

Daily Journal

JUNE 21, 2023



Theane D. Evangelis

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Los Angeles

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Litigation

Over a nearly 20-year career, Theane D. Evangelis has attained a prominent role as a practitioner of appellate, employment, class action and general

commercial litigation at Gibson, Dunn & Crutcher LLP. She serves as co-chair of the firm's global litigation practice group.

She is a former law clerk for Associate Justice Sandra Day O'Connor. In late May, she took her son's sixth-grade class on a tour of the Supreme Court. "We stood in front of Justice O'Connor's portrait and I told the kids about her work ethic, her ability to persevere against all odds and how she constantly inspires me," Evangelis said.

In March, she achieved the first successful challenge to California's AB 5, the controversial gig economy law, when the 9th U.S. Circuit Court of Appeal panel unanimously lined up behind Evangelis' argument and reversed a district court's dismissal of her equal protection claims. *Olson v. State of California*, 21-55757 (9th Cir., op. filed March 17, 2023).

Evangelis' clients are Uber Technologies, Inc. and Postmates Inc. Both challenged the law's requirement that their drivers must be treated as employees – unlike drivers for other companies.

"In AB 5, the California Legislature came after my clients like a heat-seeking missile, and that's exactly what I told the court," she said. "I've never seen a more irrational equal protection violation."

In its opinion, the circuit panel found that Evangelis' clients had plausibly alleged an

equal protection violation even under the "fairly forgiving standard" of rational basis review. It sent the case back to the trial court to reconsider the plaintiffs' motion for preliminary injunction. A motion for en banc review filed by the California attorney general is pending.

Evangelis noted that the 9th Circuit has previously rejected an equal protection claim against AB 5 brought by journalists, a First Amendment challenge brought by political canvassers and a preemption claim under the Federal Aviation Administrative Authorization Act brought by truckers.

For Grubhub Inc., Evangelis won a significant victory in the Massachusetts Supreme Judicial Court. The justices reversed a trial court and held that workers who use Grubhub's app to make deliveries are not engaged in interstate commerce under Section 1 of the Federal Arbitration Act. *Archer et al. v. Grubhub Inc.*, SJC-13228 (Mass. S. Ct., op. filed July 7, 2022).

The outcome was the first appellate case on the applicability of Section 1 in the gig economy since the U.S. Supreme Court ruled on the issue in *Southwest Airlines v. Saxon*.

"This was part of a string of victories I'm really proud of," Evangelis said.

– John Roemer