

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 96-4258

Michael L. Rehberg, and all other
similarly situated employees;
Keith W. Asleson; Theodore K. Hull,

Appellants,

v.

Iowa Department of Public Safety,
sued as Department of Public Safety
and the State of Iowa,

Appellees.

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Appeal from the United States
District Court for the
Southern District of Iowa.

[UNPUBLISHED]

Submitted: July 14, 1997

Filed: July 16, 1997

Before FAGG, BOWMAN, and MURPHY, Circuit Judges.

PER CURIAM.

Michael L. Rehberg, Keith W. Asleson, and Theodore K. Hull commenced this action under the Fair Labor Standards Act, 29 U.S.C. §§ 201-19 (1994) (FLSA), against their employer--the Iowa Department of Public Safety (DOS) and the State of

Iowa--seeking overtime compensation. Upon defendants' motion, the District Court¹ dismissed the action. The court concluded that it lacked subject matter jurisdiction under Seminole Tribe of Florida v. Florida, 116 S. Ct. 1114 (1996), as Iowa had not consented to the suit; the Commerce Clause did not grant Congress the power to abrogate Iowa's Eleventh Amendment immunity from suit; and the FLSA was enacted pursuant to the Commerce Clause. Plaintiffs appeal, arguing that, although the FLSA may have been passed pursuant to the Commerce Clause, Congress subsequently passed an FLSA amendment abrogating the states' immunity pursuant to Congress's enforcement power under Section 5 of the Fourteenth Amendment.

Appellants' argument is foreclosed by our recent decision in Raper v. Iowa, 115 F.3d 623, ____ (8th Cir. 1997). In Raper, we rejected the argument made by Iowa employees who were seeking overtime compensation that Congress revoked the states' Eleventh Amendment immunity from FLSA lawsuits under the Fourteenth Amendment, because we concluded that the FLSA's overtime provisions cannot be seen as serving a Fourteenth Amendment purpose. See id. Accordingly, the judgment of the District Court is affirmed.

A true copy.

Attest:

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

¹The Honorable Celeste F. Bremer, United States Magistrate Judge for the Southern District of Iowa, to whom the case was referred for final disposition by consent of the parties pursuant to 28 U.S.C. § 636(c) (1994).