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US Supreme Court agrees to decide whether ADEA precludes Equal Protection claim

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On March 18, 2013, the United States Supreme Court agreed to determine whether state and local government workers may file constitutional claims of age discrimination instead of pursuing their claims under the Age Discrimination in Employment Act.

The Court granted review of a 7th US Circuit Court of Appeals decision in the case of [Madigan v. Levin](#), which permitted a former Illinois assistant attorney general to proceed on a claim under the Civil Rights Act of 1871 (42 USC § 1983) that he was discharged because of his age in violation of the 14th Amendment's equal protection clause.

The United States Courts of Appeal for the 4th [which includes NC], 5th, 9th and 10th Circuits have not yet allowed such constitutional claims to go forward, ruling that government employees must seek relief under the ADEA.

The facts of the case are as follows: Harvey Levin was hired in 2000 as an assistant attorney general in the Consumer Fraud Bureau. Levin, who was 55 years old at the time, was promoted to senior assistant attorney general in December 2002, but his supervisors advised him that they had concerns about his alleged low productivity, excessive socializing at work, inferior litigation skills, and poor judgment.

Levin was fired in May 2006, along with 11 other lawyers. He alleged that he was replaced by a female attorney in her 30s. The attorney general, Lisa Madigan, denied that any of the terminated lawyers were "replaced", noting that their cases were not reassigned to younger attorneys.

Levin filed a lawsuit in federal district court in Illinois, claiming sex discrimination under Title VII of the 1964 Civil Rights Act and age bias under the ADEA. He also brought claims under Section 1983, asserting that the alleged sex and age discrimination violated his 14th Amendment equal protection rights. In addition to suing the state of Illinois, Levin sued Madigan and four employees of the attorney general's office in their individual capacities under Section 1983.

All of the defendants filed motions to dismiss Levin's Section 1983 claims on the basis that the ADEA was his exclusive remedy, but the trial court allowed the constitutional claims to go forward. The defendants appealed the ruling, and the 7th Circuit affirmed the trial court's decision.

In her petition for Supreme Court review, Madigan stated that the 7th Circuit's ruling creates a conflict with other circuits on the question of whether the ADEA "displaces" Section 1983 equal protection claims for alleged age discrimination by state and local government employers.

There are approximately 20 million state and local employees nationwide. Therefore, the issue of the ADEA's preclusive effect is an important and frequently recurring question requiring the Supreme Court's immediate review. The Court will hear arguments on this case in its 2013-14 term, which begins in October.

If you have questions or concerns about this decision or other legal issues, please feel free to contact Connie Carrigan at ccarrigan@smithdebnamlaw.com.

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