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Appellate Division First Department, Aliessa v. Novello

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PUBLIC WELFARE

N.Y. CONST. art. XVII, § 1:

The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine.

SUPREME COURT, APPELLATE DIVISION

FIRST DEPARTMENT

Aliessa v. Novello[1]
(decided July 27, 2000)

Plaintiffs brought a class action[2] claiming that Social Services Law § 122[3] violates their constitutional rights under the Equal Protection Clause of the United States[4] and New York State[5]

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[1] Aliessa v. Novello, 712 N.Y.S.2d 96 (2000).

[2] Aliessa v. Whalen, 181 Misc. 2d 334, 339, 694 N.Y.S.2d 308, 311 (1st Dep't 1999). The proposed class was defined as:

> (b) All Lawful Permanent Residents who entered the United States on or after September 22, 1996 and all Persons Residing in the United States Under Color of Law (PRUCOLs) who, but for the operation of New York Social services Law § 122, would be eligible for Medicaid coverage in New York State. *Id.*

[3] N.Y. C.L.S. SOC. SERV. § 122 (2000). This statute provides in pertinent part:

> [t]he following persons . . . shall, if otherwise eligible, be eligible for family assistance, medical assistance, and safety net assistance: (i) an alien who is a qualified alien as defined in § 431 of the federal personal responsibility and work opportunity reconciliation act of 1996 (8 U.S. Code 1641) . . . who entered the United States before the twenty-second day of August, nineteen hundred ninety-six and continuously resided in the United States until attaining qualified status . . . . *Id.*

[4] U.S. CONST. amend. XIV. The Fourteenth Amendment provides in pertinent part: "[n]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." *Id.*

[5] N.Y. CONST. art. I, § 11. This section provides in pertinent part: "[n]o person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state." *Id.*

Constitutions, as well as § 1 of article XVII of the New York State[6] Constitution.[7] The Supreme Court of New York, New York County, made a declaratory judgement holding that Social Services Law § 122 violated the Equal Protection Clauses of the United States and New York State Constitutions, and did not meet the constitutional mandate of article XVII, § 1 of the New York State Constitution, and therefore granted injunctive relief[8] against the defendant.[9] On appeal, the Supreme Court of New York, Appellate Division, First Department, unanimously reversed the decision as a matter of law, and declared that Social Services Law § 122 did not violate Article XVII, § 1 of the New York State Constitution.[10] Furthermore, the court held that Social Services Law § 122 did not improperly discriminate on the basis of alien status, under the equal protection provisions of the Federal or State Constitutions.[11]

The plaintiffs alleged that they were persons residing under color of law (PRUCOLs),[12] and each possessed a serious and potentially life-threatening medical condition.[13] For example, one of the plaintiffs, who is 61 years of age, suffered from end stage renal disease.[14] Another plaintiff, 77 years of age, suffered from mitral stenosis, hypertension, and arthritis, along with other serious chronic illnesses.[15] As a result, these plaintiffs needed regular medical attention and several different types of prescription

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[6] N.Y. CONST. art. XVII, § 1. This section provides: "[t]he aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine." *Id.*

[7] *Whalen*, 181 Misc. 2d at 339, 694 N.Y.S.2d at 311.

[8] *Id.* The injunctive relief sought was an order directing the defendant to reimburse the plaintiffs for expenses that would have been covered through Medicaid, if such assistance had in fact been provided. *Id.*

[9] *Novello*, 712 N.Y.S.2d at 97.

[10] *Id.*

[11] *Id.* at 99.

[12] *Whalen*, 181 Misc. 2d at 336, 694 N.Y.S.2d at 309. "PRUCOL refers to those immigrants who are 'permanently residing under color of law,' or people who are residing in the United States with the knowledge of/or permission of the Immigration and Naturalization Service (INS)." *Id.*

[13] *Id.* at 338, 694 N.Y.S.2d at 311.

[14] *Id.*

[15] *Id.*

medications.[16] Plaintiffs alleged that they should be eligible to receive Medicaid benefits if they met the standard of need under Social Services Law § 122, however, they claimed that they were denied because of their immigration status.[17] Plaintiffs successfully sought a declaratory judgement in the Supreme Court of New York.[18]

The court on appeal unanimously reversed, holding that Social Services Law § 122 did not improperly discriminate on the basis of alien status under the equal protection provisions of the Federal and State Constitutions, nor did it violate the New York State Constitution's, Article XVII, § 1 provision.[19]

Under the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996[20] (PRWORA), federally funded Medicaid is no longer provided to certain aliens, including PRUCOL immigrants, such as the plaintiffs in this case.[21] New York State Social Services Law § 122 was enacted in response to PRWORA, which took effect on August 22, 1996.[22] Before the enactment of this law, state funded Medicaid coverage had a broader scope of availability to immigrants, including aliens who were lawfully admitted for permanent residence and for PRUCOLs.[23] However, in accord with new federal regulations,

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[16] *Id.*

[17] *Whalen*, 181 Misc. 2d at 339, 694 N.Y.S.2d at 311.

[18] *Id.*

> The complaint seeks a declaratory judgment declaring defendant's policy and practice of denying or terminating plaintiffs' Medicaid benefits solely as a result of their immigration status to be unlawful; preliminarily and permanently enjoining defendant's policy and practice; directing defendant to reimburse the plaintiffs and all other class members who were wrongfully terminated and/or denied Medicaid coverage for the cost of their medical care and medications paid for as a result of the discontinuance or denial of their Medicaid coverage; and an award of attorneys' fees. *Id.*

[19] *Novello*, 712 N.Y.S.2d at 99.

[20] 8 U.S.C. § 1601 (2000).

[21] *Whalen*, 181 Misc. 2d at 336, 694 N.Y.S.2d at 310.

[22] *Id.*

[23] *Id.* at 337, 694 N.Y.S.2d at 310.

> New York residents who are entitled to Federally funded Medicaid coverage include the disabled, the blind, the elderly, children, pregnant women, single parent families and parents of children where there is a 'deprivation factor' in the household (42 USC § 1396 *et*

Social Services Law § 122 now restricted the eligibility of benefits to those immigrants that were considered to be qualified aliens, as defined PRWORA.[24]

On appeal, the court held that the applicable standard of review would be rational basis in determining whether Social Services Law § 122 improperly discriminated on the basis of alien status, under the equal protection provisions of the Federal or State Constitutions, and whether the New York State Constitution's, Article XVII, § 1, was also violated.[25] The alternative was to analyze the law under strict judicial scrutiny.[26] The lower court felt that strict scrutiny review was more appropriate, looking towards *Graham v. Richardson*[27] for authority.[28] The *Graham* case also dealt with a provision of the Social Security Act that was

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seq.). The State funded Medicaid program provides coverage to residents between the ages of 21 and 65 who are not blind or disabled or taking care of minor children, but whose resources fall below the New York State's Public Assistance "standard of need" as defined in the Social Services Law. *Id.*

[24] Federal Responsibility and Work Opportunity Reconciliation Act of 1996, 8 U.S.C. § 1601 (2000). A "qualified alien" is defined by the PRWORA as follows:

> an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act (8 U.S.C. § 1101 *et seq.*); (2) an alien who is granted asylum under section 208 of such Act (8 U.S.C. § 1158); (3) a refugee who is admitted to the United States under section 207 of such Act (8 U.S.C. § 1157); (4) an alien who is paroled into the United States under section 212(d)(5) of such Act for a period of at least one year (8 U.S.C. § 1182 d 5); (5) an alien whose deportation is being withheld under section 243(h) of such Act (8 U.S.C. § 1253 h); (6) an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act as in effect prior to April 1, 1980 (8 U.S.C. § 1153 a 7); (7) an alien who is a Cuban and Haitian entrant; or (8) certain aliens who have been battered or subjected to extreme cruelty (8 U.S.C. § 1641 b, c). *Id.*

[25] *Novello*, 712 N.Y.S.2d at 98.

[26] *Whalen*, 181 Misc. 2d at 340, 694 N.Y.S.2d at 312; *See also*, Graham v. Richardson, 403 U.S. 365, 371-72 (1971) (holding that the "Equal Protection Clause entitles both citizens and aliens to the equal protection of the laws of the State in which they reside, and that 'the Court's decisions have established that classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny'"). *Id.*

[27] Graham v. Richardson, 403 U.S. 365, (1971).

[28] *Whalen*, 181 Misc. 2d at 340, 694 N.Y.S.2d at 312.

created pursuant to a congressional act. That court applied the strict scrutiny standard of review because, as Justice Blackmun wrote, "aliens as a class are a prime example of a 'discrete and insular' minority for whom such heightened judicial solicitude is appropriate."[29] In other words, these aliens are a category of people sought to be protected under these statutes, thus they should be looked at with strict scrutiny. On appeal, however, the court held that the strict scrutiny standard cannot be applied to this case, and that the rational basis analysis was more appropriate.[30] The court does not give a strong opinion as to why this standard should be used. The court makes no acknowledgement of the *Graham* case, and, instead, relied on the Supreme Court decision in *Washington v. Confederated Bands and Tribes of Yakima Indian Nation*.[31]

In the *Yakima* case, the constitutionality of the state's exercise of jurisdiction on the Yakima Reservation was at issue.[32] The state of Washington enacted Chapter 36, which extended jurisdiction for criminal and civil cases over all Indian lands within the state, whether or not the tribe gave its consent, to the extent covered by Public Law 280.[33] Public Law 280 was enacted by Congress and provided consent of the United States "to any other State . . . to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof."[34] The Supreme Court, when analyzing the constitutional due process claims, held that rational basis review must be used when the state statute was made pursuant to a congressional act.[35]

The present court used the *Yakima* decision to analyze state statutes enacted pursuant to federal laws. A recent decision in *Alvarino v. Wing*, which considered the same issue, decided by this court in 1999, also used the rational basis standard of review, as in

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[29] *Graham*, 403 U.S. at 372.
[30] *Novello*, 712 N.Y.S.2d at 98.
[31] 439 U.S. 463 (1979).
[32] *Yakima*, 439 U.S. at 465.
[33] *Id.* at 475.
[34] *Id.* at 495.
[35] *Id.* at 501.

Washington.[36] In *Alvarino*, the plaintiffs challenged Social Services Law § 95(10), which restricted food assistance to certain categories of aliens.[37] This provision was enacted pursuant to a federal supplemental appropriations bill "authorizing the States to provide food assistance to aliens no longer eligible for federally funded food stamps by reason of the enactment of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996."[38] This court, in *Alvarino*, applied the same rational basis standard of review as it would have had it been a federally enacted law that was being challenged.[39] The court held that since no notorious argument was made in challenging the rationality of the comparable federal requirements, Social Services Act §95(10) did not violate the constitution under a rational basis analysis.[40]

The court followed its holding and line of reasoning from *Alvarino* in the present case. The court held that since New York State "acted in furtherance of constitutionally valid Federal immigration policies," the Social Services Law § 122 did not violate equal protection provisions of the Federal or State constitutions.[41] When New York State enacted Social Services Law § 122, it was pursuant to congressional policies. "As a general rule, Social Services Law § 122 does not link eligibility to PRUCOL status, but provides that eligibility depends on whether the alien is a "qualified alien" under the PRWORA . . . ."[42] The court reasoned that since the law was enacted as a result of the congressionally enacted legislation, PRWORA, it should have been given differential treatment because it was made pursuant to a congressional act.[43]

The court further held that the Social Services Law § 122 did not violate the New York State Constitution's, Article XVII, §1.[44] This section of the state's constitution requires the state to

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[36] Alvarino v. Wing, 261 A.D.2d 255, 255, 690 N.Y.S.2d 262, 263 (1st Dep't 1999).
[37] *Id.*
[38] *Id. See also* Pub. L. 105-18.
[39] *Alvarino*, 261 A.D.2d at 256, 690 N.Y.S.2d at 263.
[40] *Id.*
[41] *Novello*, 712 N.Y.S.2d at 98.
[42] *Whalen*, 181 Misc. 2d at 337, 694 N.Y.S.2d at 310.
[43] *Novello*,712 N.Y.S.2d at 98.
[44] *Id.*

provide aid, care, and support for the needy.[45] The lower court held that § 1 was not violated, relying heavily upon the holding in the precedent case of *Tucker v. Toia*.[46]

The plaintiffs in *Tucker* were three individuals under the age of twenty-one who were not living with a parent or responsible adult.[47] The court conceded that they were in need and met all requisite criteria for home relief.[48] However, in order to receive home relief the applicant must have commenced a support proceeding against a parent or relative and obtain an order of disposition from that support proceeding.[49] The plaintiffs were unable to obtain an order of disposition in the support proceeding against their fathers, which resulted in their ineligibility for home relief.[50] The court stated that, "in New York State, the provision for assistance to the needy [was] not a matter of legislative grace; rather, it [was] specifically mandated by our Constitution," and ruled that "section 15 of chapter 76 of the Laws of 1976 was unconstitutional in that it contravened the letter and spirit of section 1 of article XVII of the Constitution."[51] Basically, the court explained that the purpose of the provision was to make sure that no person is in need of assistance and to limit that assistance would make the constitutional provision weak. The court reasoned that the legislature could not deny all aid to certain individuals, who are admittedly needy, solely on the basis of criteria having nothing to do with need, because that would go against the purpose of the constitutional provision.[52] In the instant case, the lower

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[45] N.Y. CONST. art. XVII, § 1.

[46] Aliessa v. Whalen, 181 Misc. 2d at 344, 694 N.Y.S.2d at 315; *See also*, Tucker v. Toia, 43 N.Y.2d 1, 371 N.E.2d 449, 400 N.Y.S.2d 728 (1977).

[47] *Tucker*, 43 N.Y.2d at 5, 371 N.E.2d at 450, 400 N.Y.S.2d at 728 (1977).

[48] *Id.* at 6, 371 N.E.2d at 450, 400 N.Y.S.2d at 729. "New York residents under the age of 21 who are in need of public assistance normally receive aid through either the Federally subsidized Aid to Families with Dependent Children Program, or the State's broad Home Relief Program." *Id.* at 4.

[49] *Id.* at 5, 371 N.E.2d at 450, 400 N.Y.S.2d at 729. Without the disposition, they were denied the home relief, pursuant to section 15 of chapter 76 of the Laws of 1976 amended subdivision (a) of section 158 of the Social Services Law. *Id.*

[50] *Id.*

[51] *Id.* 7-8, 371 N.E.2d at 451, 400 N.Y.S.2d at 730.

[52] *Id.* at 9, 371 N.E.2d at 452, 400 N.Y.S.2d at 731.

court agreed with the court in *Tucker* and based its holding, in part, on the reasoning of that case.[53]

On appeal, the Appellate Division, First Department, rejected the lower court's opinion and stated that the facts in the present case were not analogous to the facts presented in *Tucker*.[54] The plaintiffs in *Tucker* were denied all aid, whereas in the instant case, the plaintiffs were not refused all aid, as they could receive emergency assistance.[55] Again, the court used *Alvarino* as authority to distinguish the facts of *Tucker* from the present case. The plaintiffs in *Alvarino* claimed that they were being denied assistance unrelated to their need, but solely based on their immigration status, which violated the New York State Constitution, article XVII, §1.[56] The *Alvarino* court held that the claim only "addresse[d] the manner and level of assistance, not the denial of any assistance . . . ."[57] Other assistance was made available to the plaintiffs, and, in fact, all but one of the named plaintiffs were receiving public assistance at the time of trial.[58] The court made the same argument in *Novello*. Social Services Law § 122 limits non-emergency Medicaid for a five-year period, but still provides assistance in other ways to those who do not fall within the "qualified alien" provision of PRWORA.[59] For example, PRUCOLs are eligible for Medicaid coverage to treat emergency medical conditions.[60] Since the Social Services Law § 122 is only one form of assistance and other forms are available, the provision does not violate the New York State Constitution, article XVII, § 1.[61]

Because the New York State Social Services Law § 122 has incorporated similar provisions of the Federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the scope of assistance is not as broad as it was before § 122 was enacted. Before its enactment, New York's state-funded Medicaid

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[53] *Whalen*, 181 Misc. 2d at 344, 694 N.Y.S.2d at 315.
[54] *Novello*, 712 N.Y.S. 2d at 97.
[55] *Id.*
[56] *Alvarino*, 261.A.D.2d at 255, 690 N.Y.S.2d at 263.
[57] *Id.*
[58] *Id.*
[59] *Novello*, 712 N.Y.S.2d at 97.
[60] N.Y. C.L.S. SOC. SERV. § 122 (1)(c)(ii) (2000).
[61] *Novello*, 712 N.Y.S.2d at 98.

program[62] afforded Medicaid to New York residents who were not eligible for federally funded Medicaid.[63] This included benefits to aliens who were lawfully admitted for permanent residence and for PRUCOLs.[64] However, since the enactment of § 122, which makes it a requirement to be a "qualified alien," as defined in the PRWORA, PRUCOLs will not necessarily be eligible.[65] Therefore, certain aliens will neither qualify for federal, nor state, Medicaid benefits, and will be left to fend for themselves.

The Federal and State courts are split on what standard of review should be used when analyzing the constitutionality of a state statute enacted pursuant to a congressional act. The lower court in the present case believed the strict scrutiny standard should be used, as held by the Supreme Court in *Graham*. The court of appeals, in this case, felt that a rational basis standard of review should be used, as held in *Washington*. If the standard of review would have been different, a different outcome would probably have resulted. Although Section 122 was not created pursuant to a congressional act, the courts would have surely used the strict scrutiny standard of review. The act would most likely not have been able to hold up under a strict scrutiny review. However, because the statute was enacted pursuant to a congressional act, coupled with the court's unwillingness to question policy choices made by Congress, rational basis review was applied and the act was deemed constitutional.

Lisa Bartolomeo

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[62] *Whalen*, 181 Misc. 2d at 337, 694 N.Y.S.2d at 310. "The State-funded Medicaid program provides coverage to residents between the ages of 21 and 65 who are not blind or disabled or taking care of minor children, but whose resources fall below the New York State's Public Assistance 'standard of need' as defined in the Social Services Law." *Id.*

[63] *Id.* (holding, "New York residents who are entitled to Federally funded Medicaid coverage include the disabled, the blind, the elderly, children, pregnant women, single parent families and parents of children where there is a 'deprivation factor' in the household").

[64] *Id.*

[65] *Id.*

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