appears in many other contexts as well,[1380] including so-called "class-of-one" challenges.[1381] A more active review has been developed for classifications based on a "suspect" indicium or affecting a "fundamental" interest. "The Fourteenth Amendment enjoins 'the equal protection of the laws,' and laws are not abstract propositions." Justice Frankfurter once wrote, "They do not relate to abstract units, A, B, and C, but are expressions of policy arising out of specific difficulties, addressed to the attainment of specific ends by the use of specific remedies. The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same."[1382] Thus, the mere fact of classification will not void legislation,[1383] because in the exercise of its powers a legislature has considerable discretion in recognizing the differences between and among persons and situations.[1384] "Class legislation, discriminating against some and favoring others, is prohibited; but legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects alike all persons similarly situated, is not within the amendment."[1385] Or, more suc-

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[1380] Vacco v. Quill, 521 U.S. 793 (1997) (assisted suicide prohibition does not violate Equal Protection Clause by distinguishing between terminally ill patients on life-support systems who are allowed to direct the removal of such systems and patients who are not on life support systems and are not allowed to hasten death by self-administering prescribed drugs).

[1381] The Supreme Court has recognized successful equal protection claims brought by a class-of-one, where a plaintiff alleges that she has been intentionally treated differently from others similarly situated and that there is no rational basis for that difference. Village of Willowbrook v. Olech, 528 U.S. 562, 564 (2000) (per curiam) (village's demand for an easement as a condition of connecting the plaintiff's property to the municipal water supply was irrational and wholly arbitrary). However, the class-of-one theory, which applies with respect to legislative and regulatory action, does not apply in the public employment context.Engquist v. Oregon Department of Agriculture, 128 S. Ct. 2146, 2149 (2008) (allegation that plaintiff was fired not because she was a member of an identified class but simply for "arbitrary, vindictive, and malicious reasons" does not state an equal protection claim). In *Engquist*, the Court noted that "the government as employer indeed has far broader powers than does the government as sovereign," id. at 2151 (quoting Waters v. Churchill, 511 U.S. 661, 671 (1994), and that it is a "common-sense realization" that government offices could not function if every employment decision became a constitutional matter. Id. at 2151, 2156.

[1382] Tigner v. Texas, 310 U.S. 141, 147 (1980).

[1383] Atchison, T. & S.F.R.R. v. Matthews, 174 U.S. 96, 106 (1899). From the same period, *see also* Orient Ins. Co. v. Daggs, 172 U.S. 557 (1869); Bachtel v. Wilson, 204 U.S. 36 (1907); Watson v. Maryland, 218 U.S. 173 (1910). For later cases, *see* Kotch v. Board of River Port Pilot Comm'rs, 330 U.S. 552 (1947); Goesaert v. Cleary, 335 U.S. 464 (1948); McGowan v. Maryland, 366 U.S. 420 (1961); Schilb v. Kuebel, 404 U.S. 357 (1971); Railroad Retirement Bd. v. Fritz, 449 U.S. 166 (1980); Schweiker v. Wilson, 450 U.S. 221 (1981).

[1384] Barrett v. Indiana, 229 U.S. 26 (1913).

[1385] Barbier v. Connolly, 113 U.S. 27, 32 (1885).