



## Civil Rights Update

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# Seventh Circuit Addresses the Parameters of Class-of-One Equal Protection Claims

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The Court of Appeals for the Seventh Circuit recently reaffirmed that the existence of a similarly situated individual is not required to support a class-of-one equal protection claim. In *Brunson v. Murray*, 843 F.3d 698 (7th Cir. 2016), the Seventh Circuit noted that courts must evaluate equal protection claims with caution to avoid turning “every squabble over municipal services . . . into a federal constitutional case.” *Brunson*, 843 F.3d at 708. With that in mind, the Seventh Circuit concluded that in this case the pervasive pattern of harassment was sufficient to create a cognizable constitutional claim. *Id.*

### Factual Background

This case arose from the personal animosity between a mayor, police chief, and business owner in Bridgeport, Illinois. *Id.* at 701. The plaintiff, James Brunson, owned a liquor store and argued that Police Chief Scott Murray and Mayor Max Schauf violated his constitutional rights by refusing to renew his liquor license and harassing him. *Id.* The plaintiff alleged federal claims of false arrest, and denial of equal protection and due process under the Fourteenth Amendment, along with other state claims. *Id.*

Chief Murray frequently visited the plaintiff’s liquor store, but his relationship with the plaintiff was not a positive one. *Id.* Chief Murray had a history of accusing the plaintiff of violating laws that did not actually exist. *Id.* Mayor Schauf, who owned a similar establishment, made a competing offer to purchase liquor store years earlier, but the plaintiff tendered the higher bid. *Id.* Interestingly enough, Mayor Schauf was also the local liquor commissioner. *Id.*

The incident arose when plaintiff submitted an application to renew his liquor license. *Id.* at 702. Chief Murray visited the plaintiff’s liquor store for an inspection and told him that his renewal would be delayed, forcing the plaintiff to temporarily suspend operations. *Id.* Thereafter, the Illinois Liquor Control Commission (Commission) concluded that Mayor Schauf did not have the authority to delay renewal of the liquor license. *Id.* Unbeknownst to the Commission, Mayor Schauf renewed the license without notice or explanation and backdated the license, creating an impression that it had been renewed in a timely fashion. *Id.*

The plaintiff’s relationship with Chief Murray and Mayor Schauf further deteriorated after someone attempted to break into his store. *Id.* Chief Murray investigated the incident but dismissed it as the work of teenagers and failed to file a police report. *Id.* The following weekend, the plaintiff discovered vandalized property outside the store. *Id.* Discouraged with the lack of support from township officials, the plaintiff stood guard over his store armed with a loaded gun. *Id.* A week later, he discovered that a friend of the Schauf family shattered the front window of his liquor store. *Id.* Both the plaintiff and the assailant became involved in a violent altercation, and the plaintiff held the suspect at gunpoint until the police arrived. *Id.* at 703. Chief Murray investigated the incident despite the objection of another officer at the scene, who believed that state police should assume the investigation. *Id.*

## Procedural History

The defendants consisted of Mayor Schauf, Police Chief Murray, State’s Attorney Lisa Wade, the assailant involved in the physical altercation with the plaintiff, the city of Bridgeport, and Lawrence County. *Id.* Together the defendants filed a summary judgment motion on the federal and state law claims. *Id.* As it related to the equal protection claim, the court granted the motion reasoning that the plaintiff did not have evidence of similarly situated comparators. *Id.* The court relied on the United States Supreme Court’s decision in *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000), where the court ruled that a class-of-one claim requires (1) that a plaintiff be intentionally treated worse than similarly situated comparators, and (2) that there be no rational basis for the differential treatment. *Village of Willowbrook*, 528 U.S. at 564.

## Class-of-One Equal Protection Claim

The plaintiff’s equal protection claim was based on the allegation that Mayor Schauf harassed him under color of state law in an attempt to drive him out of business for Schauf’s own personal gain or other illegitimate purposes. Specifically, the plaintiff complained of the delay in renewing the liquor license, harassment by law enforcement, interference with his business, vandalism of his store, and improper investigation of the break-in. *Brunson*, 843 F.3d at 704.

The court first noted that the equal protection clause guards against government discrimination on the basis of race and other immutable characteristics and also extends to protect people from “class-of-one” discrimination in which a government arbitrarily and irrationally singles out one person for poor treatment. *Id.* at 705. The court also noted that elements of class-of-one claims have remained unsettled in the Seventh Circuit. *Id.* at 706. The court relied on *Del Marcelle v. Brown County Corp.*, 680 F.3d 887 (7th Cir. 2012), where the court produced three separate opinions in a tie-vote that affirmed the district court’s dismissal of the lawsuit. *Brunson*, 843 F.3d at 706. The disagreement in *Del Marcelle* turned on whether the plaintiff in a class-of-one suit must demonstrate (1) only that there is no possible justification for rational basis for the defendant’s actions (*Del Marcelle*, 680 F.3d at 900 (Easterbrook, C.J., concurring in the judgment)), (2) a lack of justification and also present evidence of hostile intent or animus (*id.* at 889 (Posner, J., plurality opinion)), or (3) an absence of rational basis, which can be satisfied with evidence of animus (*id.* at 913. (Wood, J., dissenting)); *Brunson*, 843 F.3d at 706.

The Seventh Circuit concluded that the plaintiff’s claim in the instant case survived summary judgment under all three standards. *Id.* The court noted that while earlier cases required evidence of similarly situated comparators, more recent cases have clarified that such evidence is not always required. *Id.* For example, in *Geinosky v. City of Chicago*, 675 F.3d 743, 748 (7th Cir. 2012), the plaintiff was not required to identify comparators when the pattern of the defendants’ conduct toward the plaintiff demonstrated “the officers’ improper discriminatory purpose . . . where the alleged facts so clearly suggest harassment by public officials and that has no conceivable legitimate purpose.” *Brunson*, 843 F.3d at 706-707.

In this case, the defendants argued that because the plaintiff possessed the only Class B liquor license in Bridgeport, it was impossible for him to identify any similarly situated comparators. *Id.* at 707. The district court agreed. *Id.* However, requiring the plaintiff to produce a comparator among Class B liquor establishments “would not help distinguish between



ordinary wrongful acts and deliberately discriminatory denials of equal protection.” *Id.* (citing *Geinosky*, 675 F.3d at 748). Rather, on appeal, the Seventh Circuit noted that the plaintiff offered evidence of a pattern of discriminatory behavior on the part of a government, and such a pattern can perform the same function as the similarly situated requirement in other class-of-one claims. *Brunson*, 843 F.3d at 707. The fact that Chief Murray repeatedly visited the liquor store to inform the plaintiff that he was in violation of non-existent liquor laws along with Mayor Schauf’s refusal to act on the license renewal was evidence of such harassment. *Id.*

In addition to the evidence of harassment, the plaintiff also offered evidence that there was no rational and legitimate basis for Mayor Schauf to single him out for discriminatory treatment. *Id.* at 708. The record revealed that there was not an overwhelming amount of licenses to review nor were there insufficient resources to do so. *Id.* Thus, the Seventh Circuit concluded that a jury could find that Mayor Schauf had no conceivable justification for his actions based on his public duties as liquor commissioner. *Id.* The court concluded that the pattern of harassment and discriminatory acts driven by Mayor Schauf’s personal interests in Bridgeport was sufficient to satisfy both the plurality and dissenting opinions in *Del Marcelle*. *Brunson*, 843 F.3d at 708. Mayor Schauf possessed a number of personal interests adverse to the plaintiff’s store and sought to harass him and drive him out of business. *Id.* There was sufficient evidence to support an equal protection claim because it showed substantial animus and a continuing misuse of power by government agents akin to an “orchestrated campaign of official harassment motivated by sheer malice.” *Olech v. Village of Willowbrook*, 160 F.3d 386, 388 (7th Cir. 1998).

## Conclusion

This case provides a comprehensive review of class-of-one equal protection claims. The Seventh Circuit essentially reaffirmed the 2012 holdings in *Del Marcelle* and *Geinosky* by concluding that a pattern of discriminatory behavior is sufficient to support a class-of-one equal protection claim in the absence of a similarly situated individual.

## About the Author

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