No. 07-474

In the Supreme Court of the United States

ANUP ENGQUIST,
Petitioner
v.
OREGON DEPARTMENT OF AGRICULTURE, JOSEPH (JEFF) HYATT, JOHN SZCZEPANSKI,
Respondents

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF THE STATES OF PENNSYLVANIA, FLORIDA, HAWAII, ILLINOIS, IOWA, MONTANA, NEVADA, OHIO, OKLAHOMA, SOUTH DAKOTA, TENNESSEE, UTAH, WASHINGTON, WYOMING, AND THE COMMONWEALTH OF PUERTO RICO, AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF THE *AMICI*

The question before the Court is "whether traditional equal protection 'rational basis' analysis under *Village of Willowbrook v. Olech*, 528 U.S. 562 (2000), applies to public employers who intentionally treat similarly situated employees differently with no rational basis for arbitrary, vindictive or malicious reasons." The States are among the Nation's largest public employers and therefore have a substantial interest in the resolution of this question. In addition, state officers and employees are frequently the targets of equal protection claims brought pursuant to 42 U.S.C. § 1983. The *amici* therefore also have a substantial interest in seeing that "class of one" equal protection claims actually are constrained within the bounds of "traditional" rational basis analysis.

SUMMARY OF ARGUMENT

I. It is well settled that the federal courts are not the appropriate forum for reviewing the personnel decisions of governmental agencies, and that government could not function if every personnel decision planted the seed of a constitutional case. The Court has therefore long rejected readings of constitutional provisions that would have the effect of constitutionalizing the employee grievance.

The version of rational basis analysis advanced by petitioner and adopted by the District Court in this case, however, would have precisely that effect. As a practical matter, that theory permits a jury to find an equal protection violation whenever the jury is

convinced that a personnel action is not supported by good cause; and its focus on decision-makers' subjective intent encourages burdensome and intrusive discovery while ensuring that few claims can be disposed of short of trial. The result is an intrusive level of judicial oversight which is inconsistent both with a regard for the proper limits of the judicial function and with sound principles of federalism.

These considerations alone should suffice for the Court to reject petitioner's "class of one" theory. But that theory, as applied in this case, is also at odds with the Court's well-settled principles of rational basis analysis under the Equal Protection Clause.

II. The Court's rational basis standard of review is highly deferential to the decisions made by the political branches, and this deference in turn is rooted in respect for the separation of powers and for concerns of federalism. Under this standard, absent a suspect classification or the infringement of a fundamental constitutional right, a governmental decision must be upheld if there is any reasonably conceivable state of facts that can support it.

The decision-maker's subjective motive for its actions is constitutionally irrelevant; if there is a plausible reason for the government's action, the inquiry is over. Moreover, a court may not resolve conflicts in the evidence against the government's decision; if the facts to support that decision are arguable, then by definition a rational basis for the decision exists. It therefore follows that the existence of a rational basis presents a question of law, not of

fact, to which issues of the decision-maker's "animus" or other subjective motive are irrelevant.

III. Viewed against this standard, it is apparent that the District Court's treatment of petitioner's claim veered dramatically away from this Court's "traditional" principles of rational basis analysis. The District Court refused to accept the more than plausible explanation advanced by respondents for petitioner's termination on the ground that the evidence on that point was in conflict. Instead, the District Court permitted this case to go to a jury on the issue of respondents' subjective motives for terminating petitioner, and in particular whether they were "really" motivated by malice or spite.

None of this comports with the Court's long-settled, "traditional" principles of rational basis analysis. The Court should reject this departure, and should make it clear that, if public employees are to be permitted to pursue "class of one" claims at all, those claims must be resolved in accordance with the same "traditional" principles that apply to all other claims.

ARGUMENT

I. "Class-Of-One" Equal Protection Theory, As Misconceived By The Courts Below, Threatens The Effective Functioning Of Government By "Constitutionalizing The Employee Grievance."

The Court has long rejected the idea that public employees may be required to surrender constitutional rights as a condition of their

employment. *E.g., Garrity v. New Jersey*, 385 U.S. 493, 500 (1967). But the Court has also consistently recognized that "government offices could not function if every employment decision became a constitutional matter." *Connick v. Myers*, 461 U.S. 138, 143 (1983). "[P]ublic employers have a direct and overriding interest in ensuring that the work of the agency is conducted in a proper and efficient manner," *O'Connor v. Ortega*, 480 U.S. 709, 724 (1987) (plurality opinion); and "[g]overnment employers, like private employers, need a significant degree of control over their employees' words and actions." *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006).

Accordingly, the Court has consistently refused to adopt a view of any constitutional provision that would "constitutionalize the employee grievance." *Id.*, at 154. *See, e.g., Garcetti, supra* (First Amendment); *Ortega, supra* (Fourth Amendment); *Collins v. City of Harker Heights*, 503 U.S. 115 (1992) (substantive due process); *Bishop v. Wood*, 426 U.S. 341 (1976) (Fourteenth Amendment liberty interest). The Court has instead adhered to the view that "[t]he federal court is not the appropriate forum in which to review the multitude of personnel decisions that are made daily by public agencies." *Id.*, at 349. While "numerous individual mistakes are inevitable in the day-to-day administration of our affairs[,] [t]he United States Constitution cannot feasibly be construed to require federal judicial review for every such error. …[W]e must presume that official action was regular and, if erroneous, can best be corrected in other ways." *Id.*, at 350.

The Court of Appeals correctly saw that the "class of one" theory, as advanced by petitioner and applied

by the District Court in this case, is incompatible with these well-settled views. As the Court of Appeals recognized, 478 F.3d at 995, by imposing a *de facto* requirement that respondents convince a jury that good cause existed for petitioner's termination, the District Court effectively constitutionalized tenure for all employees and did away with any notion of at-will employment in the public sector. This result cannot be reconciled with the Court's long-standing view of the nature of public employment, *see Collins*, 503 U.S. at 128 ("state law, rather than the Federal Constitution, generally governs the substance of the employment relationship"); *Bishop*, 426 U.S. at 350 n. 1 ("the ultimate control of state personnel relationships is … with the States; they may grant or withhold tenure at their unfettered discretion"), and would overturn long-standing personnel practices in virtually every State.[1]

The Court of Appeals was also correct to observe that there is no principled basis upon which to limit such claims to terminations: "other employment actions, such as promotions, disciplinary actions, and decisions about pay, benefits and transfers," 478 F.3d at 995, would all likewise be subject to federal court review on a claim that an employee had been singled out for vindictive or malicious treatment. Even everyday supervisory decisions on such matters as scheduling and assignments, and everyday

[1] Most States have both tenured and at-will employees. The specifics vary widely from State to State, but the most usual practice is to cover some employees under some kind of merit protection system, while exempting other employees – typically, agency heads and other high-level managers, immediate aides to such employees, professional employees such as attorneys, and employees of the judicial and legislative branches – from coverage. *See* Appendix A to this brief.

conversations with employees, could be strung together to become the grist for a hostile work environment claim based on the same theory. The federal courts would thus indeed become the "forum in which to review the multitude of personnel decisions that are made daily by public agencies." *Bishop*, 426 U.S. at 349.

The inclusion of an "arbitrary, malicious or vindictive" motive as an element of such a claim only makes matters worse. "Because an official's state of mind is 'easy to allege and hard to disprove,' insubstantial claims that turn on improper intent may be less amenable to summary disposition than other types of claims against government officials." *Crawford-El v. Britton*, 523 U.S. 574, 584-585 (1998). In addition, open-ended allegations of malice subject governmental defendants to wide-ranging discovery that is both burdensome and disruptive to effective government. *Ibid.* "Class-of-one" equal protection theory, then, as conceived and applied in this case, threatens to impair the independence of the political branches even as it turns the federal courts into super-civil service review boards.

Ironically, these additional burdens would be incurred in the cause of providing additional protection to those workers who are least in need of it. Public employees, like private-sector employees, are of course already protected by federal statutes such as Title VII against discrimination based on race, religion, sex or other protected traits. In addition, millions of public employees in every State are protected by merit selection and retention systems; and millions more are covered by collective bargaining

agreements.[2] Appendix A to this brief gives a state-by-state breakdown of such protections.[3] In light of this, the observation that "official action … if erroneous, can best be corrected in other ways" has lost none of its cogency since the Court first made it in *Bishop*. *See Garcetti*, 547 U.S. at 425 (noting existence of legislative protections for public employees).

All of these considerations counsel in favor of the Court of Appeals' categorical rule that public employees simply may not bring "class of one" challenges to personnel decisions. The Court of Appeals could see no other way to constrain such claims within reasonable bounds, and as we have just discussed, there is much to support that view. But it is also true that many of these adverse effects flow directly from the District Court's fundamental misunderstanding of the "rational basis" analysis required by this Court's equal protection decisions – a misunderstanding not corrected, and thus apparently

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[2] The Department of Labor reports that about 40% of public employees are represented by a union. By contrast, only about 8% of private-sector workers are unionized. *See* U.S. DEPT. OF LABOR, BUREAU OF LABOR STATISTICS, *Union Members in 2007*, Table 3 (Jan. 2008), available at http://stats.bls.gov/news.release/union2.t03.htm (visited Feb. 25, 2008).

[3] In addition to the state statutory protections summarized in Appendix A, federal law requires States to adopt merit personnel standards for certain employees as a condition of participating in many federal-state programs, such as the Medicaid program established by Title XIX of the Social Security Act. *See* 42 U.S.C. § 1396a(a)(4). A complete list of such programs is found at App. A to 5 C.F.R. Pt. 900, Subpt. F (2007) (standards for merit system of personnel administration). These merit standards need not be embodied in a state statute. *See* 5 C.F.R. § 900.604 (compliance) (2007).

shared, by the Court of Appeals. By the same token, many of these adverse effects could be minimized, if not eliminated, by a proper understanding and rigorous application of the correct principles of such an analysis. To that subject we now turn.

II. Under The Rational Basis Analysis Developed By This Court, A Public Employee's Challenge To A Personnel Decision Should Only Rarely Proceed To Trial And Only Rarely Succeed.

A. The Court's rational basis jurisprudence mandates a standard of review that is highly deferential to the decisions of the political branches.

The Court has repeatedly emphasized that "equal protection is not a license for courts to judge the wisdom, fairness, or logic of [governmental] choices." *FCC v. Beach Communications, Inc.*, 508 U.S. 307, 313 (1993). Rational basis review, as developed in the Court's equal protection decisions, is instead "a paradigm of judicial restraint." *Id.*, at 314. Absent the involvement of a suspect class or the infringement of a fundamental constitutional right, a governmental classification must be upheld "if there is any reasonably conceivable state of facts" that can support it. *Id.*, at 313. "Where there are 'plausible reasons'" for a governmental action, a court's inquiry is "'at an end.'" *Id.*, at 313-314, *quoting United States Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 179 (1981).

Whether these "plausible reasons" in fact underlay the governmental decision is "constitutionally irrelevant." *Fritz*, 449 U.S. at 179 (internal quotation

marks omitted). Nor is the governmental decision-maker obliged to produce empirical evidence to support its decision. *Vance v. Bradley*, 440 U.S. 93, 110-111 (1979). A decision may be based on "rational speculation unsupported by evidence or empirical data," and "those attacking the rationality of the … classification have the burden 'to negative every conceivable basis which might support it.'" *Beach Communications*, 508 U.S. at 315, *quoting Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356, 364 (1973).

A governmental decision challenged as lacking a rational basis is thus "not subject to courtroom fact-finding." *Beach Communications*, 508 U.S. at 315. "It makes no difference that the facts may be disputed or their effect opposed by argument and opinion of serious strength," *Vance*, 440 U.S. at 112, *quoting Rast v. Van Deman & Lewis Co.*, 240 U.S. 342, 357 (1916), for "the District Court's responsibility for making 'findings of fact' certainly does not authorize it to resolve conflicts in the evidence against the [governmental] judgment…." *Vance*, 440 U.S. at 111 (internal quotation marks omitted). If "the facts are arguable," that very circumstance "immunizes" the decision from constitutional attack under rational basis review. *Id.*, at 112.

As the Court said in *Beach Communications*, "these restraints on judicial review have added force" where decision-makers "must necessarily engage in a process of line-drawing," because such decisions "inevitably require[] that some persons who have an almost equally strong claim … be placed on different sides of the line." Perfection in such matters is not required: "[i]f [a] classification has some reasonable

basis, it does not offend the Constitution simply because [it] is not made with mathematical nicety or because in practice it results in some inequality." *Dandridge v. Williams*, 397 U.S. 471, 485 (1970) (internal quotation marks omitted). That a line "might well have been drawn differently" is simply not a matter for judicial consideration. *Beach Communications*, 508 U.S. at 316 (internal quotation marks omitted).

This highly deferential standard of review is rooted in concerns for the separation of powers and the proper limits on the judicial function. "Only by faithful adherence to this guiding principle of judicial review is it possible to preserve to the legislative branch its rightful independence and its ability to function." *Id.*, at 315 (internal quotation marks omitted). Many of the Court's equal protection cases, like *Beach Communications*, have concerned classifications established by legislative rather than executive or administrative action. But this makes no difference to the standard of review. *See Nordlinger v. Hahn*, 505 U.S. 1, 15-17 & n. 8 (1992) (same standard of review governs equal protection challenges to administrative and legislative decisions).[4] The Court has recognized, in the related context of selective prosecution, that the executive branch too is entitled to deference in carrying out its constitutional functions. *See United States v. Armstrong*, 517 U.S. 456, 465 (1996) (deference "stems from a concern not

[4] Petitioner herself argues at length that equal protection challenges stand on the same footing regardless of whether they are directed at legislative or executive decisions. *See* Br. for Pet. 17-19. Indeed, if this were not so, she would have no equal protection claim at all.

to unnecessarily impair the performance of a core executive constitutional function"); *Wayte v. United States*, 470 U.S. 598, 607-608 (1985). In the case of state officers, these separation-of-powers concerns are reinforced by considerations of federalism. *See Garcetti*, 547 U.S. at 423 (rejecting a rule that would have committed the courts to a "new, permanent and intrusive role … between … government employees and their superiors", as "inconsistent with sound principles of federalism and separation of powers").

B. The rational basis inquiry presents a question of law, not of fact, to which the actual motive of the decision-maker is irrelevant.

From this discussion, several things are clear. First, whether a given decision is rationally related to a legitimate governmental interest presents a question of law for a court, not a question of fact for a jury. While the Court does not seem ever to have expressed this principle in so many words, the courts of appeals which have directly addressed this issue, whether in the context of equal protection or the closely related context of substantive due process, have uniformly so concluded. *See, e.g., Myers v. County of Orange*, 157 F.3d 66, 74-75 & n. 3 (2d Cir. 1998); *FM Properties Operating Co. v. City of Austin*, 93 F.3d 167, 172 (5th Cir. 1996); *Midnight Sessions Ltd. v. City of Philadelphia*, 945 F.2d 667, 682 (3d Cir. 1991), *overruled on other grounds, United Artists Theatre Circuit, Inc. v. Township of Warrington*, 316 F.3d 392, 410 (3d Cir. 2003); *Izquierdo Prieto v. Mercado Rosa*, 894 F.2d 467, 471 (1st Cir. 1990). Indeed, this conclusion follows unavoidably from the Court's repeated admonition that the rational basis

inquiry does not involve fact-finding. *See Beach Communications*, 508 U.S. at 315; *Vance*, 440 U.S. at 111.

Second, and closely related to the first point, the issue of the decision-maker's subjective reasons for acting – and particularly whether those reasons can be described as "malicious" or "arbitrary" or "vindictive" – has no place in the rational basis inquiry. The Court has repeatedly held that what actually motivated a decision-maker "is entirely irrelevant for constitutional purposes." *Beach Communications*, 508 U.S. at 315; *Fritz*, 449 U.S. at 179 ("constitutionally irrelevant" what reasoning in fact underlay a decision). In *Garrett v. Bd. of Trustees of Univ. of Alabama*, 531 U.S. 356, 367 (2001), the Court made it clear that ill intent – what the Court called "negative attitudes" and what petitioner calls "animus" – is neither a necessary nor a sufficient condition for a successful constitutional challenge. "Although such biases may often accompany irrational (and therefore unconstitutional) discrimination, their presence alone does not a constitutional violation make." *Ibid.*

While an inquiry into subjective motive is thus obviously inconsistent with the Court's long-settled equal protection doctrine as a general matter, there are additional reasons not to import such an inquiry into the specific context of employment disputes. Submitting such an issue to a jury inevitably – as it did here – transforms the proceedings into a civil service-like inquiry into good cause, or a Title VII-like inquiry into pretext, *see McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) – a course which cannot be reconciled with the Court's settled doctrine that the

Equal Protection Clause does not empower the courts to second-guess state officials charged with difficult responsibilities. *Dandridge*, 397 U.S. at 487; *Beach Communications*, 508 U.S. at 313 (not a license to judge the "wisdom, fairness or logic" of governmental decisions). This second-guessing is particularly likely when a jury is asked to evaluate personnel decisions, which may well turn on subjective assessments – as of the relative merits of two or more employees – ill-suited for formal proof in an adversarial setting.

Moreover, as the Court said in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982), it is clear that "substantial costs attend the litigation of the subjective good faith of government officials." Questions of subjective intent

> rarely can be decided by summary judgment. Yet they also frame a background in which there often is no clear end to the relevant evidence. Judicial inquiry into subjective motivation therefore may entail broad-ranging discovery and the deposing of numerous persons, including an official's professional colleagues. Inquiries of this kind can be peculiarly disruptive of effective government.

457 U.S. at 816-817. These considerations apply with special force in the context of employment-related disputes, where an open-ended search for proof of "animus" is apt to lead to a re-hashing of every petty disagreement in the workplace, further damaging working relationships and "disrupt[ing] effective government." Just as the Court in *Harlow* rejected subjective intent as an element of the qualified

immunity defense, the Court should reject it in this context as well.

Instead, the Court should adhere to its holding that the only question in a rational basis inquiry – in this as in other contexts – is whether there are "plausible reasons" to support the governmental action, *whether or not* those reasons in fact underlay the decision. *See supra* at 8-9. In the context of personnel decisions, the answer to that question will almost always be "yes."

There may well be no "plausible reason" – no "conceivable set of facts" – why one homeowner should have to convey to her municipality an easement twice as large as every other owner in order to get water service, *see Olech*, 528 U.S. at 565; and there may well be no "conceivable set of facts" why one taxpayer should pay taxes at thirty-five times rate paid by others, *see Allegheny Pittsburgh Coal Co. v. Commission of Webster Cty.*, 488 U.S. 336, 341 (1989). But it is neither inconceivable nor implausible – indeed, it is the universal experience – to believe that one employee is less hardworking, or productive, or cooperative, or open to new ideas, or is a less valuable employee in any one of a hundred other ways, than another employee. And it is certainly not irrational to believe that some legitimate end – productivity, morale, discipline, efficiency – will be furthered if that employee is terminated, reassigned, transferred, demoted or disciplined.

In pursuing this rational basis inquiry, courts should not engage in fact-finding, and should not weigh conflicting evidence on the correctness or fairness or wisdom of the government employer's

action. If the facts on which the decision-maker could have relied are "arguable," then by definition the inquiry is at an end. *Vance*, 440 U.S. at 112; *Beach Communications*, 508 U.S. at 315 (decisions may be based on "rational speculation"). Nor should a court attempt to divine the "real" reason for the government's action, which is "constitutionally irrelevant." *Fritz*, 449 U.S. at 179. Only if there exists no "plausible reason" which could conceivably support the government's decision does that decision fail rational basis analysis.

It is apparent, given this highly deferential standard of review, that few if any claims of this kind should ever be submitted to a jury,[5] and few should succeed whether they are submitted to a jury or not. We turn finally to the question of how these principles of "traditional equal protection 'rational basis' analysis," Pet. i, were applied – or, to be more precise, were not applied – in this case.

III. The Lower Courts In This Case Fundamentally Misconceived The Nature Of Rational Basis Analysis.

It is ironic that, in her petition for certiorari, petitioner invoked the principles of "traditional … rational basis analysis," and asked the Court to decide whether those "traditional" principles apply to disputes over the personnel decisions of public

[5] While the existence of a rational basis would always remain a question of law for the court, it is of course possible that some cases might present questions of historical fact for a jury to resolve – for example, whether a plaintiff was in fact treated differently from other employees.

employers. Pet. i. Ironic, because it should be clear by now that the treatment of petitioner's claim in the courts below strayed as far from "traditional … rational basis analysis" as may well be imagined.

The District Court ignored the holdings of this Court that a governmental decision survives rational basis analysis where there are "plausible reasons" that support it. *Beach Communications*, 508 U.S. at 313. In this case, respondents explained that petitioner's position was eliminated for budgetary reasons. The State of Oregon faced a significant revenue shortfall for the 2001-2003 budget; the governor called for budget cuts and asked that agencies eliminate or restructure programs to accomplish this. J.A. 19; 478 F.3d at 991. Eliminating petitioner's position could rationally be expected to help. That she may have been as deserving of keeping her job as other employees, or even more so, was neither here nor there. A line needed to be drawn to balance the budget, and it need not have been drawn perfectly. *Dandridge*, 397 U.S. at 485 (classification not unconstitutional simply because not made with mathematical nicety). Clearly, respondents offered a "plausible reason" to support their decision.

Under "traditional" rational basis analysis, that should have ended the case, but it did not, because the District Court also ignored this Court's holdings that a district court's responsibility for making findings of fact "does not authorize it to resolve conflicts in the evidence against the [governmental] judgment." *Vance*, 440 U.S. at 111 (internal quotation marks omitted). The existence of evidence that called into question whether budgetary savings would actually be realized should have made no difference, as this is

precisely the kind of factual conflict that courts are not to resolve in conducting rational basis analysis. If the facts are "arguable," as they obviously were here, the challenged classification must be upheld. *Vance*, 440 U.S. at 112. Nevertheless, the District Court twice denied respondents' motions for summary judgment on the ground that

> [t]here is evidence that plaintiff performed her job satisfactorily and that her termination was not the result of "reorganization' or budgetary costs. Based on this same evidence, there are genuine issues of fact as to whether plaintiff was singled out as a result of animosity . . . thereby violating her equal protection rights.

J.A. 59; *see also* J.A. 42.

Finally, the District Court ignored this Court's holdings that a decision-maker's actual motive is "constitutionally irrelevant" to the rational basis inquiry. *Fritz*, 449 U.S. at 179. Instead, the District Court permitted the question of respondents' ill intent to become the central issue of the case – an issue which was ultimately submitted to the jury. In her brief to this Court, petitioner now attempts to downplay the role of this issue, *see* Br. for Pet. 42-45, but this cannot obscure the fact that allegations of the respondents' "animus" were an essential part of her claim. The District Court specifically held that for petitioner to prevail, "she must show that she was singled out *as a result of animosity* on the part of Hyatt and Szczepanski. To do so, she must show that their actions were *spiteful efforts to punish her*...." J.A. 58 (emphases added). The District then went on to deny respondents' motion for summary judgment

on the ground that this very issue remained in dispute. J.A. 59 ("there are genuine issues of fact as to whether plaintiff was singled out *as a result of animosity*...") (emphasis added).

At trial, the District Court then invited the jury to decide whether petitioner's termination was really the result of budget cuts, or whether she was singled out as a result of animosity on the part of the defendants. J.A. 62-64. In short, the treatment of petitioner's claim in the courts below had more in common with a garden variety civil service hearing, than with the principles of "traditional" rational basis analysis long settled by the Court.

The Court may well conclude, as did the Court of Appeals, that the difficulties which attend this type of claim on the part of public employees justify a categorical rule against the federal courts entertaining them. But if these claims are to be entertained at all, at the very least the Court should make it clear that the "traditional" principles of rational basis analysis must be rigorously applied to such claims, and should disavow the path staked out by the lower courts in this case.

CONCLUSION

The Court should affirm the judgment of the Court of Appeals.

Respectfully submitted,

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March 26, 2008

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APPENDIX A

State	Merit System Protection	At-Will Employment	Collective Bargaining
Alabama	Yes. Ala. Code §§ 36-26-1 *et seq.*	Yes. Ala. Code § 36-26-10	No.
Alaska	Yes. AS 39.25.010-.995	Yes. AS 39.25.010-.995	Yes. AS 23.40.070 *et seq.*
Arizona	Yes. Ariz. Rev. Stat. § 41-783.	Yes. Ariz. Rev. Stat. § 41-771	No.
Arkansas	No.	Yes.	No.
California	Yes. Cal Const. Art. 7 § 1	Yes. Cal. Const. Art. 7 § 4	Yes. Cal. Govt. Code §§ 3512 *et seq.*
Colorado	Yes. Colo. Const. Art. 12, § 13	Yes. Colo. Const. Art. 12, § 13	Yes. 4 CCR 801, Board Rule 1-18
Connecticut	Yes. Conn. Gen. Stat. § 5-193 *et seq.*	Yes. Conn. Gen. Stat. § 5-198	Yes. Conn. Gen. Stat. § 5-270 *et seq.*

State	Merit System Protection	At-Will Employment	Collective Bargaining
Delaware	Yes. 29 Del. C. § 5901 *et seq.*	Yes. 29 Del. C. § 5903	Yes. 19 Del. C. 1311A
Florida	Yes. Fla. Stats. § 110.201 *et seq.*	Yes. Fla. Stats. § 110.201	Yes. Fla. Stats. § 447.201 *et seq.*
Georgia	Yes. O.C.G.A. § 45-20-1 *et seq.* (employees hired before FY 1996 only)	Yes. (All employees hired after FY 1995.)	No.
Hawaii	Yes. HRS 76-1 *et seq.*	Yes. HRS 76-16	Yes. HRS 89-3.
Idaho	Yes. IC 67-5301 *et seq.*	Yes. IC 67-5303	No.
Illinois	Yes. 20 ILCS 415/1	Yes. 20 ILCS 415/4c	Yes. 5 ILCS 315/1 *et seq.*
Indiana	Yes. IC 4-	Yes. IC 4-	Yes. IC 20-

State	Merit System Protection	At-Will Employment	Collective Bargaining
	15-2-1 *et seq.*	15-2-7	7.5-1-1 to 20-7.5-1-14
Iowa	Yes. ICA 8A.411 *et seq.*	Yes. ICA 8A.412	Yes. ICA 20.8
Kansas	Yes. KSA 75-2929a *et seq.*	Yes. KSA 75-2935	Yes. KSA 75-4327
Kentucky	Yes. KRS 18A.005 *et seq.*	Yes. KRS 18A.115	No.
Louisiana	Yes. La. Const. Art. X	Yes. La. Const. Art. X, § 2	No.
Maine	Yes. 5 MRSA chs. 65, 67-69, 71, 372	Yes. 5 MRSA 7051(7)	Yes. 26 MRSA 979-B
Maryland	Yes. MD Code, State Personnel and Pensions, Div. I, Tit.	Yes. MD Code, State Personnel and Pensions, 11-305	Yes. MD State Personnel and Pensions, Div. I, Tit. 3

State	Merit System Protection	At-Will Employment	Collective Bargaining
	1-15		
Massachusetts	Yes. MGL ch. 31	Yes. MGL ch. 31 § 41	Yes. MGL ch. 150A § 3
Michigan	Yes. Mich. Const. Art. XI, § 5	Yes. Mich. Const. Art. XI, § 5	Yes. Mich. CSR 6-1.2
Minnesota	Yes. MSA 43A.01 *et seq.*	Yes. MSA 43A.08	Yes. MSA 43A.18
Mississippi	Yes. Miss. Code Ann. 25-9-101, *et seq.*	Yes. Miss. Code Ann. 25-9-107(c)	No.
Missouri	Yes. VAMS 36.010 *et seq.*	Yes. VAMS 36.030	Yes. VAMS 105.510-105.530
Montana	Yes. Mont. Code Ann. § 2-18-101 *et seq.*	Yes. Mont. Code Ann. § 2-18-103	Yes. Mont. Code Ann. § 39-31-101 *et seq.*
Nebraska	Yes. NRS § 81-1321	Yes. NRS § 81-1321	Yes. NRS § 81-1369

State	Merit System Protection	At-Will Employment	Collective Bargaining
Nevada	Yes. NRS 284.150	Yes. NRS 284.143	No. NRS 288.110(2)
New Hampshire	No.	Yes.	Yes. NH Rev. Stat. 273-A1 – A179
New Jersey	Yes. NJSA 11A:1-1 to 11A:12-6	Yes. NJSA 11A:3-4	Yes. NJSA 34:13A-1 to 34:13A-13
New Mexico	Yes. NMSA 1978, 10-9-1 *et seq.*	Yes. NMSA 1978, 10-9-4	Yes. NMSA 1978, 10-7E-1 to 10-7E-26
New York	Yes. NY Civil Service Law, § 1 *et seq.*I	Yes. NY Civil Service Law, §§ 35, 41	Yes. NY Civil Service Law 204
North Carolina	Yes. NC Gen. Stat. § 126-34.1	Yes. NC Gen. Stat. § 126-35, 126-1.1	No.
North Dakota	Yes. NDCC 34-11.1	Yes.	Yes. NDCC 34-12-04

State	Merit System Protection	At-Will Employment	Collective Bargaining
Ohio	Yes. Ohio Rev. Code 124.33-124.341	Yes. Ohio Rev. Code 124.11	Yes. Ohio Rev. Code 4117.01-4117.23
Oklahoma	Yes. 74 Okla. Stat. §§ 840-4.1, 840-4.2	Yes. 74 Okla. Stat. §§ 840-5.1.A, 840-5.5	No.
Oregon	Yes. ORS 240.005 *et seq.*	Yes. ORS 240.200, 240.205	Yes. ORS 243.650 *et seq.*
Pennsylvania	Yes. Pa. Stat. Ann. tit. 71, § 741.1 *et seq.*	Yes. Pa. Stat. Ann. tit. 71, § 741.3	Yes. Pa. Stat. Ann. tit. 43, § 1101.1 *et seq.*
Rhode Island	Yes. R.I. Gen. Laws 36-4-1 *et seq.*	Yes. R.I. Gen. Laws 36-4-2, 36-4-2.1	Yes. R.I. Gen. Laws 36-11-1 *et seq.*
South Carolina	Yes. SC Code 8-17-310 *et seq.*	Yes. SC Code 8-17-370	No.

State	Merit System Protection	At-Will Employment	Collective Bargaining
South Dakota	Yes. SDCL 3-6A-1 *et seq.*	Yes. SDCL 3-6A-13	Yes. SDCL 3-18-1 *et seq.*
Tennessee	Yes. Tenn. Code Ann. 8-30-101	Yes. Tenn. Code Ann. 8-30-101(a)(23)	No.
Texas	Yes. VTCA § 655.001 *et seq.*	Yes. VTCA § 655.001	No. VTCA, Govt. Code 617.002
Utah	Yes. Utah Code § 67-19-1 *et seq.*	Yes. Utah Code § 67-19-15	No.
Vermont	No.	Yes. 3 VSA 258	Yes. 3 VSA 901-1007
Virginia	Yes. Va. Code Ann. 2.2-2900 *et seq.*	Yes. Va. Code Ann. 2.2-2905	No. Va. Code Ann. 40.1-57.2
Washington	Yes. Wash. Rev. Code 41.06.010 *et seq.*	Yes. Wash Rev. Code 41.06.170	Yes. Wash. Rev. Code 41.56

State	Merit System Protection	At-Will Employment	Collective Bargaining
West Virginia	Yes. W.Va. Code 6C-2-1 *et seq.*	Yes. W.Va. Code 6C-2-2	No.
Wisconsin	Wis. Stat. ch. 230	Yes. Wis. Stats. § 230.08	Yes. Wis. Stat. § 111.80 *et seq.*
Wyoming	Yes. Wyo. Stat. 9-2-1022	Yes.	No.