

07-474 ENGQUIST V. OR DEPT. OF AGRIC.

DECISION BELOW: 478 F3d 985

LOWER COURT CASE NUMBER: 05-35170, 05-35263

QUESTION PRESENTED:

The Ninth Circuit below vacated the jury's verdict in favor of Petitioner Engquist and created a divisive split with the seven Circuits that apply the "rational basis" analysis to public employees who claim their termination was a result of unequal treatment, even if that treatment did not result from the employee's membership in a suspect class. The first question presented is:

1. Whether traditional equal protection "rational basis" analysis under *Village of Willowbrook v Olech*, 528 US 562, 120 S Ct 1073, 145 L Ed 2d 1060 (2000) applies to public employers who intentionally treat similarly situated employees differently with no rational bases for arbitrary, vindictive or malicious reasons? The Ninth Circuit also upheld the validity of a state statute that took 60 percent of Engquist's punitive damage award for a public use, aligning the Ninth Circuit with the six state supreme courts that have held such statutes constitutional, and furthering the split with the two state supreme courts that have held such statutes violate the Takings Clause. The second question presented is:

2. Whether a state "split recovery" punitive damages statute violates the Takings Clause of the United States Constitution?

LIMITED TO QUESTION 1 EXPEDITED BRIEFING

CERT. GRANTED 1/11/2008