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Constitutional Law - Due Process and Equal Protection - Mandatory Leave Rules for Public School Teachers

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RECENT CASES

CONSTITUTIONAL LAW—DUE PROCESS AND EQUAL PROTECTION—MANDATORY LEAVE RULES FOR PUBLIC SCHOOL TEACHERS.

Respondents Jo Carol La Fleur and Ann Elizabeth Nelson and petitioner Susan Cohen are public school teachers.[1] Each became pregnant during the 1970-1971 school year. Each informed her respective school board of her pregnancy and requested that she be permitted to continue teaching until shortly before the expected date of delivery.[2] These requests were denied by the school boards. Pursuant to mandatory maternity leave rules[3] La Fleur, Nelson and Cohen were compelled to quit their jobs, without pay, several months prior to their expected delivery dates.[4] Separate suits were filed under 42 U.S.C. § 1983[5] challenging the constitutionality of the maternity leave rules. The United States Supreme Court granted certiorari in both cases[6] and held that the mandatory maternity

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1. Respondents are junior high school teachers employed by the Board of Education of Cleveland, Ohio. Petitioner was employed by the School Board of Chesterfield County, Virginia.

2. LaFleur and Nelson, expecting their children to be born during the summer of 1971, requested that they be permitted to continue teaching until the end of the school year. Mrs. Cohen, whose expected date of delivery was April 28, 1971, initially sought permission to teach until April 1, 1971, but subsequently revised her request backwards to January 21, 1971.

3. Respondents were forced to leave their jobs in March of 1971, at least four months prior to actual delivery. Mrs. Cohen was required to leave her job on December 18, 1970, approximately five months prior to the birth of her child.

4. The Cleveland rule requires every pregnant teacher to take a leave without pay, five months before the expected date of delivery. No teacher on maternity leave may return to work until the beginning of the school semester following the date when her child reaches three months of age. The teacher on leave is not guaranteed reemployment.

The Chesterfield County rule requires a pregnant teacher to leave work at least four months prior to the expected date of birth. A teacher may be reemployed when she submits a physician's statement declaring her physically fit for carrying on classroom duties. For the full text of the rules *see* Cleveland Board of Education v. La Fleur, 94 S. Ct. 791, 794-95 (1974).

5. 42 U.S.C. § 1983 (1970) provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or useage, of any State of Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

6. La Fleur and Nelson filed separate suits in the United States District Court for the Northern District of Ohio. The District Court tried the cases together and rejected the

leave rules denied the teachers due process of the Fourteenth Amendment. *Cleveland Board of Education v. La Fleur*, 94 S. Ct. 791 (1974).

The Court noted that it has long been recognized that freedom of choice in matters relating to marriage and family life is one of the liberties protected by the Due Process Clause of the Fourteenth Amendment.[7] Because mandatory maternity leave rules may affect this liberty by penalizing[8] a teacher for deciding to bear a child, the Due Process Clause requires that the interests advanced by the rules must be rational and necessary.[9] Further, the rules must not needlessly, arbitrarily or capriciously impinge upon the protected liberty.[10]

The school boards argued that the firm cut-off dates were necessary to maintain continuity of classroom instruction. Their rationale was that advance knowledge of when a pregnant teacher must leave facilitates finding and hiring a replacement. The Court agreed that continuity of instruction is a legitimate educational goal and that requiring teachers to provide early notice of their condition facilitates administrative planning.[11] However, while advance notice is rational and necessary, an absolute requirement that a teacher leave work at the end of the fourth or fifth month bears no rational relationship to the valid interest of preserving continuity of instruction.[12] Cut-off dates much later during the pregnancy would serve

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teacher's arguments. La Fleur v. Cleveland Board of Education, 326 F. Supp. 1208 (N.D. Ohio 1971), rev'd 465 F.2d 1184 (6th Cir. 1972) *aff'd* 94 S. Ct. 791 (1974). The United States Court of Appeals for the Sixth Circuit reversed finding the Cleveland rules in violation of the Equal Protection Clause of the Fourteenth Amendment. La Fleur v. Cleveland Board of Education, 465 F.2d 1184 (6th Cir. 1972), *aff'd* 94 S. Ct. 791 (1974). Mrs. Cohen filed suit in the United States District Court for the Eastern District of Virginia. The District Court held that the Chesterfield County rules violated the Equal Protection Clause of the Fourteenth Amendment. Cohen v. Chesterfield County School Board, 326 F. Supp. 1159 (E.D. Va. 1971). A divided panel of the Fourth Circuit affirmed but, on rehearing *en banc*, upheld the constitutionality of the challenged regulations. Cohen v. Chesterfield County School Board, 474 F.2d 395 (4th Cir. 1973), *rev'd*, 94 S. Ct. 791 (1974).

Certiorari was granted by the Supreme Court in both cases in order to resolve the conflict between the Court of Appeals regarding the constitutionality of mandatory maternity leave rules for public school teachers. Cleveland Board of Education v. La Fleur, 411 U.S. 947 (1973).

Apart from the La Fleur and Cohen cases at least three other federal appellate opinions dealing with the constitutionality of mandatory maternity leave regulations are reported. *Compare* Green v. Waterford Board of Educaaion, 473 F.2d 629 (2nd Cir. 1973); Buckly v. Coyle Public School System, 476 F.2d 92 (10th Cir. 1973) *with* Schattman v. Texas Employment Commission, 459 F.2d 32 (5th Cir. 1972), *cert. denied*, 409 U.S. 1107 (1973).

7. 94 S. Ct. at 796.

8. Justice Powell objects to deciding the case on the ground that maternity leave regulations impair any right to bear children. 94 S. Ct. at 802 (Powell, J., concurring). In Dandridge v. Williams, 397 U.S. 471, (1970), the Supreme Court upheld limitations on the welfare benefits a family may receive that do not take into account the size of the family. Justice Powell notes that if some intentional efforts to penalize childbearing are constitutional, then the maternity rules are not invalid because they infringe on any right to bear children. 94 S. Ct. at 802.

9. 94 S. Ct. at 796-98.

10. *Id.* at 796. Justice Stewart's language is quite similar to that used by Justice White in his concurring opinion in Griswold v. Connecticut, 381 U.S. 479, 502 (1965).

11. 94 S. Ct. at 797.

12. *Id.*

as well or better.[13] The Court argued that since the arbitrary cut-off dates will fall at different times in the school year for different teachers the rules may actually serve to hinder attainment of continuity.[14]

The school boards also argued that the rules are justified because they serve to protect the health of the teacher and her unborn child while at the same time assuring that the students have a physically capable instructor.[15] The Court responded that the rules "sweep too broadly."[16] The regulations amount to a conclusive presumption that every pregnant teacher who reaches the fixed cut-off date is incapable of carrying on in her job.[17] The Due Process Clause requires a more individualized determination.[18]

Prior to *La Fleur*, the Supreme Court had held that the rules which embody conclusive presumptions are disfavored under the Due Process Clause of the Fifth and Fourteenth Amendments.[19] In *Bell v. Burson*[20] the Court held invalid a Georgia statute requiring any uninsured motorist involved in an accident to post a bond for the protection of possible claimants or suffer suspension of his license. The petitioner refused to post such a bond and his license was suspended. The Court rules the statutory procedure to be violative of the Due Process Clause because it deprived the petitioner of his license without reference to the very factor (fault) fundamental to the State's statutory scheme. In effect, the Georgia statute raised a conclusive presumption that an uninsured motorist was at fault.

Stanley v. Illinois[21] held invalid an Illinois statute providing that children of unmarried fathers, upon the death of the mother,

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13. *Id.* at 797-98. The Court suggested that continuity could better be achieved if the teacher chose her own cut-off date and notified the school board at a sufficiently advance date.

14. Mrs. La Fleur and Mrs. Nelson both were compelled to leave work with only a few months left in the school term. Both were willing and able to finish the term.

The Court took note of the fact that the Cleveland rule would be hard put to further the goal of continuity since it required only two week's notice before the commencement of leave. *Id.* at 798 n. 11.

15. The records of the case suggest that the regulations were adopted to save teachers from embarassment and to insulate school children from the sight of a pregnant woman. Apparently one member of the Chesterfield County School Board feared that a child might interpret the teacher's condition as being the result of ingesting a watermelon. *Id.* at 797, n. 9.

16. La Fleur v. Cleveland Board of Education, 94 S. Ct. 791 (1974); *see* Shelton v. Tucker, 364 U.S. 479 (1960). Here, Justice Stewart, writing for the Court, held invalid an Arkansas statute requiring every teacher, as a condition of employment, to file annually an affidavit listing every organization to which he had belonged within the preceding five years on the grounds that the breadth of the statute went beyond what was necessary to achieve any legitimate state purpose. *See also* Tally v. California, 362 U.S. 60 (1959), where the Court held invalid a Los Angeles ordinance prohibiting the distribution of any handbill unless the handbill has printed on it the name and address of the person who prepared, distributed, or sponsored it.

17. 94 S. Ct. at 798.

18. *Id.* at 799. Refer to n. 25 *infra*.

19. *See, e.g.*, Vlandis v. Kline, 412 U.S. 441 (1973); Stanley v. Illinois, 405 U.S. 645 (1972); Bell v. Burson, 402 U.S. 535 (1971); Carrington v. Rash, 380 U.S. 89 (1965).

20. 402 U.S. 535 (1971).

21. 405 U.S. 645 (1972).

are declared wards of the state without any hearing of parental fitness. Justice White's majority opinion concluded:

> The State's interest is caring for Stanley's children in *De minimus* if Stanley is shown to be a fit father. It insists on presuming rather than proving Stanley's unfitness solely because it is more convenient to presume than to prove. Under the Due Process Clause that advantage is insufficient to justify refusing a father a hearing when the issue at stake is the dismemberment of his family.[22]

In *Vlandis v. Kline*[23] the Court struck down a Connecticut durational residence requirement conditioning eligibility for instate university tuition rates on prior state citizenship. The majority assumed that a state might charge nonresidents higher tuition than that paid by residents.[24] The Court held that none of the reasons advanced by Connecticut could justify a permanent and irrebuttable presumption that those who move to a state shortly before matriculation are not residents.[25]

The Court in *La Fleur* argued that the school board's rules conclusively presume that every pregnant teacher is incapable of teaching at a uniform fixed time.[26] Medical experts, however, agreed that the ability of any particular pregnant teacher to continue working past a fixed period is an individual matter.[27] Therefore it is evident that large numbers of teachers who are fully capable and qualified to continue teaching are forced to quit work merely because they are pregnant.[28] The conclusive presumptions embodied in the school board's rules are neither "necessarily nor universally true" and are therefore violative of the Due Process Clause.[29] The mandatory maternity leave cut-off dates attempt a legitimate goal, but because they employ irrebuttable presumptions that unduly penalize a female teacher for deciding to bear children they do not meet the requirments of the Due Process Clause of the Fourteenth Amendment.[30] For similar reasons, the Cleveland requirement that a teacher may not become eligible to teach after delivery of her child until the beginning of the school term following the third month of her child's life, is violative of the Due Process Clause.[31]

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22. *Id.* at 657-58.
23. 93 S. Ct. 2230 (1973).
24. *Id.* at 2233.
25. Chief Justice Burger dissenting in Vlandis concluded that the use of irrebuttable presumptions is tantamount to engrafting "close judicial scrutiny" on to the Due Process Clause. He notes that thousands of state statutes create classifications which raise conclusive presumptions, which are less than perfect, and which might be improved by individualized determinations. The Chief Justice urges that the Court should erect standards that are not unrealistic. *Id.* at 2241-42 (Burger, C. J., dissenting).
26. 94 S. Ct. at 798.
27. *Id.* at 799.
28. *Id.*
29. *Id.*
30. *Id.* at 800.
31. *Id.* at 800-01.

It appears that the use of irrebuttable presumptions is a tool which the Court uses to call attention to the components of a challenged statute. In *Carrington v. Rash*[32] the Court rules unconstitutional a Texas statute which prohibited all military personnel from voting in the State on the presumption that since servicemen were not bona fide residents, all could be treated as non-residents. Both the majority and the dissent acknowledged that the challenged law's constitutionality depended upon the reasonableness of the classification which the state had devised.[33] By noting the irrebuttable presumption, the Court sought to illustrate that the Texas legislature had assumed that *most* servicemen who lived in Texas were not domiciled there and that the legislature applied this assumption to *all* military personnel who made their home in Texas. The Court then applied the test of reasonableness to both the irrebuttable presumption and the statute's application.

In *La Fleur* the irrebuttable presumption that a pregnant teacher was incapable of teaching after a fixed time did not make the challenged regulation unconstitutional. Rather, it was the combination of the presumption's incorrectness and the classification's overinclusiveness. Had the school boards set a firm date during the last few weeks of pregnancy, the regulations might have fallen within constitutional parameters.[34] In such a situation both the presumption (incapacity) and the classification (all pregnant teachers) might have been reasonable in light of the school board's legitimate goals.

The application of an irrebuttable presumption analysis to various state statutes may place these statutes in jeopardy.[35] Literally thousands of statutes draw lines such as those drawn by the school boards maternity leave rules.[36] It is conceivable that the irrebuttable presumptions approach could be used to sustain challenges to such laws as mandatory retirement of government employees, voting age requirements, driving age limitations and the like.[37]

The significance of *La Fleur* probably lies in that the Court chose not to apply Equal Protection standards to the challenged

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32. 380 U.S. 89 (1965).
33. *Id.* at 93, 99.
34. The Court appears to imply that it would be justifiable to raise an irrebuttable presumption that during the final weeks of pregnancy all pregnant teachers are too debilitated to continue working. *See* 94 S .Ct. at 799-800 n. 13.
35. *Id.* at 805 (Rehnquist, J., dissenting).
36. 412 U.S. 441 (1973), (Burger, C. J., dissenting). *See* n. 25 *supra.*
37. 94 S. Ct. at 805-06. Justice Rehnquist, dissenting, would move away from "irrebuttable presumptions" altogether because it would necessitate application to other statutes which draw lines such as those in La Fleur on an individual, ad hoc, basis. The dissent notes that all legislation involves lines being drawn, and the lines necessarily result in certain individuals who are disadvantaged by the lines being drawn. *See* Williamson v. Lee Optical Company, 348 U.S. 483 (1955).

Justice Powell in his concurring opinion agrees with the dissent that the end of the road that the Court had embarked on using irrebuttable presumptions is nowhere in sight. 94 S. Ct. at 802.

regulations.[38] Following *Frontiero v. Richardson*[39] it appeared that the Court was on the verge of recognizing sex based classifications as being inherently suspect and subject to strict judicial scrutiny. In *La Fleur*, the Court failed to meet the real issue of sex discrimination head on. Whether or not *La Fleur* indicates a withdrawal from Equal Protection as applied to sex discrimination is a question yet to be answered.[40]

RICHARD A. CLAPP

STATES—FEDERAL LAW AS SUPERSEDING STATE LEGISLATION—NORTH DAKOTA GARNISHMENT AND EXECUTION OF JUDGMENT STATUTES ARE PRE-EMPTED INSOFAR AS THEY FRUSTRATE THE CONSUMER CREDIT PROTECTION ACT.

The United States Secretary of Labor alleged that two practices employed in Grand Forks County in aid of execution and garnishment, pursuant to the North Dakota Century Code, violated provisions of the Consumer Credit Protection Act (CCPA).[1] The first allowed a garnishee-employer to pay the entire wages of a debtor-employee to the clerk of court or sheriff pending a judicial determination; the second permitted the sheriff to levy judgment on the debtor's earnings which were in payroll check form but undistributed by the debtors' employer. The United States District Court, District of North Dakota, *held* these practices circumvented the purposes of the CCPA. The Act therefore pre-empted the offending Code provisions[2] to the extent necessary to assure compliance. The Clerk of Court for the First Judicial District of North

38. Justice Powell in his concurring opinion would have applied an Equal Protection analysis to the challenged rules. He did not reach the question whether strict judicial scrutiny should be applied. 94 S. Ct. at 802-04 (Powell, J., concurring).

The federal appellate decisions dealing with mandatory maternity leave rules were all based upon an Equal Protection analysis. *See* Green v. Waterford Board of Education, 473 F.2d 629 (2nd Cir. 1973); Buckly v. Coyle Public School System, 476 F.2d 92 (10th Cir. 1973); Schattman v. Texas Employment Commission, 459 F.2d 32 (5th Cir. 1972), *cert. denied*, 409 U.S. 1107 (1973).

39. 411 U.S. 677 (1973). In Frontiero a plurality of the Court found sex based classifications to be inherently suspect and subject to strict judicial scrutiny. *Id.*

40. For additional discussion of maternity leave *see* Comment, *Mandatory Maternity Leave of Absence Policies—An Equal Protection Analysis*, 45 TEMPLE L.Q. 240 (1972); *See also*, Comment, *Love's Labor Lost: New Conceptions of Maternity Leaves*, 7 HARV. CIV. RIGHTS—CIV. LIB. L. REV. 260 (1972).

1. Consumer Credit Protection Act, 82 Stat. 146 (1968), 15 U.S.C. § 1671 (1970). This discussion deals exclusively with Title III—Restriction on Garnishment, 82 Stat. 146, 162 (1968), 15 U.S.C. § 1671-77 (1970) hereinafter referred to as CCPA, or the Act.

2. N.D. CENT. CODE §§ 28-21-08, 32-09-17 (1960).