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MEMO

TO: Interested Persons
FROM: Chris Lamb, Staff Attorney
RE: Suter v. Artist M. legislation--legislative history

I. Introduction

On October 20, 1994, President Clinton signed H.R. 6, the Elementary and Secondary Education Act, P.L. 103-382, 108 Stat. 3518, which contained a provision designed to overturn Suter v. Artist M., 112 S.Ct. 1360 (1992), to the extent that that decision applied grounds that were not applied in earlier Supreme Court cases for restricting the enforceability of provisions of the Social Security Act mandating the contents of state plans. This memo and packet provide attorneys litigating §1983 actions with a summary of the somewhat convoluted legislative history of this provision.

As described below, the provision that was finally signed into law as part of P.L. 103-382 was originally passed in 1992 as part of H.R. 11, the Revenue Act of 1992, but H.R. 11 was vetoed by President Bush for reasons unrelated to the Suter provision. It then took Congress two years to repass the provision. In fact, Congress actually passed the provision twice in the fall of 1994. The other bill containing the provision was H.R. 5252 and it too was signed into law, as P.L. 103-432, 108 Stat. 4398. Both bills were passed in the final weeks of the legislative session, when a large number of bills tend to be passed in a brief period. There is no indication that those responsible for adding the Suter provision to H.R. 5252 were aware that it was also contained in H.R. 6. This packet provides the legislative history for both 1994 bills as the vetoed 1992 bill.

II. The 1992 Legislation

The first version of the vetoed 1992 Suter provision was contained in the House version of H.R. 11, the Revenue Act of 1992. No similar provision was included in the bill

as passed by the Senate, but a Suter provision using different language than that contained in the House bill was included in the Conference Report. The language agreed to in the 1992 Conference is the language that eventually was signed into law in the two 1994 bills.

A. The House

In the House, the Suter cure provision was passed on July 2, 1992, as part of H.R. 11, the Revenue Act of 1992. The provision as passed by the House read:

SEC. 7104 EFFECT OF FAILURE TO CARRY OUT STATE PLAN

(a) IN GENERAL--Part A of title XI of the Social Security Act (42 U.S.C. 1301-1302b-18) is amended by inserting after section 1122 the following:

"SEC. 1123. EFFECT OF FAILURE TO CARRY OUT STATE PLAN.

Each individual shall have the right not to be denied any service or benefit under this Act as a result of the failure of any State to which Federal funds are paid under a title of this Act that includes plan requirements to have a plan that meets such requirements, or to administer such a plan in accordance with such requirements."

(b) APPLICABILITY.--The amendment made by subsection (a) shall apply to actions pending on the date of the enactment of this Act and to actions brought on or after such date of enactment.

The Report of the Ways and Means Committee explains the intent of the provision as follows:

This provision is . . . intended to restore to an aggrieved party the right to enforce, as existed prior to the Suter v. Artist M. decision, the Federal mandates of the State plan titles of the Social Security Act in the Federal courts. This provision is not intended to expand upon enforceable rights created under the State plan titles of the Social Security Act. Nor is this provision intended to define, clarify, or establish standards for determining whether States have made "reasonable efforts" to prevent the need for foster care placement or to reunify children with their families after placement as required by the Adoption assistance and Child Welfare Act

This provision confirms the more than two decades of Federal jurisprudence which has recognized that, in establishing "State plan" programs under the

Social Security Act, Congress meant to require State officials to administer these programs in accordance with Federal statutory standards, and to permit those injured by State officials failure to do so (including any failure, in the administration of the State plan, to comply with any provisions of, or any provision required to be included in, such a plan) to challenge, through appropriate judicial actions, that failure.

H.R. Rep. 631, 102d Congress, 2d Session 365-66 (relevant part attached).

B. The Senate

The Senate took up the issue of a legislative response to Suter after the House had acted. The matter was considered at a hearing of the Senate Finance Committee chaired by Senator Moynihan on September 17, 1992. At the hearing, advocates favoring a legislative response to Suter and representatives of the state governments testified. After expressing concern that the House language was confusing, Senator Moynihan asked advocates and representatives of the state governments to come up with new wording. The language that they subsequently agreed upon was:

(a) Part A of Title XI of the Social Security Act is amended by inserting after section 1122 the following:

"SEC. 1123. In an action brought to enforce a provision of the Social Security Act, such provision is not to be deemed unenforceable because of its inclusion in a section of the Act requiring a State plan or specifying the required contents of a State plan. This section is not intended to limit or expand the grounds for determining the availability of private actions to enforce State plan requirements other than by overturning any such grounds applied in Suter v. Artist M., 112 S.Ct. 1360 (1992), but not applied in prior Supreme Court decisions respecting such enforceability; provided, however, that this section is not intended to alter the holding in Suter v. Artist M. that section 471(a)(15) of the Act is not enforceable in a private right of action."

(b) Applicability. The amendment made by subsection (a) shall apply to actions pending on the date of enactment of this Act and to actions brought on or after such date of enactment.

No version of a Suter fix was included in the Senate tax bill, but the agreed upon language was provided to the House-Senate conferees in a letter dated October 2, 1992 (attached).

C. The Conference

The Conference substituted the negotiated language described above for the House language. The Conference Report stated:

While adopting a different formulation, the conference agreement follows that intent of the House bill provision, which is to assure that individuals who have been injured by a State's failure to comply with the Federal mandates of the State plan titles of the Social Security Act are able to seek redress in federal courts to the extent they were able to prior to the decision in Suter v. Artist M., while also making clear that there is no intent to overturn or reject the determination in Suter that the reasonable efforts clause of title IV-E does not provide a basis for a private right of action.

H.R. Rept. 1034, 102d Cong., 2d Sess. 37 (relevant part attached).

The Conference Report on H.R. 11 was adopted by the House on October 5, 1992, and by the Senate on October 8, 1992.

D. The Veto

On November 4, 1994, President Bush vetoed H.R. 11. In his veto message (attached), the President explained that he was disapproving the bill because, "it includes numerous tax increases, violates fiscal discipline, and would destroy jobs and undermine small business." There is no reference to the Suter provision in the message.

III. 1993

The House passed the same provision that had been in the Conference Report on H.R. 11 as part of the Omnibus Budget Reconciliation Bill of 1993, H.R. 2264, but the provision was dropped from the Senate version of the bill. The Suter measure was not restored in Conference and therefore was not part of the Omnibus Budget Reconciliation Act. On November 17, 1993, after OBRA passed, Senator Moynihan introduced S. 1668 which contained various Social Security Act amendments, including the Suter provision, which had been struck from OBRA. Although S. 1668 was not acted upon, most of its provisions, including the Suter proviso, were incorporated into H.R. 5252 in 1994.

IV. The 1994 Legislation

As if to make up for the failure to pass the Suter provision in 1993, Congress passed it twice in 1994, as part of H.R. 6, the Elementary and Secondary Education Act, and H.R. 5252, which contains various Social Security Act amendments. Again, the language of the Suter provision is identical to that worked out in the 1992 Conference.

A. H.R. 6

1. The Conference

The Suter provision was added to H.R. 6 by the conference committee. It is the same language as the final language contained in H.R. 11 in 1992. The Conference Report, which passed the House on September 30, 1994, and passed the Senate on October 5, 1994, states:

The intent of this provision is to assure that individuals who have been injured by a State's failure to comply with Federal mandates of the State plan titles of the Social Security Act are able to seek redress in the federal courts to the extent they were able to prior to the decision in Suter v. Artist M. while also making clear that there is no intent to overturn or reject the determination in Suter that the reasonable efforts clause to Title IV-E does not provide a basis for a private right of action.

H.R. Rep. No. 761, 103d Cong., 2d Sess. 926 (relevant part attached).

3. Presidential Approval

President Clinton signed H.R. 6 into law as P.L. 103-382, 108 Stat. 3518, on October 20, 1994.

B. H.R. 5252

1. The House

H.R. 5252, which contained technical amendments to the Social Security Act was introduced in the House on October 7, 1994, and passed that day by a voice vote. It included a Suter provision that is identical to the one contained in H.R. 6.

2. The Senate

H.R. 5252 was introduced in the Senate and immediately passed by unanimous consent on October 8, 1994. On that day, Senator Rockefeller mentioned the Suter provision on the floor:

I would especially like to commend Chairman MOYNIHAN and the ranking member, Senator PACKWOOD, for their leadership on the Suter issue, which covers the enforcement of State plans of child welfare, welfare and other provisions of the Social Security Act. A sweeping Supreme Court decision eliminated an individual's right to sue to enforce provisions of State plans under the Social Security Act. This caused real concern, and I joined with several of my Senate colleagues in petitioning the finance committee to review this court decision and its impact on the States and children in 1992. Senators MOYNIHAN and PACKWOOD held a hearing which helped to forge a compromise on this issue. That compromise is part of this legislation.

140 Cong. Record S15024 (daily ed. October 8, 1994, Part II)(attached).

3. Presidential Approval

The President signed H.R. 5252 into law as P.L. 103-432, 108 Stat. 4398 on October 31, 1994.