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SUPREME COURT ANNOUNCES NEW STANDARD FOR SOVEREIGN IMMUNITY IN FAIR LABOR STANDARDS ACT CASE

■ Stephen Allred

On June 23, 1999, the Supreme Court announced its decision in *Alden v. Maine* (No. 98-436), greatly enhancing the states' sovereign immunity against claims brought against them by individuals alleging violations of federal law. Just how far the immunity reaches is unclear, at least in terms of which federal statutory rights are affected.

Background

The Court's 1999 ruling on sovereign immunity of states was based on two other recent rulings, *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996) and *City of Boerne v. Flores*, 117 S.Ct. 2365 (1997). In *Seminole Tribe*, the Court held that Congress lacks power under Article I (the commerce clause) to limit the States' sovereign immunity under the 11th Amendment in federal court. And *in City of Boerne*, the Court invalidated the Religious Freedom Restoration Act under Section 5 of the 14th Amendment, concluding that Congress had exceeded its power by redefining, rather than simply enforcing, the constitutional guarantee of freedom of religion.

The *Alden* case arose when a number of probation officers employed by the State of Maine sued their employer in federal district court for failure to pay overtime in violation of the Fair Labor Standards Act (FLSA). The district court dismissed their complaint on the basis of *Seminole Tribe*. Subsequently, the employees filed the same action in state court. Although the FLSA says that private actions may be brought against States in their own courts, the trial court dismissed the suit on the ground of sovereign immunity. The Maine Supreme Judicial Court affirmed. The employees then appealed to the United States Supreme Court.

The Majority Ruling

In an opinion authored by Justice Kennedy, in which Chief Justice Rehnquist, Justice O'Connor, Justice Scalia, and Justice Thomas joined, the Court set out a lengthy review of the history of the Tenth and Eleventh Amendment. Prior Supreme Court rulings made it clear that the states' immunity from suit is a fundamental aspect of the sovereignty they enjoyed before the Constitution's ratification and retain today except as altered by the plan of the Convention or certain constitutional Amendments, stated the opinion.

Under the federal system established by the Constitution, stated Justice Kennedy, the States retain sovereignty. They are not relegated to the role of mere provinces or political corporations, but retain the dignity, though not the full authority, of sovereignty. The founding generation considered immunity from private suits central to this dignity. The idea that a sovereign could not be sued without its consent was universal in the States when the Constitution was drafted and ratified. In addition, the leading advocates of the Constitution gave explicit assurances during the ratification debates that the Constitution would not strip States of sovereign immunity. This was also the understanding of those state conventions that addressed state sovereign immunity in their ratification documents.

Continuing, Justice Kennedy noted that when, just five years after the Constitution's adoption, the Supreme Court held that Article III authorized a private citizen of another State to sue Georgia without its consent in *Chisholm v. Georgia*, 2 Dall. 419, the Eleventh Amendment was ratified. An examination of *Chisholm* indicates that the case, not the Amendment, deviated from the original understanding, which was to preserve States' traditional immunity from suit. Congress acted not to change but to restore the original constitutional design. The majority then stated that Congress may exercise its Article I powers to subject States to private suits in their own courts only if there is compelling evidence that States were required to surrender this power to Congress pursuant to the constitutional design. Neither the Constitution's text nor the Court's recent sovereign immunity decisions establish that States were required to relinquish this portion of their sovereignty, Justice Kennedy said.

The theory and reasoning of the Court's prior rulings also suggest that States retain constitutional immunity from suit in their own courts, the opinion continued. A review of the essential principles of federalism and the state courts' special role in the constitutional design leads to the conclusion that a congressional power to subject nonconsenting States to private suits in their own courts is inconsistent with the Constitution's structure. Federalism requires that Congress accord States the respect and dignity due them as residuary sovereigns and joint participants in the Nation's governance. Immunity from suit in federal courts is not enough to preserve that dignity, for the indignity of subjecting a nonconsenting State to the coercive process of judicial tribunals at the instance of private parties exists regardless of the forum. Private suits against nonconsenting States may threaten their financial integrity, and the surrender of immunity carries with it substantial costs to the autonomy, decisionmaking ability, and sovereign capacity of the States. A general federal power to authorize private suits for money damages would also strain States' ability to govern in accordance with their citizens' will.

Justice Kennedy cautioned, however, that a State's constitutional privilege to assert its sovereign immunity in its own courts does not confer upon the State a concomitant right to disregard the Constitution or valid federal law. States and their officers are bound by obligations imposed by the Constitution and federal statutes that comport with the constitutional design. Limits implicit in the constitutional principle of sovereign immunity strike the proper balance between the supremacy of federal law and the separate sovereignty of the States. The first limit is that sovereign immunity bars suits only in the absence of consent. Many States have enacted statutes consenting to suits and have consented to some suits pursuant to the plan of the Convention or to subsequent constitutional Amendments. The second important limit is that sovereign immunity bars suits against States but not against lesser entities, such as municipal corporations, or against state officers for injunctive or declaratory relief or for money damages when sued in their individual capacities.

But turning to the specifics in this case, the Court held that Maine had not waived its immunity. Although the employees contended that Maine discriminated against federal rights by claiming immunity from this suit, the Court found no evidence that it has manipulated its immunity in a systematic fashion to discriminate against federal causes of action. To the extent Maine has chosen to consent to certain classes of suits while maintaining its immunity from others, it has done no more than exercise a privilege of sovereignty, the majority concluded. As a result, the employees had no cause of action against the state for the alleged failure to pay them overtime under the FLSA

The Dissent

Justice Souter filed a dissenting opinion, in which Justice Stevens, Justice Ginsburg, and Justice Breyer joined. Justice Souter wrote that there is no evidence that the Tenth Amendment constitutionalized a concept of sovereign immunity as inherent in the notion of

statehood, and no evidence that any concept of inherent sovereign immunity was understood historically to apply when the sovereign sued was not the font of the law. Nor does the Court fare any better with its subsidiary lines of reasoning, that the state-court action is barred by the scheme of American federalism, a result supposedly confirmed by a history largely devoid of precursors to the action considered here, he added. Justice Souter stated bluntly that the majority's understanding of federalism ignores the accepted authority of Congress to bind States under the FLSA and to provide for enforcement of federal rights in state court. The Court's history, he added, simply disparages the capacity of the Constitution to order relationships in a Republic that has changed since the founding. He added that on each point the Court has raised it is mistaken.

Implications for Public Employers

The major impact of the *Alden* ruling is, of course, on state agencies. Like Maine, North Carolina has not waived its right of sovereign immunity, and thus it is clear that individual employees may no longer sue a state agency for an FLSA violation, although such claims may still be brought by the U.S. Department of Labor. But it would appear unlikely that the federal government would have the resources to aggressivly pursue claims on behalf of state employees against their employers.

The Court's opinion noted that claims for injunctive or equitable relief could still be brought by individuals. Thus, although a state employee could no longer sue his or her employer for back pay under the FLSA, the employee could seek a court order enjoining the agency from continuing to violate the statute.

What is less clear is the extent of the Court's ruling on other federal civil rights laws. Arguably, the same rule would apply with respect to individual employee claims for alleged violations of the Americans with Disabilities Act, the Family and Medical Leave Act, or the Age Discrimination in Employment Act.

Notwithstanding the Court's statement that sovereign immunity may not be asserted by local governments, it is unclear how far that statement should be read. Clearly, a municipality may not assert a Tenth Amendment immunity defense, but what about a community college? Could it assert sovereign immunity as an arm of the state, or would it be treated as a political subdivision of the state more like a municipality and thus subject to suit by its employees?

The full implications of the *Alden* case remain to be seen, but as the lower courts face federal civil rights claims by public employees in the next year or so, more guidance should emerge.

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