

U.S. Supreme Court To Kick Off New Term With Age Discrimination Issue

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Supreme Court

When the Supreme Court holds its first day of arguments of the new term (traditionally, the first Monday in October), it will hear an Illinois case that raises the issue of whether public employees who claim age discrimination can bypass the requirements of the Age Discrimination in Employment Act and head straight to court under the Equal Protection Clause and 42 U.S.C. 1983.

Barring any delays associated with the government shutdown, the Court is expected to hear arguments on Oct. 7, 2013 in *Madigan v. Levin*, a case in which a former assistant attorney general alleged that he was unlawfully terminated at age 61 and replaced with a younger, female employee. At issue in the appeal is whether the ADEA displaced claims under 42 U.S.C. 1983, a question that has divided the courts of appeal that have addressed the subject. In the underlying appeal, the Seventh Circuit ruled that the employee-plaintiff was not limited solely to a claim under the ADEA. The outcome will make or break the Plaintiff's case because the state successfully argued that he fell under the ADEA's exclusion for policy-making political appointees.

State and local governments, understandably, are taking a keen interest in the case and the potential impact it will have if employees are allowed to bypass the pre-court administrative process that they argued is designed to encourage early resolution of claims before costly and time-consuming court proceedings.

Since the Supreme Court agreed in April to hear the appeal, a number of organizations have weighed in with their views through "friend of the court" briefs. They include, on the side of public employers, the [National Association of School Boards](#), the [State of Michigan and 20 other states](#), and the International [Municipal Lawyers Association](#).

On the side of the employee, briefs have been filed by the [AFL-CIO](#), the [AARP](#), and the [National Education Association](#).

Once oral arguments have concluded, a ruling is expected to follow in a few months.

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