The legal issue in *Guido v. Mount Lemmon Fire District* could not be simpler; but the law is tricky. In this case the Supreme Court will decide whether the federal Age Discrimination in Employment Act (ADEA) applies to state and local government employers with less than 20 employees. The State and Local Legal Center (SLLC) *amicus brief* argues it should not.

John Guido was 46 and Dennis Rankin was 54 when they were terminated by the Mount Lemmon Fire District due to budget cuts. They claim they were terminated because of their age in violation of the ADEA. They were the oldest of the district’s 11 employees.

The fire district argues that the ADEA does not apply to it because it employs fewer than 20 people.

The term “employer” is defined in the ADEA as a “person engaged in an industry affecting commerce who has 20 or more employees.” The definition goes on to say “[t]he term also means (1) any agent of such a person, and (2) a State or political subdivision of a State.”

Guido argued, and the Ninth Circuit agreed, that “employer” means “[A—person] and also means (1) [B—agent of person] and (2) [C—State-affiliated entities].” The clause describing state-affiliated entities contains no size requirement.

The Ninth Circuit opined that the word “also” supports its interpretation. “The word ‘also’ is a term of enhancement; it means ‘in addition; besides’ and ‘likewise; too.’” As used in this context, ‘also’ adds another definition to a previous definition of a term—it does not clarify the previous definition.”

Notably the Sixth, Seventh, Eighth, and Tenth Circuits have come to the opposite conclusion—that the 20-employee minimum applies to state and local governments.

The SLLC *amicus* brief points out that small special districts, like the Mount Lemmon Fire District, are very common. Particularly in rural areas there are “few alternatives to layoffs and terminations when budget cuts must be made,” making small special districts particularly vulnerable to age discrimination lawsuits.

The brief also argues the Ninth Circuit decision is inconsistent with principles of federalism. “Small state and local government entities must have the latitude to staff their projects as they see fit, responsive to local needs and in line with particular project goals. The fact that these needs differ is illustrated by the different age discrimination statutes enacted by the States with a variety of minimum employee thresholds.”

Collin O’Connor Udell of Jackson Lewis wrote the SLLC *amicus* brief which was joined by the National Conference of State Legislatures, the Council of State Governments, the National Association of Counties, the National League of Cities, the United States Conference of Mayors, the International City/County Management Association, the International Municipal Lawyers Association, the National Public Labor Relations Association, and the International Public