- Spec

- Transmittal

Edward W. Correia

03/21/2000 02:20:17 PM

Record Type: Record

To: Irene Bueno/OPD/EOP@EOP

cc:

Subject: Newest draft of Kimel materials

I'm just starting to take a look at this.

---------------------- Forwarded by Edward W. Correia/WHO/EOP on 03/21/2000 02:20 PM ---------------------------

JOCELYN SAMUELS <Jocelyn.Samuels@EEOC.GOV>

03/21/2000 02:05:47 PM

Record Type: Record

To: Edward W. Correia/WHO/EOP

cc: Ellen.Vargyas@EEOC.GOV, Seth.Galanter@usdoj.gov

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Eddie:

I am attaching copies of the newest draft of the Kimel amendment to the ADEA, as well as a proposed statement and draft Qs&As drafted by DOJ.

With regard to the bill itself, we have tried to expand the findings section to strengthen the arguments that age discrimination has real and significant costs; that we are merely restoring law that applied before Kimel; and that it is appropriate (and constitutional) to do this through Congress' spending power. The findings are obviously a work-in-progress, and will be further modified as we get additional factual information.

On the basic waiver provision (Section 4 of the bill), we have also, in collaboration with DOJ, done the following.

1. We have modified the basic waiver language to reflect the fact that sovereign immunity attaches to a state, not directly to a program or activity, and to make clear that the state will be the entity that waives it.

2. We have added authorization to sue individual state officials in their official capacity, to ensure that Ex Parte Young type suits will be available whether or not a particular state entity is found to be a program or activity receiving federal funds.

3. We are exploring the possibility of expanding the definition of program or activity to include entities that receive funds from state entities included under the Civil Rights Restoration Act. (See bracketed

language in Section 4(g)(1)(b) of the bill.) We added this language to address the concern that there may be some state entities - pension funds are a possible example - that do not receive federal funds and thus would not be covered under a CRRA approach. Under the language included in brackets, such state entities would be covered if they received funds from any state agency that DID receive federal funds. In the case of a pension fund, this would mean that - however it was funded - an individual could sue the fund for discrimination in a retirement plan. This has the advantage of authorizing state-wide relief; otherwise, each individual affected by a plan might be limited to suing his/her direct state employer for participation in the plan.

Jessica and Seth have significant reservations about this approach. My understanding is that they are concerned about expanding the CRRA definition of program or activity, which courts may already consider too broad. They are also concerned about whether adding language to cover entities that receive funds from state agencies will undermine arguments that this use of the spending power is constitutional.

We may be better situated to evaluate the need to extend the CRRA definition after we have more factual information. AARP is, for example, investigating how state pension funds are funded, and whether there significant numbers of state agencies that would not be covered under a CRRA approach. For now, we have included the language simply as an option to consider.

Please don't hesitate to call any of us with your thoughts.

Jocelyn

- kimelQs&As.wpd

- kimeldraftbill4.wpd

PROPOSED STATEMENT REGARDING THE AGE DISCRIMINATION IN EMPLOYMENT RESTORATION ACT OF 2000

The Age Discrimination in Employment Restoration Act of 2000 restores to employees of state governments the right that almost everyother employee has * the right to go to court when their employers have discriminated against them on the basis of age. For 25 years, courts had consistently found that state employees had this right. But the Supreme Court in its recent decision in Kimel v. Florida Board of Regents said that even when a state employee can prove that he or she has been discriminated against in violation of the federal Age Discrimination in Employment Act, a court cannot hear the case. Private employers, cities, and the federal government (including Congress) can all be held responsible in court for age discrimination, but after the Kimel decision, states are exempt from suit under this important federal civil rights law.

The Restoration Act will not create new duties for states. It will simply restore the rights and remedies that state employees have had since 1974 * the right to go to court when they believe they have been discriminated against on the basis of age. This Act puts states on notice that if they choose to take federal funds to support a state program, they must agree to let courts decide whether they are complying with the federal law against age discrimination. If the states are unwilling to make that promise, then they will not get the federal assistance. Right now, states get billions of dollars in federal aid. There is no reason why they should be permitted to discriminate in programs using that money. The Restoration Act is modeled on similar legislation enacted by Congress to prohibit discrimination on the bases of race, sex, and disability in state programs supported by federal funding. There is no reason why American taxpayers should be subsidizing any of these types of discrimination.

Since 1974, the Age Discrimination in Employment Act has prohibited states from discriminating in employment on the basis of age. Nevertheless, age-based employment discrimination continues to impose serious costs on the individual and the nation. State workers should not be deprived of an effective and necessary means of preventing age discrimination and remedying its effects. Congress decided in 1974 that State employers should be subject to the same legal requirements and remedies as private employers. This legislation is needed to restore equality for state employees.

PROPOSED QUESTIONS AND ANSWERS REGARDING THE AGE DISCRIMINATION IN EMPLOYMENT RESTORATION ACT OF 2000

Q: What remedies will state employees be entitled to under the Restoration Act?

A: The Restoration Act permits courts to award the same remedies to state employees as they currently award to private employees and federal employees and that were available to state employees before the Kimel decision. In general, these are limited to back pay (doubled if the violation was willful), reinstatement to the job, and attorneys fees. There are no damages for pain and suffering, and no punitive damages.

Q: What types of discrimination does the Restoration Act prohibit?

A: The Restoration Act is simply intended to provide state employees with a remedy for violations of the Age Discrimination in Employment Act, which has applied to state employers since 1974. The Restoration Act does not alter the current definitions of discrimination or the substantive standards of that Act.

Q: Until the Restoration Act is enacted, what remedies do state employees have?

A: There are limited remedies available. The Equal Employment Opportunity Commission can sue on behalf of a state employee. But the EEOC alone cannot ferret out all age discrimination by state employers. In any event, experience has taught us that permitting a person to bring his own lawsuit is one of the best ways to make sure his rights are protected. The Restoration Act should be enacted as soon as possible to ensure that state employees do not remain the only employees who cannot rely on the courts to protect their right to be free from age discrimination.

Q: If a state refuses to let courts hear these cases, will it have to give up all its federal funds?

A: No. The State will be able to choose on a program-by-program basis whether to let courts deal with age discrimination complaints against them or not take federal funds. The Restoration Act is modeled on similar legislation enacted by Congress to prohibit discrimination on the bases of race, sex, and disability.

Q: Will the federal government cut off funds to states that discriminate against older workers on the basis of age?

A: The Restoration Act does not provide for fund cut-offs. Instead, state acceptance of federal funds for a program will constitute agreement to letting age discrimination claims be heard in court. The courts will decide whether there has been age discrimination and will award individual remedies to victims of discrimination.

Q: Does the Restoration Act apply to cities, counties, school districts or utility districts?

A: The Supreme Court's decision was limited to States and certain state instrumentalities. The Restoration Act is designed to sweep in all government entities that were addressed by the Court's decision.

Q: Will the Restoration Act apply to the federal government?

A: The federal government is already covered by the Age Discrimination in Employment Act and the Supreme Court's decision did not affect federal employees' ability to go to court.

Q: Is age discrimination in the White House prohibited?

A: Yes. The Presidential and Executive Office Accountability Act extended the prohibitions and remedies of the Age Discrimination in Employment Act to the White House. The Supreme Court's decision did not affect the ability of these employees to go to court.

Q: Doesn't the Restoration Act violate States' rights?

A: No. The Restoration Act gives the states a clear choice. If a state agency wants to be able to discriminate against its employees on the basis of age without its employees being able to go to court to get relief, the state agency will have to give up its federal money. The states don't have any right to have the American taxpayers subsidize discrimination.

Q: Why does this law just deal with age discrimination? What about race, sex, and disability?

A: There is no problem needing a fix. There are already laws on the books that prohibit race, sex, and disability discrimination by state employers, and the courts have held that state employees may go to court to enforce them against state employers.

Q: Does Kimel affect any other laws?

A: No. The Supreme Court's decision was very narrow. The Department of Justice believes that laws prohibiting race, sex, and disability discrimination are still fully effective after Kimel.

Q: Does this overrule a Supreme Court decision?

A: The Restoration Act is working within the rules laid out by the Court and is not seeking to overrule its constitutional decision. The Restoration Act addresses the remedy gap created by the Supreme Court's decision by requiring state programs receiving federal financial assistance to agree to let courts resolve age discrimination disputes.

Q: Why Spending Power legislation?

A: No state is entitled to federal aid. Instead, it is the federal government that decides how much federal aid to give and under what conditions. The Supreme Court has made clear that even when Congress cannot require a state to do something, such as be sued in court, Congress can condition the receipt of federal aid on a state agreeing to do that act. The states, of course, retain the ultimate choice to accept or forgo the federal money.

Q: Didn't the Supreme Court say that age discrimination was not a problem for state employers?

A: No. What the Supreme Court said was that age discrimination was a problem that could be solved through federal legislation, and that it did not involve the same constitutional concerns as did sex and race discrimination. The Court did not deny the very real consequences to the individual and to the national economy of discriminating against or firing qualified workers simply because they are old.

Q: Are all state employers covered regardless of size or number of employees?

A: The Restoration Act does not change the Age Discrimination in Employment Act's definition of employer. All state programs or activities that receive federal funds that meet the definition of employer under the ADEA will be covered.

Q: Can state employees sue in state court?

A: Yes. The Restoration Act will require states to agree to be sued in both state and federal court.

Q: How many cases are there every year under the ADEA against state employers?

A: The EEOC reports that it received 2744 complaints of age discrimination in Fiscal Year 1998 against state and local governments. Only a portion of these charges will actually go to court.

Q: What role will the EEOC play for state employees?

A: As under current law, complaints of age discrimination will initially be filed with the EEOC and the EEOC will investigate and work to reach a voluntary resolution before court proceedings even begin. In fact, all of the current procedural provisions that govern the rights of employees and employers will continue to be applicable.

Q: How much money do states receive every year from the federal government?

A: State governments received over $200 billion in federal funds last year.

Q: Are there state employers that will not be affected by the Restoration Act?

A: The Restoration Act's coverage will depend on the decisions the states make about which of their programs and activities will receive federal funds. The choice whether to apply for and accept federal funds will be the states' to make.

Q: Why does the Restoration Act allow suits against state officials?

A: This provision simply confirms the current law that courts can order state officials to comply with federal law.

Q: Does the Restoration Act's authorization of suits against state officials mean that employees can sue their bosses under the Age Discrimination in Employment Act and possibly bankrupt them?

A: No. The Restoration Act permits suits against state officials only in their "official capacities." This means that any remedy ordered by a court would come from the state, not the individual. And the Act specifically limits the relief to injunctive and equitable relief, which normally does not include damages.

A BILL

To require, as a condition of receipt of federal funding, that states waive immunity to suit for violations of the Age Discrimination in Employment Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE. -- This Act may be cited as the "Age Discrimination in Employment Restoration Act of 2000."

SECTION 2. FINDINGS.

(a) Since 1974, the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*, has prohibited states from discriminating in employment on the basis of age. The Age Discrimination in Employment Act reflects Congress' long-standing policy that public sector employers should be subject to the same standards as their private sector counterparts.

(b) In *EEOC v. Wyoming*, 460 U.S. 226 (1983), the Supreme Court upheld Congress' constitutional authority to prohibit states from discriminating in employment on the basis of age. As they have for more than twenty-five years, the prohibitions of the Age Discrimination in Employment Act remain in effect, and continue to apply to the states.

(c) Where it occurs, age discrimination in employment undermines the general welfare and has invidious effects on its victims, the economy, and the labor force as a whole.

(1) As the population of the United States ages, the number of people who will be vulnerable to discrimination in employment on the basis of age will grow. More than fifty percent of people in the United States will be aged 45 or over by the year 2015. In addition, the number of workers in the civilian labor force who are ages 55 and older is projected to grow over the next decade by almost forty-eight percent. Approximately 3.7 million older Americans were

in the labor force (working or actively seeking work) in 1998.

(2) Recent research has demonstrated that older workers are subjected to significant risks of age discrimination in employment.

(3) Age discrimination in employment --

(i) increases the risk of unemployment among older workers, who will then be more likely to be dependent on government services;

(ii) prevents the best use of available labor resources;

(iii) decreases morale and productivity among all workers in the labor force; and

(iv) perpetuates unwarranted stereotypes about the abilities of older workers.

(d) Providing remedies for unlawful age discrimination in employment is crucial both to provide redress to victims for the effects of that discrimination and to deter employers from discriminating against others. Private lawsuits in federal and state court are an effective and necessary means of ensuring that these goals are met.

(e) These goals have been undermined by the Supreme Court's decision in *Kimel v. Florida Board of Regents*, 2000 WL 14165 (U.S. Jan. 11, 2000). In *Kimel*, the Court held that Congress lacked power under the Fourteenth Amendment to abrogate state sovereign immunity to suits by individuals under the Age Discrimination in Employment Act. Although age-based employment discrimination by state employers will continue to be unlawful, a victim of that discrimination may not, as a result of the *Kimel* decision, bring suit in federal court to obtain remedies against the state unless the state chooses to waive its sovereign immunity.

(f) The *Kimel* decision also vitiates Congress' intent, dating from 1974, that victims of age-based employment discrimination by state employers have the same remedies as all other employees. Individuals who are employed by private sector, local government, federal, and Congressional employers may obtain all authorized remedies for age discrimination by those employers. While state employees have the right to be free from age-based employment discrimination, the *Kimel* decision has curtailed their ability to seek redress for violations of that right.

(g) States receive billions of dollars each year in federal financial assistance. Federal law has long treated non-discrimination obligations as a core component of programs that are, in whole or in part, conducted with or subsidized by federal funds. The Supreme Court has upheld Congress' authority to condition the expenditure of federal monies on adherence to these important obligations. *E.g., Cannon v. University of Chicago*, 441 U.S. 677 (1979). The Court has further recognized that Congress may require that a state waive its sovereign immunity to suit for a violation of federal law as a condition for its provision of financial assistance. *E.g., College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board*, 119 S. Ct. 2219 (1999).

(h) These principles apply to enforcement of the Age Discrimination in Employment Act. The federal government has a strong interest in ensuring that federal funds do not support, subsidize, or condone -- directly or indirectly -- programs or activities that discriminate in employment on the basis of age and that remedies are available for violations that do occur. This interest can be implemented only by extending protection to employees of all programs or activities that receive federal funds because --

(1) federal funds are [often?] used by states, at least in part, to support employment of individuals charged with implementing the program or activity that receives federal financial assistance;

(2) even where federal monies are not used directly to fund employment in a program or activity, the receipt of such monies by a program or activity indirectly supports employment by freeing the program or activity to use its own resources for employment purposes; and

(3) there are numerous means and mechanisms by which federal funds are distributed to states and arms of the states, and a comprehensive approach to coverage is required to ensure that all state employees who implement federally supported programs are protected

from age-based employment discrimination.

(i) Conditioning the expenditure of federal funds on a state's waiver of its sovereign immunity to suit for violations of the Age Discrimination in Employment Act will advance the general welfare by –

(1) ensuring that federal funds are not used to support any program or activity that engages in age-based employment discrimination;

(2) restoring to individuals employed by state employers the remedies for age discrimination to which they were entitled before the Supreme Court's *Kimel* decision;

(3) restoring Congressional intent that state employers be subject to the same standards and remedies as other employers for violations of the Age Discrimination in Employment Act; and

(4) enhancing the deterrent effect of the Age Discrimination in Employment Act so that the substantial costs of age-based employment discrimination may be avoided in the future.

SECTION 3. PURPOSES.

The purposes of this Act are --

(a) to require, as a condition of receipt of federal funding, that states waive immunity to suits by individuals for violations of the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*;

(b) to provide to state employees the same rights and remedies for violations of the Age Discrimination in Employment Act as are available to other employees under that Act; and

(c) to restore the authorization for suit by individuals against states that existed prior to the Supreme Court's decision in *Kimel v. Florida Board of Regents*, 2000 WL 14165 (U.S. Jan. 11, 2000).

SECTION 4. SOVEREIGN IMMUNITY.

Section 7 of the Age Discrimination in Employment Act, 29 U.S.C. § 626, is amended by inserting after Section 7(f) the following new section:

(g)(1)(a) The receipt of federal financial assistance by any program or activity of a state or of an arm of a state shall constitute a waiver of sovereign immunity, under the Eleventh Amendment to the United States Constitution or otherwise, to suits respecting the program or activity brought under this Chapter against any such state or arm of a state in any federal or state court for equitable, legal, and/or other relief authorized under this Chapter.

(b) For purposes of this subsection, the terms "program or activity" shall have the same meaning as those terms are given in Section 2000d-4a(1) and (2) of Title 42 of the United States Code, and shall also include any other entity which [receives funds from one or more, or] is established by two or more, of the entities described in Section 2000d-4a(1) and (2) of Title 42 of the United States Code.

(2) Officials of a state or arm of a state may be sued in their official capacity by any person aggrieved who has complied with the procedures of Sections 7(d) or 7(e) of this Chapter for injunctive and other equitable relief authorized under this Chapter.

SECTION 5. SEVERABILITY.

(a) If any provision of this Act, or the application of such provision to any person or circumstances, is held to be invalid, the remainder of this Act and the application of such provision to other persons and circumstances shall not be affected.

(b) If any provision of this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of the Age Discrimination in Employment Act, 29 U.S.C. 621 *et seq.*, shall not be affected.

SECTION 6. EFFECTIVE DATE. – As to each program or activity receiving federal financial assistance, the waiver provided for in Section 4 of this Act will apply to conduct occurring on or after the date on which that program or activity first receives federal financial assistance following enactment of this Act.

(VP)

ADEA - 3/24/00

Bill

Groups -

Pensions - need to sue entity to fix the statewide system problem
- Will it receive fed funds. — how do you follow it
- In part, could sue
- AARP & AFSCME - met w/ them.
- Need more info -

Edward W. Correia

03/21/2000 02:20:17 PM

Record Type: Record

To: Irene Bueno/OPD/EOP@EOP

cc:

Subject: Newest draft of Kimel materials

– Transmittal letter

– Groups - pending

– No remedy for states fed – all we need is a waiver ~~std~~ of state immunity

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prevent a Kimel bar

revise

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To require, as a condition of receipt of federal funding, that states waive immunity to suit for violations of the Age Discrimination in Employment Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE. -- This Act may be cited as the " Age Discrimination in Employment Restoration Act of 2000."

SECTION 2. FINDINGS.

(a) Since 1974, the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*, has prohibited states from discriminating in employment on the basis of age. The Age Discrimination in Employment Act reflects Congress' long-standing policy that public sector employers should be subject to the same standards as their private sector counterparts.

(b) In *EEOC v. Wyoming*, 460 U.S. 226 (1983), the Supreme Court upheld Congress' constitutional authority to prohibit states from discriminating in employment on the basis of age. As they have for more than twenty-five years, the prohibitions of the Age Discrimination in Employment Act remain in effect, and continue to apply to the states.

(c) Where it occurs, age discrimination in employment undermines the general welfare and has invidious effects on its victims, the economy, and the labor force as a whole.

(1) As the population of the United States ages, the number of people who will be vulnerable to discrimination in employment on the basis of age will grow. More than fifty percent of people in the United States will be aged 45 or over by the year 2015. In addition, the number of workers in the civilian labor force who are ages 55 and older is projected to grow over the next decade by almost forty-eight percent. Approximately 3.7 million older Americans were

in the labor force (working or actively seeking work) in 1998.

(2) Recent research has demonstrated that older workers are subjected to significant risks of age discrimination in employment.

(3) Age discrimination in employment --

(i) increases the risk of unemployment among older workers, who will then be more likely to be dependent on government services;

(ii) prevents the best use of available labor resources;

(iii) decreases morale and productivity among all workers in the labor force; and

(iv) perpetuates unwarranted stereotypes about the abilities of older workers.

(d) Providing remedies for unlawful age discrimination in employment is crucial both to provide redress to victims for the effects of that discrimination and to deter employers from discriminating against others. Private lawsuits in federal and state court are an effective and necessary means of ensuring that these goals are met.

(e) These goals have been undermined by the Supreme Court's decision in *Kimel v. Florida Board of Regents*, 2000 WL 14165 (U.S. Jan. 11, 2000). In *Kimel*, the Court held that Congress lacked power under the Fourteenth Amendment to abrogate state sovereign immunity to suits by individuals under the Age Discrimination in Employment Act. Although age-based employment discrimination by state employers will continue to be unlawful, a victim of that discrimination may not, as a result of the *Kimel* decision, bring suit in federal court to obtain remedies against the state unless the state chooses to waive its sovereign immunity.

(f) The *Kimel* decision also vitiates Congress' intent, dating from 1974, that victims of age-based employment discrimination by state employers have the same remedies as all other employees. Individuals who are employed by private sector, local government, federal, and Congressional employers may obtain all authorized remedies for age discrimination by those employers. While state employees have the right to be free from age-based employment discrimination, the *Kimel* decision has curtailed their ability to seek redress for violations of that right.

(g) States receive billions of dollars each year in federal financial assistance. Federal law has long treated non-discrimination obligations as a core component of programs that are, in whole or in part, conducted with or subsidized by federal funds. The Supreme Court has upheld Congress' authority to condition the expenditure of federal monies on adherence to these important obligations. *E.g., Cannon v. University of Chicago*, 441 U.S. 677 (1979). The Court has further recognized that Congress may require that a state waive its sovereign immunity to suit for a violation of federal law as a condition for its provision of financial assistance. *E.g., College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board*, 119 S. Ct. 2219 (1999).

(h) These principles apply to enforcement of the Age Discrimination in Employment Act. The federal government has a strong interest in ensuring that federal funds do not support, subsidize, or condone -- directly or indirectly -- programs or activities that discriminate in employment on the basis of age and that remedies are available for violations that do occur. This interest can be implemented only by extending protection to employees of all programs or activities that receive federal funds because --

(1) federal funds are [often?] used by states, at least in part, to support employment of individuals charged with implementing the program or activity that receives federal financial assistance;

(2) even where federal monies are not used directly to fund employment in a program or activity, the receipt of such monies by a program or activity indirectly supports employment by freeing the program or activity to use its own resources for employment purposes; and

(3) there are numerous means and mechanisms by which federal funds are distributed to states and arms of the states, and a comprehensive approach to coverage is required to ensure that all state employees who implement federally supported programs are protected

from age-based employment discrimination.

(i) Conditioning the expenditure of federal funds on a state's waiver of its sovereign immunity to suit for violations of the Age Discrimination in Employment Act will advance the general welfare by –

(1) ensuring that federal funds are not used to support any program or activity that engages in age-based employment discrimination;

(2) restoring to individuals employed by state employers the remedies for age discrimination to which they were entitled before the Supreme Court's *Kimel* decision;

(3) restoring Congressional intent that state employers be subject to the same standards and remedies as other employers for violations of the Age Discrimination in Employment Act; and

(4) enhancing the deterrent effect of the Age Discrimination in Employment Act so that the substantial costs of age-based employment discrimination may be avoided in the future.

SECTION 3. PURPOSES.

The purposes of this Act are --

(a) to require, as a condition of receipt of federal funding, that states waive immunity to suits by individuals for violations of the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.*;

(b) to provide to state employees the same rights and remedies for violations of the Age Discrimination in Employment Act as are available to other employees under that Act; and

(c) to restore the authorization for suit by individuals against states that existed prior to the Supreme Court's decision in *Kimel v. Florida Board of Regents*, 2000 WL 14165 (U.S. Jan. 11, 2000).

SECTION 4. SOVEREIGN IMMUNITY.

Section 7 of the Age Discrimination in Employment Act, 29 U.S.C. § 626, is amended by inserting after Section 7(f) the following new section:

(g)(1)(a) The receipt of federal financial assistance by any program or activity of a state or of an arm of a state shall constitute a waiver of sovereign immunity, under the Eleventh Amendment to the United States Constitution or otherwise, to suits respecting the program or activity brought under this Chapter against any such state or arm of a state in any federal or state court for equitable, legal, and/or other relief authorized under this Chapter. term of art

(b) For purposes of this subsection, the terms "program or activity" shall have the same meaning as those terms are given in Section 2000d-4a(1) and (2) of Title 42 of the United States Code, and shall also include any other entity which [receives funds from one or more, or] is established by two or more, of the entities described in Section 2000d-4a(1) and (2) of Title 42 of the United States Code.

(2) Officials of a state or arm of a state may be sued in their official capacity by any person aggrieved who has complied with the procedures of Sections 7(d) or 7(e) of this Chapter for injunctive and other equitable relief authorized under this Chapter.

SECTION 5. SEVERABILITY.

(a) If any provision of this Act, or the application of such provision to any person or circumstances, is held to be invalid, the remainder of this Act and the application of such provision to other persons and circumstances shall not be affected.

(b) If any provision of this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of the Age Discrimination in Employment Act, 29 U.S.C. 621 *et seq.*, shall not be affected.

SECTION 6. EFFECTIVE DATE. – As to each program or activity receiving federal financial assistance, the waiver provided for in Section 4 of this Act will apply to conduct occurring on or after the date on which that program or activity first receives federal financial assistance following enactment of this Act.

Irene Bueno
03/01/2000 08:55:20 PM

Record Type: Record

To: Eric P. Liu/OPD/EOP@EOP

cc: Anna Richter/OPD/EOP@EOP
Subject: Age Discrimination Act Meeting

I was invited to this meeting but the change conflicted with another meeting I was holding so I missed but Genie attended it and I spoke with Eddie. Here's quick update. There is interest in introducing legislation to allow states to be sued for age discrimination but there is not yet agreement on how to do it. EEOC and DOJ/Civil Rights Division have been working on proposals and the groups have some suggestions. I will send them to you when I receive them. The groups plan to discuss this with Congressional members and we will meet with them again to discuss options.

---------------------- Forwarded by Irene Bueno/OPD/EOP on 03/01/2000 08:51 PM ---------------------------

Alexian T. Wines 02/28/2000 10:20

Record Type: Record

To: See the distribution list at the bottom of this message

cc: Maura M. Pally/WHO/EOP@EOP, Edward W. Correia/WHO/EOP@EOP
Subject: Age Discrimination Act Meeting - CHANGE

Hello All! The Age Discrimination Act Meeting originally scheduled for tomorrow (2/29/2000) at 2pm has been moved to 3:30pm. It will still be in room 476/OEOB.

Please let me know if you will still be able to attend with this time change. Sorry for any inconvenience this may cause.

Thanks,
Ali
ext. 65069

Message Sent To:

William Marshall/WHO/EOP@EOP
Irene Bueno/OPD/EOP@EOP
Joel K. Wiginton/WHO/EOP@EOP
Broderick Johnson/WHO/EOP@EOP
Mary E. Cahill/WHO/EOP@EOP
Lisa M. Brown/OVP@OVP
Peter Rundlet/WHO/EOP@EOP

Irene Bueno
02/29/2000 11:14:27 AM

Record Type: Record

To: Eugenia Chough/OPD/EOP

cc:
Subject: Age Discrimination Act Mtg.

I will give you my file. Please send me brief summary of the meeting. Thanks.
---------------------- Forwarded by Irene Bueno/OPD/EOP on 02/29/2000 11:13 AM ---------------------------

Alexian T. Wines 02/24/2000 04:49

Record Type: Record

To: See the distribution list at the bottom of this message

cc: Maura M. Pally/WHO/EOP@EOP, Edward W. Correia/WHO/EOP@EOP
Subject: Age Discrimination Act Mtg.

Hello All! I am writing to invite you all to a meeting with Eddie Correia on the **Age Discrimination Act on Tuesday the 29th of February, 2000**. The meeting will be in room 476 of the OEOB and should last one hour. There will be outside agencies also in attendance. For example, the Leadership Conference, AARP, National Women's Law Center, and a few others.

Please let me know if you will be able to attend.

Thanks,
Ali
ext. 65069

Message Sent To:

William Marshall/WHO/EOP@EOP
Irene Bueno/OPD/EOP@EOP
Joel K. Wiginton/WHO/EOP@EOP
Broderick Johnson/WHO/EOP@EOP
Mary E. Cahill/WHO/EOP@EOP

The Chronicle of Higher Education

January 21, 2000

SECTION: GOVERNMENT & POLITICS; Pg. A30

LENGTH: 1028 words

HEADLINE: Supreme Court Blocks Federal Age-Bias Lawsuits by Public-College Employees

BYLINE: PATRICK HEALY

BODY:

In a ruling last week that college lawyers hailed but many faculty leaders decried, the U.S. Supreme Court said that employees of public universities may not sue their institutions -- or state governments -- in federal court on claims of age discrimination.

The case, involving a group of Florida public-university employees, asked the court to decide whether federal protections from age discrimination trumped the constitutional immunity that protects states from federal lawsuits. The 5-to-4 decision came down on the side of the states, reflecting the court's recent trend toward striking down federal laws that interfere with states' rights.

The majority opinion strongly held that states' immunity guarantee under the 11th Amendment of the U.S. Constitution can rarely be restricted, and, moreover, that individuals are not clearly protected from age discrimination under the 14th Amendment's rights to equal protection.

"States therefore may discriminate on the basis of age without offending the Fourteenth Amendment if the age classification in question is rationally related to a legitimate state interest," the opinion stated. Age may serve as a useful "proxy" to determine qualifications for a job, for example, the decision said.

Workers in most states can still bring age-discrimination lawsuits under state civil-rights statutes, the opinion added.

The decision provided a ringing defense of states' rights under the 11th Amendment, which generally protects states and their institutions from federal lawsuits. Legal observers also said it could limit individuals' ability to sue colleges and states under some other federal antidiscrimination laws, such as the Americans With Disabilities Act of 1990, because disability, like age, is not a status that is protected in the U.S. Constitution.

"The decision comes down to a question of power -- by what authority the federal government would impose its conception of civil rights upon a state entity, including a university," said Douglas Kmiec, a professor of constitutional law at Pepperdine University and an expert on 11th Amendment cases.

Last week's case involved 36 current and former faculty members and librarians at Florida State University and Florida International University who sued the state Board of Regents in 1995 over a salary dispute.

The employees, all over age 40, argued that the regents had refused to order the universities to adjust the group's salaries as promised, resulting in a disparate impact on the base pay of older employees with many years of service.

The group sued under the Age Discrimination in Employment Act of 1967, which Congress passed to bar employers, including states, from discriminating against workers on the basis of their age.

The merits of the lawsuit have never been much at issue. Rather, the question raised before one federal court after another was whether the Florida regents -- and thereby the state -- were protected under the 11th Amendment from lawsuits based on the 1967 law.

Justice Sandra Day O'Connor, writing for a majority that has also backed states in other 11th Amendment cases, said that Congress exceeded its authority by passing the age-discrimination law.

The U.S. Constitution does not consider age a "suspect classification" deserving equal protection -- as it does race, for example -- and states had given Congress no reason to believe that age discrimination was rampant and required federal action, the majority concluded.

"Congress never identified any pattern of age discrimination by the States, much less any discrimination whatsoever that rose to the level of constitutional violation," the opinion stated.

Justice O'Connor was joined in her decision by Chief Justice William H. Rehnquist and Justices Anthony M. Kennedy, Antonin Scalia, and Clarence Thomas.

Robert A. Burgoyne, a Washington lawyer who works on higher-education issues, said the court's decision provides public universities with a new precedent with which to battle discrimination lawsuits.

"This is a case the higher-education community was actively following," Mr.

Burgoyne said.

He and others said the ruling raises questions about the fate of the Americans With Disabilities Act, which has also been challenged in federal court.

"There's a split in the courts right now on whether the A.D.A. was properly enacted in terms of the 11th Amendment," Mr. Burgoyne said. "The more statutes that the court views with this type of eye, it suggests they're going to look closely at other similar statutes."

Gregg A. Gleason, general counsel to the Florida Board of Regents, said the decision was important for the universities involved. But he questioned its broad significance, echoing Justice O'Connor's statement that many Americans can still sue under state laws.

"This may simply be a change-of-venue issue," he said.

But Rosie Webb Joels, president of the United Faculty of Florida, a union for professors at public universities in the state, said the decision stripped a significant protection for older faculty and staff members.

"If individuals, because of age, are treated in the workplace in ways that are negative, it's an issue that is even more fundamental than employee rights. It's an issue of human dignity and fairness and equity," Ms. Joels said.

Justice John Paul Stevens wrote a brief but sharply worded dissent attacking the majority opinion, and was joined by Justices Stephen G. Breyer, Ruth Bader Ginsburg, and David H. Souter.

Justice Stevens said he believed Congress had made the appropriate deliberations and steps in deciding to pass the age-discrimination act and to limit states' immunity under it.

"Congress can use its broad range of flexible legislative tools to approach the delicate issue of how to balance local and national interests in the most responsive and careful manner," Justice Stevens wrote.

"It is quite evident, therefore, that the Framers did not view this Court as the ultimate guardian of the States' interest in protecting their own sovereignty from impairment by 'burdensome' federal laws," the justice added.

LANGUAGE: ENGLISH

LOAD-DATE: February 24, 2000

Edward W. Correia

02/14/2000 10:06:00 AM

Record Type: Record

To: Irene Bueno/OPD/EOP@EOP

cc:

Subject: Re:

Kimel struck down the part of the Age Discrimination Act that allows people to sue states. The Court said that Congress does not have the power under the Commerce Clause to force states to waive their sovereign immunity against damage claims. This is the latest case in the Court's trend toward making it hard for Congress to regulate the states. However, we can accomplish the same result through use of the Spending Clause, though we cannot achieve the same comprehensive coverage we did earlier.