

IN THE IOWA DISTRICT COURT IN AND FOR POLK COUNTY

LINDA PIPPEN, et al.,

Plaintiffs,

vs.

THE STATE OF IOWA, et al.,

Defendants.

Case No. CL 107038

**DEFENDANTS' MOTION TO
DISMISS TITLE VII CLAIMS
FOR FAILURE TO STATE A
CLAIM AND/OR LACK OF SUBJECT
MATTER JURISDICTION**

COME NOW Defendants, the State of Iowa, et al. (collectively referred to as "Defendants" or the "State") and in support of their motion to dismiss Plaintiffs' claims under Title VII of the Civil Rights Act ("Title VII") for failure to state a claim and/or lack of subject matter jurisdiction states as follows:

I. TITLE VII CLAIMS MUST BE DISMISSED

Plaintiffs filed this action in Polk County District Court alleging that Defendants' hiring and promotion practices violated Title VII and the Iowa Civil Rights Act, Iowa Code Chapter 216. This Court must dismiss the Title VII claims because such claims fail to state a claim upon which any relief may be granted and/or this Court does not have subject matter jurisdiction over the federal Title VII claims. Accordingly, the federal Title VII claims must be dismissed from the present lawsuit.

A. Sovereign Immunity

In the seminal case *Alden v. Maine*, the United States Supreme court made clear that, absent consent, Congress did not have the power to subject States to suits in their own courts:

"We hold that the powers delegated to Congress under Article I of the United States Constitution

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do not include the power to subject nonconsenting States to private suits for damages in state courts." 527 U.S. 706, 712 (1999). That is, absent express waiver by the State, the State is immune from private suits in its own court. *See id.* at 724, 754 ("In light of history, practice, precedent, and the structure of the Constitution, we hold that the States retain immunity from private suit in their own courts, an immunity beyond the congressional power to abrogate by Article I legislation."). Thus, under *Alden*, even where Congress abrogates a State's Eleventh Amendment immunity to be sued in federal court, it clearly lacks the Constitutional authority to subject a State to private suits in the State's own courts. *See id.* at 749 ("Although the immunity of one sovereign in the courts of another has often depended in part on comity or agreement, the immunity of a sovereign in its own courts has always been understood to be within the sole control of the sovereign itself."); *Raygor v. Regents of the Univ. of Minn.*, 534 U.S. 533, 543 (2002) (explaining that with respect to suits against a State in its own courts "'[o]nly the sovereign's own consent could qualify the absolute character of [its] immunity' from suit in its own courts") (internal citations omitted).

In *Anthony v. State of Iowa, et al.*, the Iowa Supreme Court, following *Alden*, had to determine whether the State expressly waived sovereign immunity to be sued in state court for claims under the federal Fair Labor Standards Act ("FLSA"). 632 N.W.2d 897, 900-02 (Iowa 2001). The *Anthony* court applied the framework set forth in *Alden* to determine whether the State expressly waived sovereign immunity as to the FLSA.¹ *See also Raper v. State of Iowa*,

¹ The *Anthony* court held that as to federal FLSA overtime claims, the State expressly consented to be sued in Iowa courts in sections 91A.8 and 91A.10(3) of the Iowa Wage Payment Collection Law by expressly stating that eligibility for overtime compensation be in accordance with the federal FLSA. 632 N.W.2d at 902.

688 N.W.2d 29, 53-54 (Iowa 2004). Consequently, absent express waiver, the State retains its sovereign immunity to be sued in its own courts.²

B. The State Did Not Waive Sovereign Immunity as to Title VII

Here, Plaintiffs do not allege that the State expressly waived its sovereign immunity as to Title VII. Indeed, the State has not waived its sovereign immunity to be sued under Title VII in state courts. Unlike the provisions noted in *Anthony* above, there are no express provisions or references to Title VII in Iowa Code Chapter 216. See *Alascadero State Hosp. v. Scanlon*, 473 U.S. 234, 239-40 (1985) ("A state will be deemed to have waived its immunity only where stated by the most express language or by such overwhelming implication from the text as [will] leave no room for any other reasonable construction."); *Burke v. Beene*, 948 F.2d 489, 493 (8th Cir. 1991) (holding that waiver of sovereign immunity must be "clear and unequivocal"). Plaintiffs' Title VII claims, therefore, must be dismissed.


² In *Alden*, the Supreme court noted that in addition to express waiver, States consented to some suits in their own courts pursuant to "the plan of the Convention" or to "subsequent constitutional amendments." 527 U.S. at 755. Here, "the plan of the Convention" or "subsequent constitutional amendments" method of consent are not implicated.

II. PRAYER FOR RELIEF

WHEREFORE, Defendants respectfully submit that the State's sovereign immunity bars Plaintiffs' claims under Title VII in state court and respectfully request that the Title VII claims be dismissed for failure to state a claim and/or lack of subject matter jurisdiction.

Respectfully submitted,

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Proof of Service	
The undersigned certifies that the foregoing instrument was served upon each of the persons identified as receiving a copy by delivery in the following manner on <u>8-3</u> , 2009.	
<input checked="" type="checkbox"/> U.S. Mail	<input type="checkbox"/> FAX
<input type="checkbox"/> Hand Delivery	<input type="checkbox"/> Overnight Courier
<input type="checkbox"/> Federal Express	<input type="checkbox"/> Other
<input type="checkbox"/> Electronically	
Signature: 