



# *DPS Legal Review*

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## **CLASS-OF-ONE/ EQUAL PROTECTION**

In 1992, the Plaintiff was hired in a lab by the Oregon Department of Agriculture as an international food standard specialist. The Plaintiff complained about a male co-worker making false statements about her and making her life difficult. Based upon her complaint, that co-worker was directed to attend anger management training. In 2001, that same male co-worker was selected for a managerial position for which the Plaintiff had also applied and for which she was more qualified.

Thereafter, the Plaintiff was told that her position was being eliminated because of reorganization. She was given an opportunity to either bump to another position at her level or take a demotion. However, she was unqualified for the only other position at her level, and she declined a demotion. Hence, she was effectively laid off. She sued the agency and individual employees asserting various federal civil rights claims including a "class-of-one" equal protection claim. Her class-of-one claim alleged that she was fired, not because she was a member of an identified class (like race, gender, or national origin), but simply for arbitrary, vindictive, and malicious reasons. A jury found in her favor on the class-of-one claim. The state appealed.

**HOLDING:** The United States Supreme Court held that a "class-of-one" theory of equal protection claim does not apply in the public employment context. The Equal Protection Clause protects persons, not groups. It is well settled that States do not escape the requirements of the Equal Protection Clause in their roles as employers. However, common sense suggests that government offices would not function if every employment decision became a constitutional matter. To treat employees differently is not to classify them in a way that raises equal protection concerns. Instead, it simply allows a State to exercise the broad discretion that typically characterizes

the employer-employee relationship. Engquist v. Oregon Department of Agriculture, \_\_\_ U.S. \_\_\_, 2008 WL 2329768 (U.S.).

## **EXCESSIVE FORCE/ PREGNANT DRIVER**

The Plaintiff, who was seven and a half months pregnant with her first child at the time, was arrested on various charges stemming from a traffic stop made by sheriff's officers in Jacksonville, Florida. The Plaintiff realized that she was bleeding, and she believed that there was a problem with her pregnancy. She got in her car, started to drive herself to the hospital, and dialed 911. The 911 operator asked her if she wanted to pull over and await an ambulance, but she declined because she believed that she could make it to the hospital sooner on her own.

As she proceeded to the hospital, she ran a red light, and two sheriff's officers riding in a patrol car signaled for her to stop. She stopped, less than a mile from the hospital. There was a factual dispute in the record regarding the point at which the Plaintiff told the officers that she was pregnant.

On the one hand, the Plaintiff alleged that, after she stopped her car, the officer requested her driver's license and inquired about whether she owned the car. She claimed that she provided the documentation and immediately drove to the hospital's emergency room vehicle bay (with the officers close behind). As she left her car, one of the officers grabbed her and told her that she was going to jail. She broke free and stopped at two locked doors in the emergency room begging for help. She further alleged that one of the officers jumped on her and slammed her to the floor. After that officer dislocated his shoulder, as he attempted to arrest her, the other officer handcuffed her (as she pleaded with him to get off of her stomach because she was pregnant).

On the other hand, the officers alleged that, it was not until the Plaintiff was handcuffed that she told them that she was pregnant and

bleeding. The officer who dislocated his shoulder claimed his injury happened when the Plaintiff made him lose his balance and fall. It was undisputed that the Plaintiff was taken to the patrol car where she was examined by a nurse from the hospital. Ultimately, the Plaintiff was admitted to the hospital and found to be bleeding and in premature labor. Her doctors stopped the premature labor, and she was released ten days later. Her child was ultimately born prematurely the following month. The officers were disciplined for misconduct.

The Plaintiff sued the officers for excessive use of force under 42 U.S.C. § 1983 and for malicious prosecution under state law. She sued the sheriff for failure to train under 42 U.S.C § 1983 and for false arrest and battery under state law. The Defendants moved for summary judgment based upon qualified immunity. The officers asserted in their motion that they had probable cause to arrest the Plaintiff and that the force used was not unreasonable.

**HOLDING:** With regard to the malicious prosecution claim, the Court denied summary judgment. A reasonable person could not have believed that the Plaintiff's actions were criminal. Under Florida law, a pregnant woman, who out of necessity drives away from a traffic stop seeking urgent medical care in order to avoid imminent harm to her pregnancy, does not commit the felony of driving away from a traffic stop or eluding an officer. Necessity, also called duress under Florida law, is a defense to prosecution for fleeing or eluding a police officer.

With regard to the excessive force claim, the Court also denied summary judgment. The Court held that an officer's use of common force may be excessive when the officer has reason to know that the arrestee is particularly vulnerable. There was a genuine issue with regard to whether the officers knew the Plaintiff was pregnant and in medical distress, and, thus, particularly likely to be harmed. There was also sufficient evidence that the arrest was not founded upon probable cause. Even de minimis force is inappropriate when used to make an arrest *without* probable cause. The claim against the sheriff for failure to train was dismissed as factually unsupported. Williams v. Sirmons, 2008 WL 2222209 (M.D. Fla.).

## INQUIRING MINDS

**QUERY:** Where can a handgun be carried in a motor vehicle *with* a permit?

**ANSWER:** A person licensed to carry a concealed weapon may transport a loaded firearm in any location in a private motor vehicle. See O.C.G.A. §16-11-126(e).

**QUERY:** Where can a handgun be carried in a motor vehicle *without* a permit?

**ANSWER:** A person *eligible* but *not licensed* to carry a concealed weapon may transport a loaded firearm in any location in a private motor vehicle. The statutory language that required non-licensed individuals to have their firearm fully exposed to view or in the glove compartment has been removed. See O.C.G.A. §16-11-126(e).

## ALS REMINDERS

⊗ In roadblock cases, please remember to take a **CERTIFIED** copy of the Roadblock Supervisor Approval Form to the ALS Hearing. The certification sticker must be the **ORIGINAL** certification sticker and *not* a copy of the sticker. After testifying about the form, it must be given to the Court as part of the record.

⊗ Remember that a defendant *must* be under arrest for DUI *before* the implied consent card is read (*unless* the case involves a wreck with a serious injury or fatality). In a DUI case that involves a wreck with a serious injury or fatality, the defendant *does not* have to be under arrest before the implied consent card is read. However, there must be probable cause to believe that the defendant was DUI of alcohol or drugs. The serious injury must be one of the following injuries: 1) one or more persons suffered a fractured bone, 2) severe burns, 3) disfigurement, 4) dismemberment, 5) partial or total loss of sight or hearing, or 6) loss of consciousness.

## QUOTABLE WISDOM WORKS

"Every heart that has beat strong and cheerfully has left a hopeful impulse behind in the world, and bettered the tradition of mankind."

*Robert Louis Stevenson*

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