



U. S. Department of Justice

Office of the Solicitor General

Solicitor General

Washington, D.C. 20530

October 5, 2000

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

Re: Kazmier v. Widmann, No. 99-30242  
(5th Cir. Aug. 25, 2000)

Dear Ms. Gennet:

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 and 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). The last two reasons -- care for an immediate family member and a serious health condition -- are at issue here.

Janice Kazmier was an attorney with the Louisiana Department of Social Services. Kazmier took a series of authorized absences due to her father's terminal illness and her own injuries. Allegedly as a result of these absences, Kazmier was dismissed from her job.

After filing a complaint with the U.S. Department of Labor and exhausting her state civil service remedies, Kazmier sued under the

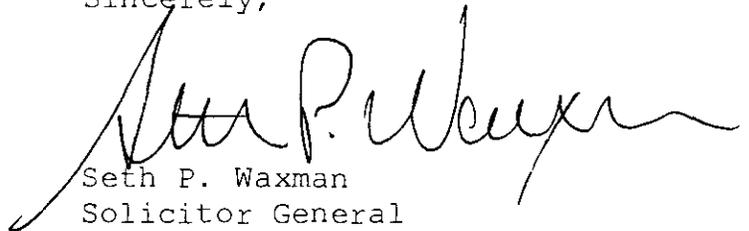
FMLA, seeking monetary damages from Louisiana officials. The defendants moved to dismiss on Eleventh Amendment grounds. While conceding that the FMLA clearly expresses Congress's intent to abrogate the States' Eleventh Amendment immunity, the defendants contended that the FMLA exceeds Congress's enforcement powers under Section 5 of the Fourteenth Amendment. The district court denied the defendants' motion.

The government intervened in the ensuing appeal to support the constitutionality of the FMLA as valid Section 5 legislation. A divided panel of the Fifth Circuit, however, reversed the district court. The panel majority held that Congress lacked authority under Section 5 of the Fourteenth Amendment to abrogate a state employer's immunity from suit with respect to the family leave and medical leave provisions of the FMLA. Judge Dennis dissented. He concluded that both provisions are valid Section 5 legislation. A copy of the decision is attached.

A petition for a writ of certiorari would have to be filed in this case by November 24, 2000. The private plaintiff, however, has decided not to petition for a writ of certiorari. I therefore have decided against petitioning in this particular case. To do so would involve taking a private plaintiff's case to the Supreme Court when the plaintiff is not pursuing her own claim. I note that the Justice Department has defended the FMLA before other courts of appeals, so eventual Supreme Court review is not foreclosed.

Please let me know if I can be of further assistance in this matter.

Sincerely,



Seth P. Waxman  
Solicitor General

Enclosure