

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 97-3646

Gary Goss,

Appellant,

v.

State of Arkansas; University of
Arkansas, of the State of Arkansas;
University of Arkansas Cooperative
Services; and University of Arkansas
Board of Trustees,

Appellees.

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Appeal from the United States
District Court for the Eastern
District of Arkansas.

Submitted: April 17, 1998

Filed: January 6, 1999

Before BEAM, JOHN R. GIBSON, and MORRIS SHEPPARD ARNOLD, Circuit
Judges.

MORRIS SHEPPARD ARNOLD, Circuit Judge.

Gary Goss brought this action pursuant to the Age Discrimination in
Employment Act, see 29 U.S.C. §§ 621-634, against the State of Arkansas, the
University of Arkansas, the University of Arkansas Cooperative Extension Service,
and the University of Arkansas Board of Trustees. The defendants moved for
summary

judgment on the ground, *inter alia*, that they were immune from suit under the Eleventh Amendment, and Mr. Goss countered that Congress had specifically made the several states subject to suit for age discrimination in 29 U.S.C. § 630(b)(2). The district court, relying on its previous decision in Hawn v. Sugg, No. LR-C-95-831 (E.D. Ark. May 12, 1997), *rev'd*, No. 97-2613, 1998 WL 813823 (8th Cir. Nov. 20, 1998) (*per curiam*), held that the abrogation of Eleventh Amendment immunity contained in the statute was a constitutional exercise of congressional authority, and thus denied the defendants' motion for summary judgment.

We recently ruled in Humenansky v. Regents of the University of Minnesota, 152 F.3d 822, 828 (8th Cir. 1998), that § 630(b)(2) does not in fact abrogate Eleventh Amendment immunity and, moreover, that even if it purported to, it could not have been enacted pursuant to the power of Congress to enforce the Fourteenth Amendment and thus would have been unconstitutional. Humenansky is on all fours with this case and disposes of it entirely.

We therefore reverse the judgment of the district court and remand for such further proceedings, if any, as the district court finds are not inconsistent with this opinion.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.