In its first opinion of the term in *Mt. Lemmon Fire District v. Guido* the Supreme Court ruled 8-0 that 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) filed an *amicus* brief arguing that it should not apply. State and local governments often rely on small special districts to provide services they don’t provide.

John Guido was 46 and Dennis Rankin was 54 when they were laid off by the Mount Lemmon Fire District. 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 argued that the ADEA does not apply to it because it employs fewer than 20 people. The Ninth Circuit disagreed.

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.”

The Supreme Court, in an opinion written by Justice Ginsburg, held that the phrase “also means” adds a new category to the definition of employer (that contains no size requirement) rather than clarifies that states and their political subdivisions are a type of person contained in the first sentence. The Court reasoned that “also means” is “additive” rather than “clarifying.” The Court noted the phrase is common in the U.S. Code and “typically carrying an additive meaning.” Finally, the statute pairs states and their political subdivisions with agents, “a discrete category that, beyond doubt, carries no numerical limitation.”

The SLLC *amicus* brief pointed 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 argued 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.”

The Court rejected the Fire District’s policy argument that “applying the ADEA to small public entities risks curtailment of vital public services such as fire protection.” “Experience suggests otherwise. For 30 years, the Equal Employment Opportunity Commission has consistently interpreted the ADEA as we do today. And a majority of States forbid age discrimination by political subdivisions of any size; some 15 of these States subject private sector employers to age discrimination proscriptions only if they employ at least a threshold number of workers. No untoward service shrinkages have been
Collin O’Connor Udell of Jackson Lewis wrote the SLLC amicus brief which was joined by the National Conference of State Legislatures [4], the Council of State Governments [5], the National Association of Counties [6], the National League of Cities [7], the United States Conference of Mayors [8], the International City/County Management Association [9], the International Municipal Lawyers Association [10], the National Public Labor Relations Association, and the International Public Management Association for Human Resources.

By:
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