

## U.S. Supreme Court To Consider Application Of ADEA To State And Local Workers

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The U.S. Supreme Court has agreed to hear an appeal from Illinois Attorney General Lisa Madigan on the issue of whether state and local government employees can bypass the Age Discrimination in Employment Act and sue for age discrimination under an equal protection theory. The case is *Madigan v. Levin*, Docket Number 12-872.

Appellate courts are split on whether the ADEA is the exclusive route for state and local government employees to bring a claim for age discrimination, or whether an equal protection claim via Section 1983 is available. The Seventh Circuit Court of Appeals [decided](#) that the Plaintiff, a former Assistant Attorney General, could go forward with a Section 1983 age discrimination claim against certain defendants (including Madigan) in their individual capacity. The Seventh Circuit decided that the ADEA does not preclude a Section 1983 claim, but acknowledged that its decision was contrary to rulings in other circuits holding that the ADEA is the exclusive remedy for age discrimination claims.

The [question presented to the Supreme Court](#) is whether the Seventh Circuit erred in holding that state and local government employees may avoid the ADEA's remedial regime by bringing age discrimination claims under the Constitution's Equal Protection Clause and 42 U.S.C. 1983.

In the petitioner's brief asking the Supreme Court to grant certiorari, Madigan noted the circuit split and argued that if the Seventh Circuit's ruling were to stand, there would be about one million state and local workers in Illinois, Indiana, and Wisconsin who would be able to bypass the ADEA's administrative dispute resolution process at the EEOC and go straight to court. Madigan argued that this would undercut the ADEA and would deprive state and local governments of prompt notice of claims.

The outcome of the case will be important not only for state and municipal employers, but also for individual employees. As a practical matter, the plaintiff could end up with no further opportunity for an age discrimination claim if the Supreme Court decides that the ADEA forecloses age claims under Section 1983. That is because the lower court decided that the employee fell under the ADEA exclusion of policy-making level employees, 29 U.S.C. §630(f). Moreover, sovereign immunity applies to protect states from individual suits for monetary damages under the ADEA, under Supreme Court precedent in *Kimel v. Florida Board of Regents*, 528 U.S. 62.

The case is likely to proceed to briefing during the current term and may be scheduled for argument in the fall term.

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