Supreme Court of the United States

Nat'l School Boards Assoc.

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discrimination laws that balance the rights of public

protect aging employees, and unnecessarily burdensome on school district employers called upon

by this Court $PHULFD·V SXEOLF VFKRROV PXVW EH I
from additional and redundant litigation so they can
meet the challenges of preparing students for the
world that awaits them.

ARGUMENT

I. THE SEVENTH CIRCUIT DECISION HANDCUFFS SCHOOL DISTRICTS AND PUBLIC SCHOOL OFFICIALS IN MEE TING THE &+$//(1*(6 2) 285 1$7,21·6 PUBLIC SCHOOLS

$PHULFD·V SXEOLF VFKRROV face unprecedented
challenges and are under increased pressure to do
more with less. Public schools must comply with
legislative dictates passed each year at both the
federal and state levels. On the federal level, the
challenges presented by the No Childhallenges No

II. EXPANSIVE FEDERAL AND STATE LAWS ALREADY PROTECT SCHOOL EMPLOYEES, OBVIATING THE NEED FOR EXPANSION OF 42 U.S.C. § 1983 TO COVER CLAIMS OF AGE DISCRIMINATION IN THE SCHOOL CONTEXT

A. The ADEA offers ample protection to school employees from age discrimi nation.

By any measure, the comprehensive scheme created by the ADEA and its amendments provides adequate protections for employees 40 and over from discrimination based on age, such that expanding 42 U.S.C. § 1983 to also cover age discrimination in employment would be superfluous.

The ADEA covers employers that employ 20 or more individuals, as well as state and local governments, employment agencies, labor organizations and the federal government. 29 U.S.C. § 626(f) (2013). The ADEA is sweeping in its scope, and protects employees and applicants from discrimination on the basis of age with respect to the terms, conditions or privileges of employment, including hiring, firing, promotion, layoff, compensation, benefits, job assignments and training. Id. a

employment decisions that disparately impact older workers. Smith v. City of Jackson, 544 U.S. 228 (2005). The EEOC, which enforces the ADEA, has interpreted the statute to allow employers to favor workers who are 40 years of age or older, even when doing so negatively impacts younger workers under the age of 40. See Facts About Age Discrimination, http://www.eeoc.gov/facts/age.html.

The ADEA also contains an anti-retaliation clause that protects individuals who oppose discriminatory, age-related employment practices and those who file a charge of discrimination, or who participate or testify in an investigation, proceeding or litigation of a claim under the ADEA. 29 U.S.C. § 623(d) (2013). Less obvious aspects of the employment relationship also fall within the ambit of the ADEA. For example, the ADEA prohibits discrimination in apprenticeship programs and regulates job notices and advertisements. Id. at § 623(e). Facts About Age Discrimination, http://www.eeoc.gov/facts/age.html. The statute also prohibits discrimination in employee benefit plans such as health coverage and pensions. 29 U.S.C. § 623(i) (2013). Further, according to the EEOC, while the ADEA does not expressly prohibit age-related L Q T X L U because such inquiries may deter older workers from applying for employment or may otherwise indicate possible intent to discriminate based on age, requests for age information will be closely scrutinized to make sure that the inquiry was made for a lawful purpose, rather than for a purpose prohibited by the ADEA. µ Facts About Age Discrimination, http://www.eeoc.gov/facts/age.html

of discrimination with the EEOC as a mandatory condition precedent to filing suit. In turn, the ADEA G L U H F W V W K H ((2 & W R lim ínate the D W W H P S W W R H discriminatory practice or practices alleged, and to effect voluntary compliance . . . through informal P H W K R G V R I F R Q F L O L D W L R Q F R Q I H U H Q F H D Q G S 29 U.S.C. § 626 (2013). An aggrieved individual is also required to give the EEOC at l H D V W V L [W \ G D \ V · notice of an intent to file such an action. Id. at § 626(d). While no employer relishes receiving an EEOC charge, school districts need a constant and stable work force that is able to deliver education in a harmonious environment conduciv e to learning; therefore, di stricts have a strong incentiv e to resolve employment disputes as early as possible without litigation.

The relief available to aggrieved individuals is also expansive under the ADEA. The ADEA provides that an aggrieved individ ual may bring an action for Z K D W H Y H U ´ O H J D O R U H T X L W D E O H U H O L H I D V Z L W K H S X U S R V H V R I Id. at § 626(b)(1). In addition to injunctive relief, ADEA plaintiffs may secure: compelled employment (for applicants), reinstatement, front pay, lost benefits, promotion, and back pay. Id. at § 626(b). Where an employer is I R X Q G W R K D Y H H Q J D J H G L Q F R Q G X F W W K D W L W showed reckless disregard for the matter of whether L W V F R Q G X F W Z D V S U R K L E L W H G E \ W K H $ ' ($ µ D violation is established and liquidated damages are awarded, which are generally computed by doubling the amount awarded to the plaintiff. Id. at § 626(b); see,e.g., Trans World Air Lines v. Thurston , 469 U.S. 111, 126 (1985). Upon establishing a violation of the ADEA, a plaint L I I L V H Q W L W O H G W R U H D V R Q D E O H D W W

fees and costs. 29 U.S.C. § 626(b) (2013). In addition, DQ\RQH ZKR LQWHUIHUHV ZLWK WKH ((2&·V SHUIR of its duties under the ADEA is subject to criminal penalties amounting to a fine, up to one year of prison, or both. Id. at § 629.

C. School district employees have additional protections under state anti -discrimination law s, collective bargaining agreements, civil service laws and school district established grievance procedures.

In the public school setting specifically, employees in many states have remedies under a collective bargaining agreement at their disposal.

district will then investigate and attempt to resolve. This often serves as the first layer of protection against age discrimination. See, e.g., Grievance Procedure of Raymore-Peculiar School District, available at http://www.raypec.k12.mo.us/index.aspx?NID=813 (establishing grievance procedure for school district employees who contend they have been discriminated with respect to, inter alia, employment). These procedures provide employees an avenue to resolve complaints in a cost-effective and efficient manner, sometimes producing resolutions without

against governmental entities such as public school GLVWULFWV WKH 6HYHQWK &LUFXLW·V GHFLVLRQ and misguided. An individual who believes he has been the victim of age discrimination does not need a redundant co nstitutional remedy to vindicate his rights.

The litany of r emedies available to employees for age and other types of discrimination under federal law, state laws and collective bargaining agreements provide ample incentive for public school districts to adhere to non-discriminatory practices. Through proactive personnel practices and internal policies that work to eradicate workplace discrimination, school districts may investigate internal allegations of discrimination and remedy specific situations, so they do not burden federal FRXUWV ZLWK WKH UROH RI ´D VXSHU personnel department that reexamines an entity's business GHFLVLRQV´ Chapman v. AI Transp. , 229 F.3d 1012, 1030 (11th Cir. 2000) (en banc).

This case provides the Court with the opportunity to r eaffirm that public entity employers, including public school districts, should not be burdened with the specter of additional litigation when sufficient, effective remedies are already in place to remedy age discrimination. This is particularly important given the stakes that are involved in Section 1983 litigation, which often forces indivndistr6(i)7158.42 24(nd)5(c)4()-3(s)-7pplent-orcat publcse.25 s aees bhe

III. EXISTING REMEDIES AVAILABLE TO EMPLOYEES ARE LESS COSTLY, LESS BURDENSOME, AND MORE ALIGNED WITH CONGRESSIONAL INTENT THAN EXPENSIVE, TIME-CONSUMING CONSTITUTIONAL LITIGATION

Because the ADEA, state equal employment opportunity statutes, collective bargaining agreements, civil service laws and school district-established grievance procedures provide comprehensive and more easily accessible remedies against schools that discriminate on the basis of age, a constitutional remedy via Section 1983 is redundant and unnecessary. These non-Section 1983 remedies also result in less costly, less complex, and less intrusive litigation. Because the litigation of constitutional claims against school districts under Section 1983 is more intricate and involved, both parties will incur greater legal costs. Protracted litigation in public schools not only redirects precious public funding away from the classroom, but also leads to the unnecessary expenditure of human capital, diminishes employee and supervisor morale, divides schools and school boards, and strains school board-union relationships.

diametrically opposes Congressional intent ; 29 U.S.C. § 626(d) (2013); and allows litigation to become the remedy of first resort when little is gained by doing so.

This case is different than the situation

decisions point to the ad ministrative and remedial schemes of the respective statutes at issue to find that a plaintiff may not end run the remedies provided in these statutes in favor of a Section 1983 remedy. The administrative scheme put in place by Congress and the remedies av ailable to age GLVFULPLQDWLRQ SODLQWLIIV DUH ´VXIILF FRPSUHKHQVLYHµ WR SUHFOXGH XVH RI 6HFWLRQ Clammers 86 DW ´:KHQ WKH UHPHGLDO devices provided in a particular Act are sufficiently comprehensive, they may suffice to demonstrate congressional intent to preclude the remedy of suits under § 1983µ

B. Constitutional claims under Section 1983 impose litigation burdens on both parties that prolong and complicate the resolution of age discrimination complaints without providing greater protection or more effect ive remedies.

The proof requirements in constitutional litigation against a school district are daunting. To prevail under the Equal Protection Clause, a plaintiff must establish invidious and purposeful discrimination by school officials. To hold the sc hool district itself liable, the plaintiff must prove that the district maintained a custom, policy, or practice of discrimination to satisfy the strictures of Monell v. 1HZ <RUN &LW\ 'HS·W R,436 U.S. 658 6HUYLFHV (1978), which can be a difficult hurdle to clear. See, e.g., Rost v. Steamboat Springs RE -2 Sch. Dist., 511

F.3d 1114, 1124-25 (10th Cir. 2008) (holding that school district was not liable in Section 1983 action because requirements of Monell could not be satisfied); Lillard v. Shelby County Bd. of Educ., 76 F.3d 716 (6th Cir. 1996) (same). In order to meet this burden, plaintiffs must engage in extensive discovery. Backe v. LeBlanc, 691 F.3d 645, 648 (5th Cir. 2012) (costly, time-consuming, and in Section 1983 litigation). In Section 1983 litigation, where the Monell doctrine applies, a plaintiff must seek discovery designed to uncover a district-wide custom, policy, or practice. See Cadiz v. Kruger, 2007 WL 4293976 at *3 (N.D. Ill. 2007) (acknowledging that a Monell claim will typically expand Nodak v. City of Chicago, 2004 WL 1381043 at *5 (N.D. Ill. 2004) (noting that Monell allows a broad inquiry into police practices and procedures, citizen complaints, similar incidents, and internal Langford v. City of Elkhart, 1992

When school officials are sued in their individual capacity under Section 1983, defendants are entitled to assert the defense of qualified immunity early in the litigation and, if denied, are entitled to file an interlocutory appeal while discovery is stayed. Harlow v. Fitzgerald, 457 U.S. 800, 814 (1982); see also Behrens v. Pelletier, 516 U.S. 299, 308 (1996) (the defense of qualified immunity also extends to insulate public officials from the burden associated with engaging in discovery); Anderson v. Crieghton, 483 U.S. 635, 646 n.6 (1987) (one of the purposes of the qualified immunity standard is to protect public officials from discovery); Mitchell v. Forsythe, 472 U.S. 511, 526 (1985) (qualified immunity not only provides a defense to liability, but also gives a public official immunity from suit itself). Qualified immunity shields public officials from suit unless they personally participated in, or were deliberately LQGLIIHUHQW WR D YLROD WLRQ RI DQ LQGLYLG established constitutional rights. See Williams v. Bd. of Regents, 477 F.3d 1282, 1300 (11th Cir. 2007) (discussing general standards applicable to qualified immunity defense). While the qualified immunity defense offers school officials important protections, it remains the subject of considerable debate and litigation, and as a practical matter, is raised by counsel for individual capacity defendants in all but the most unique of cases, thus increasing the time and expense to both parties needed to resolve the discrimination claim.

Moreover, Section 1983 cases often involve multiple defendants ³ the school district and/or multiple school administrators ³ thus complicating

the litigation. The ADEA, by contrast, does not permit individual liability claims. Fantini v. Salem State College, 557 F.3d 22, 28-32 (1st Cir. 2009) (holding that individual liability does not exist under ADEA); see also Hill v. Borough of Kutztown, 455 F.3d 225, 246 n.29 (3d Cir. 2006); Medina v. Ramsey Steel Co. 238 F.3d 674, 686 (5th Cir. 2001) (the ADEA ´SURYLGHV QR individual liability for EDVLV HRU VXSHUYLVRU\ HPSOR\HHVµ Horwitz v. Board of Educ. of Avoca Sch. Dist. No. 37, 260 F.3d 602, 610 n.2 (7th Cir. 2001) ´+LOO GLG QRW EULQJ an ADEA claim against Mayor Marino himself, nor could he have because the ADEA does not provide for individual liability µ Butler v. City of Prairie Village, 172 F.3d 736, 744 (10th Cir.1999) (citing with approval cases from other circuits holding that there is no individual liability under the ADEA); Martin v. Chemical Bank, 129 F.3d 114 (2d Cir. 1997) (no individual liability under the ADEA); 6DERXUL Y 2KLR 'HS 42 F.3d 436 (6th Cir. &LU ´6DERXUL PD\ QRW VHHN UHOLHI IURP individual defendants because neither Title VII nor the ADEA provides for individual liability µ Smith v. Lomax, 45 F.3d 402, 403 n. 4 (11th Cir.1995) (no individual liability under the ADEA); Birkbeck v. Marvel Lighting Corp., 30 F.3d 507, 510 (4th Cir. 1994) (rejecting claim against individual capacity defendant); Miller v. Maxwell's Int'l, Inc., 991 F.2d 583, 587 (9th Cir. 1993) (holding that individual liability under ADEA does not exist).

Because of the risk of multiple parties and rules governing conflicts of interest, it is often impossible for an attorney to represent both a governmental entity defendant and an individual

defendant in Section 1983 litigation. Thus, more lawyers typically appear in su ch cases, which invariably complicates litigation and results in higher legal costs for school districts and other public entities.

Finally, the statute of limitations in Section 1983 cases is often longer than the limitations period applicable in ADEA cas es. Section 1983 borrows the most analogous statute of limitations period in each state. Wilson v. Garcia , 471 U.S. 261, 273-74 (1985). Thus, the limitations periods applicable to Section 1983 actions will vary state -by-state and claim -by-claim. By contras t, the ADEA provides a uniform limitations period which clearly defines when one must file a charge of discrimination: within 180 days in states with no anti -discrimination statute, and 300 days in states where such a law exists. The longer statute of limi tations periods applicable to Section 1983 actions create uncertainty in public school districts, which are routinely faced with the need to move school administrators to different schools at the end of a school year and must reallocate teachers to differe nt schools based upon the needs of the schools within the district.

CONCLUSION

For all of the above reasons, Amici Curiae urge this Court to U H Y H U V H W K H 6 H Y H Q W K & L U F X L W · \ decision.

Respectfully submitted,

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