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S. 3008

To amend the Age Discrimination in Employment Act of 1967 to require, as a condition of receipt of Federal funding, that States waive immunity to suit for certain violations of that Act, and to affirm the availability of certain suits for injunctive relief to ensure compliance with that Act.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 6, 2000

Mr. JEFFORDS (for himself, Mr. KENNEDY, and Mr. FEINGOLD) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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A BILL

To amend the Age Discrimination in Employment Act of 1967 to require, as a condition of receipt of Federal funding, that States waive immunity to suit for certain violations of that Act, and to affirm the availability of certain suits for injunctive relief to ensure compliance with that Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Older Workers Rights Restoration Act of 2000''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Since 1974, the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.) has prohibited States from discriminating in employment on the basis of age. In EEOC v. Wyoming, 460 U.S. 226 (1983), the Supreme Court upheld Congress' constitutional authority to prohibit States from discriminating in employment on the basis of age. The prohibitions of the Age Discrimination in Employment Act of 1967 remain in effect and continue to apply to the States, as the prohibitions have for more than 25 years.

(2) Age discrimination in employment remains a serious problem both nationally and among State agencies, and has invidious effects on its victims, the labor force, and the economy as a whole. For example, age discrimination in employment—

(A) increases the risk of unemployment among older workers, who will as a result be more likely to be dependent on government resources;

(B) prevents the best use of available labor resources;

(C) adversely effects the morale and productivity of older workers; and

(D) perpetuates unwarranted stereotypes about the abilities of older workers.

(3) Private civil suits by the victims of employment discrimination have been a crucial tool for enforcement of the Age Discrimination in Employment Act of 1967 since the enactment of that Act. In Kimel v. Florida Board of Regents, 120 S. Ct. 631 (2000), however, the Supreme Court held that Congress lacks the power under the 14th amendment to abrogate State sovereign immunity to suits by individuals under the Age Discrimination in Employment Act of 1967. The Federal Government has an important interest in ensuring that Federal funds are not used to facilitate violation of, the Age Discrimination in Employment Act of 1967. Private civil suits are a critical tool for advancing that interest.

(4) As a result of the Kimel decision, although age-based discrimination by State employers remains unlawful, the victims of such discrimination lack important remedies for vindication of their rights that are available to all other employees covered under the Act, including employees in the private sector, of local government, and of the Federal Government. Unless a State chooses to waive sovereign immunity,

or the Equal Employment Opportunity Commission brings an action on their behalf, State employees victimized by violations of the Age Discrimination in Employment Act of 1967 have no adequate Federal remedy for violations of the Act. In the absence of the deterrent effect that such remedies provide, there is a greater likelihood that entities carrying out federally funded programs and activities will use Federal funds to violate the Act, or that the Federal funds will otherwise subsidize or facilitate violations of the Act.

(5) Federal law has long treated nondiscrimination obligations as a core component of programs or activities that are, in whole or part, assisted by Federal funds. Federal funds should not be used, directly or indirectly, to subsidize invidious discrimination. Assuring nondiscrimination in employment is a crucial aspect of assuring nondiscrimination in those programs and activities.

(6) Discrimination on the basis of age in federally assisted programs or activities is, in contexts other than employment, forbidden by the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.). Congress determined that it was not necessary for the Age Discrimination Act of 1975 to apply to em-

ployment discrimination because the Age Discrimination in Employment Act of 1974 already forbade discrimination in employment by, and authorized suits against, State agencies and other entities that receive Federal funds. In section 1003 of the Rehabilitation Act Amendments of 1986 (42 U.S.C. 2000d–7), Congress required all State recipients of Federal assistance to waive any immunity from suit for discrimination claims arising under the Age Discrimination Act of 1975. The earlier limitation in the Age Discrimination Act of 1975, originally intended only to avoid duplicative coverage and remedies, has in the wake of the Kimel decision become a serious loophole leaving millions of State employees without an important Federal remedy for age discrimination resulting in the use of such funds to subsidize or facilitate violations of the Age Discrimination in Employment Act of 1967.

(7) The Supreme Court has upheld Congress' authority to condition receipt of Federal funds on acceptance by the States or other recipients of conditions regarding or related to the use of those funds, as in Cannon v. University of Chicago, 441 U.S. 677 (1979). The Court has further recognized that Congress may require a State, as a condition of

receipt of Federal assistance, to waive the State's sovereign immunity to suits for a violation of Federal law, as in College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board, 527 U.S. 666 (1999). In the wake of the Kimel decision, in order to assure compliance with, and to provide effective remedies for violations of, the Age Discrimination in Employment Act of 1967 in State programs or activities receiving Federal assistance, and in order to ensure that Federal funds do not subsidize or facilitate violations of the Age Discrimination in Employment Act of 1967, it is necessary to require such a waiver as a condition of receipt of that Federal financial assistance.

(8) The waiver resulting from the acceptance of Federal funds by 1 State program or activity under this Act will not eliminate a State's immunity with respect to other programs or activities that do not receive Federal funds; a State waives sovereign immunity only with respect to Age Discrimination in Employment Act of 1967 suits brought by employees within the programs or activities that receive such funds. With regard to those programs and activities that are covered by the waiver, the State employees will be accorded only the same remedies that were

available to State employees under the Age Discrimination in Employment Act of 1967 before Kimel and that are accorded to all other covered employees under the Act.

(9) The Supreme Court has repeatedly held that State sovereign immunity does not bar suits for prospective injunctive relief brought against State officials, as in ex parte Young, 209 U.S. 123 (1908). Clarification of the language of the Age Discrimination in Employment Act of 1967 will confirm that the Act authorizes such suits. The injunctive relief available in such suits will continue to be no broader than the injunctive relief that was available under the Act before the Kimel decision, and that is available to all other employees under that Act.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to provide to State employees in federally assisted programs or activities the same rights and remedies for practices violating the Age Discrimination in Employment Act of 1967 as are available to other employees under that Act, and that were available to State employees prior to the Supreme Court's decision in Kimel v. Florida Board of Regents, 120 S. Ct. 631 (2000);

(2) to provide that the receipt of Federal funding for use in a program or activity constitutes a State waiver of sovereign immunity from suits by employees within that program or activity for violations of the Age Discrimination in Employment Act of 1967; and

(3) to affirm that suits for equitable relief are available against State officials in their official capacities for violations of the Age Discrimination in Employment Act of 1967.

SEC. 4. REMEDIES FOR STATE EMPLOYEES.

Section 7 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626) is amended by adding at the end the following:

''(g)(1)(A) A State's receipt or use of Federal financial assistance in any program or activity of a State shall constitute a waiver of sovereign immunity, under the 11th amendment to the Constitution or otherwise, to a suit brought by an employee of that program or activity under this Act for equitable, legal, or other relief authorized under this Act.

''(B) In this paragraph, the term 'program or activity' has the meaning given the term in section 309 of the Age Discrimination Act of 1975 (42 U.S.C. 6107).

"(2) An official of a State may be sued in the official capacity of the official by any employee who has complied with the procedures of subsections (d) and (e), for equitable relief that is authorized under this Act. In such a suit the court may award to the prevailing party those costs authorized by section 722 of the Revised Statutes (42 U.S.C. 1988).".

SEC. 5. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of such provision or amendment to another person or circumstance shall not be affected.

SEC. 6. EFFECTIVE DATE.

(a) WAIVER OF SOVEREIGN IMMUNITY.—With respect to a particular program or activity, section 7(g)(1) of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 626(g)(1)) applies to conduct occurring on or after the day, after the date of enactment of this Act, on which a State first receives Federal financial assistance for use in that program or activity.

(b) SUITS AGAINST OFFICIALS.—Section 7(g)(2) of the Age Discrimination in Employment Act of 1967 (29

1 U.S.C. 626(g)(2)) applies to any suit pending on or after
2 the date of enactment of this Act.

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