



U. S. Department of Justice

Office of the Solicitor General

Solicitor General

Washington, D.C. 20530

August 6, 1999

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

Re: Kaiser v. State of Minnesota, No. 98-1553 (8th Cir.)

Dear Ms. Bryan:

I am writing to advise you that I have determined not to appeal the decision in the above case to the United States Court of Appeals for the Eighth Circuit. See 2 U.S.C. 288k(b).

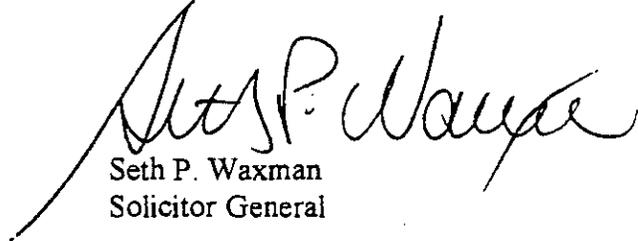
This case concerns the constitutionality of the Family Medical Leave Act (FMLA), 29 U.S.C. 2601 *et seq.*, insofar as it subjects state employers to suits by private individuals. In this case, Kaiser filed suit under the FMLA against the State of Minnesota and its Housing Finance Agency (HFA). She alleged that the State and HFA violated the FMLA by failing to count her absences as qualified leave and by discharging her for excessive absences. The State and HFA moved to dismiss, contending that the FMLA violates the Eleventh Amendment insofar as it subjects States to suit by private individuals. The United States intervened to defend the constitutionality of the FMLA. The district court granted the motion to dismiss, holding the FMLA unconstitutional insofar as it subjects States to suit by private individuals. The plaintiff failed to file a notice of appeal. Instead, she filed suit in Minnesota state court.

The Department of Justice is defending the constitutionality of the FMLA as applied to the States in several courts of appeals. Kazmier v. Widmann, No. 99-30242 (5th Cir.); Thomson v. Ohio State Univ., No. 98-3613 (6th Cir.); Sims v. University of Cincinnati, No. 99-3274 (6th Cir.); Garrett v. University of Alabama, No. 98-6069 & 98-6070 (11th Cir.); Longstreet v. Florida, No. 97-3541 (11th Cir.). Because the private plaintiff in this case has decided not to pursue an appeal, however, I have decided against appealing the decision in this particular case. To do so would involve taking a private plaintiff's case to an appellate court when she has decided not to pursue her claim. Other cases pending in the federal courts, including those cited above, remain available for the presentation by the United States of a defense of the FMLA.

Ms. Bryan
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A copy of the district court's decision in this case is enclosed. The United States has filed a protective notice of appeal. No briefing schedule has been established. Please let me know if I can be of further assistance in this matter.

Sincerely,



Seth P. Waxman
Solicitor General

Enclosure

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