

COURT UPHOLDS CONSTITUTIONALITY OF STATUTE PROVIDING QUALIFIED IMMUNITY TO PUBLIC ENTITY OR EMPLOYEE CAUSING INJURY TO DRIVER WHERE DRIVER WAS UNDER THE INFLUENCE

March 31, 2009 | Law Alerts

Devries v. State of Arizona, et. al
Ct. Appeals, Div. One, March 31, 2009

Authored by the [JSH Appellate Team](#)

DeVries was driving on the 101, lost control, and hit a 3-strand cable median barrier. DeVries was pinned by the cable and died. His blood alcohol level exceeded the legal limit. DeVries' mother (Plaintiff) sued the State for negligent highway design and wrongful death. The State claimed qualified immunity under A.R.S. § 12-820.02 (A)(7). That statute states that neither a public entity nor employee is liable for an injury to a driver who is under the influence of alcohol unless the public employee (acting within the scope of employment) intended to cause injury or was grossly negligent. Plaintiff argued the statute was unconstitutional because it interferes with Plaintiff's constitutional right to have a jury decide the issue of contributory negligence in violation of the Arizona Constitution, art. 18, section. 5. That section states that "[t]he defense of contributory negligence or of assumption of risk shall, in all case whatsoever, be a question of fact and shall, at all times be left for the jury."

The court of appeals held the statute constitutional. In *Clouse v. State* (2001), the Arizona Supreme Court upheld the constitutionality of a different immunity statute because the Legislature has the power to control actions against the State. The court applied the same reasoning here, stating that the Legislature could specify instances when immunity applies to governmental entities. The court refused to follow *City of Tucson v. Fahringer* (1990), which invalidated a different immunity provision, because it predated *Clouse*.