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Equal Protection

the court's purpose to enable plaintiffs to receive in kind goods and services and full cash allowances."[70]

There seems to be no conflict between applicable state and federal laws on any of Crawford's claims. Both state and federal precedent have adhered to those principles utilized by the Appellate Division, First Department in *Crawford*. The United States Supreme Court has consistently held that those classifications based on wealth are not suspect, and as such, state legislation is subject to mere rational basis scrutiny.[71] The analysis by the *Crawford* court suggests that New York case law is consistent with the federal holdings.

SECOND DEPARTMENT

Carey v. Cuomo[72]
(decided November 21, 1994)

Plaintiff, a county court judge, alleged that the mandatory retirement provisions of the New York State Constitution had violated his federal right to equal protection of the law.[73] The Appellate Division, Second Department held that Article VI,

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70. *Id.* at 205 A.D.2d at 308, 612 N.Y.S.2d at 575 (quoting *Thrower*, 138 Misc. 2d at 178, 523 N.Y.S.2d at 937).

71. *See* Harris v. McRae, 448 U.S. 297 (1980). In *Harris*, the Court rejected an equal protection challenge to a federal statute which prohibited federal funds for abortions, despite its acknowledged impact on the indigent. In addressing that impact, the Court stated "that [this] fact does not itself render the funding restriction constitutionally invalid, for this court has held repeatedly that poverty, standing alone, is not a suspect class." *Id.* at 322. *See also* Kadrmas v. Dickinson Pub. Schs., 487 U.S. 450 (1988). The Court, in answering an indigent's equal protection challenge to a school bus fee stated: "We have previously rejected the suggestion that statutes having different effects on the wealthy and the poor should on that account alone be subjected to strict scrutiny." *Id.* at 455.

72. 619 N.Y.S.2d 646 (App. Div. 2d Dep't 1994).

73. *Id.*

section 25(b) of the New York State Constitution,[74] and the Judiciary Law section 23[75] and section 115[76] should not be interpreted as extending the opportunity for post-retirement service to those other than judges on the court of appeals or justices of the United States Supreme Court.[77] The court specifically held that the challenged provisions did not deprive the plaintiff, a county court judge, of equal protection under the Fourteenth Amendment of the United States Constitution.[78]

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74. N.Y. CONST. art. VI, § 25(b). Article VI, § 25(b) provides in pertinent part:

> Each judge of the court of appeals, justice of the supreme court, judge of the court of claims, judge of the county court . . . shall retire on the last day of December in the year in which he reaches the age of seventy. Each such former judge of the court of appeals and justice of the supreme court may thereafter perform the duties of a justice of the supreme court, with power to hear and determine actions and proceedings, provided, however, that it shall be certificated in the manner provided by law that the services of such judge or justice are necessary to expedite the business of the court and that he is mentally and physically able and competent to perform the full duties of such office. Any such certification shall be valid for a term of two years and may be extended as provided by law for additional terms of two years. A retired judge or justice shall serve no longer than until the last day of December in the year in which he reaches the age of seventy-six.

Id.

75. N.Y. JUD. LAW § 23 (McKinney 1983). Section 23 provides in pertinent part:

> No person shall hold the office of judge, justice or surrogate of any court, whether of record or not of record, except a justice of the peace of a town or police justice of a village, longer than until and including the last day of December next after he shall be seventy years of age.

Id.

76. N.Y. JUD. LAW § 115 (McKinney 1983). Section 115 provides in relevant part: "Any justice of the Supreme Court retired pursuant to subdivision b of section 25 of article 6 of the constitution, may, upon application be certified by the administration board for services as a retired justice of the Supreme Court." *Id.*

77. *Carey*, 619 N.Y.S.2d at 646.

78. U.S. CONST. amend XIV, § 1. Section 1 of the Fourteenth Amendment provides in pertinent part:

> No state shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any

The plaintiff, John Carey, is a county court judge in Westchester County.[79] Judge Carey turned seventy on June 11th, 1994.[80] The plaintiff filed requests with the Administrative Board of the Courts of the State of New York to be considered for post-retirement age service, but these requests were denied.[81] The plaintiff brought suit in the United States District Court for the Southern District of New York and claimed that the denial of continued service as a judge denied him equal protection of the law.[82] The district court advised that plaintiff should seek relief from the courts of New York, and the parties filed an action in state court on submitted facts.[83]

The court concluded, in a cursory fashion, that the plain language of the provisions at issue limited the opportunity for post-retirement age service to justices of the supreme court or judges of the court of appeals.[84] The court noted that it is a well settled principle of statutory interpretation that "where statutory language is clear and unambiguous, a court should construe it so as to give effect to the plain meaning of the words used,"[85] in accordance with "its express terms and without resort to further statutory construction."[86] The court ultimately rejected the plaintiff's claim that denial of his request to continue to serve as a

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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.

79. *Carey*, 619 N.Y.S.2d at 646.

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.* For this proposition, the court cited State v. Ford Motor Co., 74 N.Y.2d 495, 500, 548 N.E.2d 906, 908, 549 N.Y.S.2d 368, 370 (1989) ("Our cardinal function in interpreting a statute should be to attempt to effectuate the intent of the Legislature, and where the statutory language is clear and unambiguous, the court should construe it so as to give effect to the plain meaning of the words used.") (citations omitted).

86. *Carey*, 619 N.Y.S.2d at 646 (citing Podolsky v. Narnoc Corp., 196 A.D.2d 593, 595, 601 N.Y.S.2d 320, 322 (2d Dep't 1993)).

judge constituted an equal protection violation.[87] Citing *Maresca v. Cuomo*,[88] discussed below, the court effectively stated that it would be applying a "mere rationality" standard of review to the plaintiff's claim.[89] The *Carey* court concluded that the "complexity of the Supreme Court's jurisdiction, provides a rational basis to require greater experience and manpower than are necessary in other courts."[90]

Maresca involved a claim with substantially similar facts.[91] In that case, the court of appeals held that the mandatory retirement provisions at issue in *Carey* did not violate either the Equal Protection Clause or the Due Process Clause under the United States Constitution.[92] The *Maresca* court, citing *Vance v. Bradley*[93] and *Massachusetts Board of Retirement v. Murgia*,[94] found that judges were not a suspect class and that the statutory age restrictions did not interfere with the exercise of a fundamental right.[95] Therefore, the provisions were subjected to

87. *Id.* at 647.

88. 64 N.Y.2d 242, 475 N.E.2d 95, 485 N.Y.S.2d 724 (1984).

89. *Carey*, 619 N.Y.S.2d at 647.

90. *Id.*

91. The plaintiffs, civil court judges in New York County, sought a declaration that the mandatory retirement age of seventy denied them both equal protection and due process of law. *Maresca*, 64 N.Y.2d at 247, 475 N.E.2d at 96, 485 N.Y.S.2d at 725. The court rejected their claim, however, holding that neither the Equal Protection Clause nor the Due Process Clause was violated by the mandatory retirement provisions directed at judges over the age of seventy. *Id.* at 253, 475 N.E.2d at 100, 485 N.Y.S.2d at 729.

92. *Id.*

93. 440 U.S. 93, 97 (1979) (upholding provisions for mandatory retirement of foreign service personnel at age sixty against an equal protection challenge, reasoning that plaintiff's claim did not involve a suspect class and the dismissal did not abridge a fundamental right).

94. 427 U.S. 307, 314 (1976). Murgia, a Massachusetts state police officer who retired on his 50th birthday, challenged a provision for mandatory retirement. *Id.* at 309. The court found that government employment was not a fundamental right and that the age classification asserted by the officer was not a "discrete and insular" group. *Id.* at 313. Applying the extremely deferential rational basis test, the Court concluded that the provision for mandatory retirement at age 50 did not deny equal protection to the officer. *Id.* at 317.

95. *Maresca*, 64 N.Y.2d at 250, 475 N.E.2d at 98, 485 N.Y.S.2d at 727.

the extremely deferential rational basis test.[96] In other words, the applicable test asks whether the government classification has some rational relation to conceivable and legitimate state interests.[97]

The *Maresca* court hypothesized seven possible objectives for the classification at issue which it deemed rationally related to legitimate state interests:

> (1) advancement of general considerations of judicial efficiency; (2) motivation and encouragement of younger attorneys with judicial aspirations by this orderly process of attrition; (3) elimination of the unpleasantness and embarrassment of selectively removing aged and disabled Judges; (4) prevention of harm by a few disabled Judges which more than offsets loss of Judges who retain their full powers past age 70; (5) elimination of the administrative burden of testing each Judge age 70 to assess competency; (6) avoidance of the economic burden of testing and removing incapable Judges; and (7) the fixing of a line at a certain age which attempts to uphold the high competency for judicial posts and which fulfills societal demand for the highest caliber Judges in the system.[98]

The court in *Maresca* concluded its decision by stating:

> It is not within the province of the judiciary to balance the advisability of a lawfully implemented public policy against the hardship or illogic it may be said to impose. This is especially true in the instant case where the policy at issue, expressed in a constitutional provision, directly manifests the will of the electorate of the State of New York. Inasmuch as the distinctions embodied in the challenged provisions can be justified as shown above, plaintiff's constitutional challenge must fail.[99]

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96. *Id.*

97. *Id.*

98. *Id.* at 251, 475 N.E.2d at 99, 485 N.Y.S.2d at 728.

99. *Id.* at 251, 475 N.E.2d at 100, 485 N.Y.S.2d at 729. In addition to holding that the retirement provisions did not violate the Equal Protection Clause, the court in *Carey* noted other distinctions between lower court judges, judges on the court of appeals, and justices of the supreme court regarding terms of office and qualifications. *Carey*, 619 N.Y.S.2d at 647. The term of office for a county court judge is ten years, N.Y. CONST. art. VI, § 10(b), while that of a supreme court justice is fourteen years. N.Y. CONST. art VI,

The extensive discussion of a substantially similar issue in *Maresca* allowed the Appellate Division, Second Department in *Carey* to issue a brief decision based upon the court of appeals' decision.

In conclusion, the mandatory retirement provisions of the New York Constitution and the Judiciary Law do not violate the Equal Protection Clause with respect to judges other than supreme court justices or judges on the court of appeals.

Chasalow v. Board of Assessors[100]
(decided March 14, 1994)

The petitioners, a group of Nassau County taxpayers, brought suit claiming that the Nassau County Board of Assessors violated the Equal Protection Clauses of both the State[101] and Federal[102] Constitutions, by employing a cost method in its assessment of class I residential properties which caused "gross disparities in the tax burden imposed upon similarly-situated taxpayers."[103] The Appellate Division, Second Department, held that the petitioner's constitutional rights had not been violated.[104] The

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§ 6(c). Judges on the court of appeals and justices of the supreme court are required to have been admitted to practice law in the State of New York for at least ten years while other judges are required to have been admitted to practice law for only five years. N.Y. CONST. art VI, § 20(a). Finally, the court in *Carey* concluded by plainly stating the fact that the plaintiff had occasionally served as a supreme court justice was irrelevant to his position. *Carey*, 619 N.Y.S.2d at 647.

100. 202 A.D.2d 499, 609 N.Y.S.2d 27 (2d Dep't 1994).

101. N.Y. CONST. art. I, § 11. Article I, § 11 provides in pertinent part: "No person shall be denied the equal protection of the law of this state or any subdivision thereof." *Id.*

102. U.S. CONST. amend. XIV, § 1. The Fourteenth Amendment states in pertinent part: "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws." *Id.*

103. *Chasalow*, 202 A.D.2d at 500, 609 N.Y.S.2d at 28.

104. *Id.* at 499, 609 N.Y.S.2d at 28. In this decision, the appellate division reversed the Nassau County Supreme Court holding that the method utilized by the county to "assess Class I residential property" was unconstitutional and illegal. *Id.*