



U. S. Department of Justice

Office of the Solicitor General

Solicitor General

Washington, D.C. 20530

April 10, 2000

Patricia Mack Bryan, Esq.
Senate Legal Counsel
United States Senate
Senate Hart Office Building
Room 642
Washington, D.C. 20510-7250

Re: Longstreet v. McCabe

Dear Ms. Bryan:

I am writing to advise you that I have determined not to file a petition for a writ of certiorari in the above case.

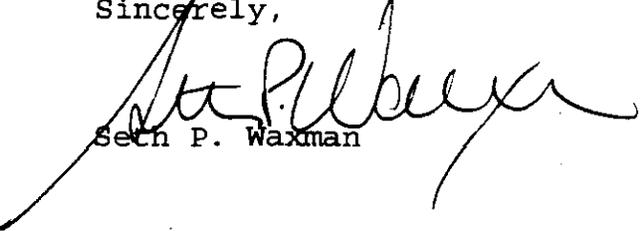
This case concerns the constitutionality of the Family Medical Leave Act (FMLA), 29 U.S.C. 2601 *et seq.*, insofar as it subjects state employers to suits by private individuals. The FMLA provides that "an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period" for one or more of four reasons. Those reasons are (1) "[b]ecause of the birth of a son or daughter of the employee and in order to care for such son or daughter," (2) "[b]ecause of the placement of a son or daughter with the employee for adoption or foster care," (3) "[i]n order to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition," and (4) "[b]ecause of a serious health condition that makes the employee unable to perform the functions of the position of such employee." 29 U.S.C. 2612(a)(1). Only the last reason -- "because of a serious health condition" of the employee -- is at issue here.

Karen Longstreet filed suit against her former employer, Bernie McCabe, alleging that he had fired her for taking medical leave in violation of the FMLA. McCabe, a State Attorney for the State of Florida, moved to dismiss on Eleventh Amendment grounds. The district court denied the motion, but the Eleventh Circuit reversed. Following its recent decision in Garrett v. University of Ala., Nos. 98-6069 & 98-6070 (Oct. 26, 1999), the court held that the medical leave provision does not validly abrogate a State's immunity from suit.

The Department of Justice is defending the constitutionality of the FMLA in the Fifth and Sixth Circuits. Kazmier v. Widmann, No. 99-30242 (5th Cir.); Sims v. University of Cincinnati, No. 99-3274 (6th Cir.). Because the private plaintiff in this case has decided not to petition for a writ of certiorari, I have decided against petitioning in this particular case. To do so would involve taking a private plaintiff's case to the Supreme Court when she has decided not to pursue her claim. Other cases pending in the federal courts, including those noted above, remain available for the presentation by the United States of a defense of the FMLA.

A copy of the court of appeals' decision is enclosed. A petition for a writ of certiorari would have to be filed by April 17, 2000. Please let me know if I can be of further assistance in this matter.

Sincerely,



Seth P. Waxman

Enclosure

cc: Geraldine R. Gennet, Esq.
General Counsel
United States House of Representatives
Cannon House Office Building
Room 219
Washington, D.C. 20515