

## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

1 C. TERESA MARTIN, )  
2 )  
3 Plaintiff, ) 3:13-cv-00047-RCJ-WGC  
4 )  
5 vs. )  
6 )  
7 NEVADA DIVISION OF INSURANCE, ) **ORDER**  
8 )  
9 Defendant. )  
10 \_\_\_\_\_  
11 )  
12 )  
13 )

14 Plaintiff C. Teresa Martin has sued the State of Nevada's Division of Insurance in this  
15 Court for age and sex discrimination. Defendant has moved to dismiss the claim for age  
16 discrimination under the Age Discrimination in Employment Act ("ADEA"). The Court grants  
17 the motion.

18 The Court generally has no jurisdiction to entertain a suit against the State of Nevada or  
19 one of its departments by one of its citizens absent the State's consent. *See* U.S. Const. amend.  
20 XI; *Hans v. Louisiana*, 134 U.S. 1 (1890). Nevada has explicitly refused to waive its Eleventh  
21 Amendment immunity from suit in federal court as a general matter, *see* Nev. Rev. Stat.  
22 § 41.031(3), and the State did not remove the present case from state court, so waiver does not  
23 apply in the present case. Although § 5 of the Fourteenth Amendment gave Congress the power  
24 to abrogate the States' Eleventh Amendment immunity with respect to discrimination suits in  
25 some circumstances, *see Fitzpatrick v. Bitzer*, 427 U.S. 445, 455–56 (1976) (Title VII), Congress

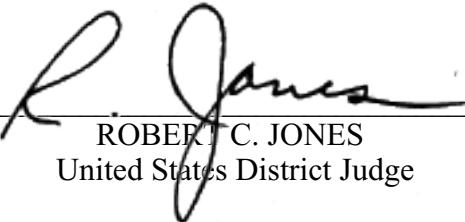
1 did not exercise that power in passing ADEA, because “Congress had virtually no reason to  
2 believe that state and local governments were unconstitutionally discriminating against their  
3 employees on the basis of age,” *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 91 (2000). The pre-  
4 *Kimel* decisions from inferior courts that Plaintiff cites in opposition are no longer persuasive.

5 **CONCLUSION**

6 IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 12) is GRANTED.

7 IT IS SO ORDERED.

8 Dated this 26th day of April, 2013.

9  
10   
11 ROBERT C. JONES  
12 United States District Judge  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25