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Equal Protection

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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.*

appellate division found that the results derived from the method employed by Nassau County conformed to both the statewide and national average without forming "gross disparities" in taxation.[105]

The petitioners, owners of class I real property located in Nassau County, were seeking a reduction of their real property assessments for the 1988/89 tax year.[106] Petitioners claimed that the cost method employed by the County of Nassau in assessing class I residential property caused a "gross disparit[y] in the tax burden imposed upon similarly-situated taxpayers."[107] To support their position, the petitioners applied a "statistical calculation known as the coefficient of dispersion."[108] Petitioners introduced expert testimony establishing that the New York State Board of Equalization and Assessment had determined that the coefficient of dispersion for class I property in Nassau County in 1986 was 20.12. In addition a 1988 study found the coefficient of dispersion at 18.18% which was well above the normal standard of 15%.[109] However, a Nassau County expert challenged these findings and found that the proper standard for Nassau County to apply was 16.64%, which was only slightly above the normal statewide standards.[110]

The court's rationale in *Chasalow* was primarily based on two holdings. First, the court stated that in the area of real property

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105. *Id.* at 501, 609 N.Y.S.2d at 29.

106. Chasalow v. Board of Assessors, 176 A.D.2d 800, 802, 575 N.Y.S.2d 129, 131 (2d Dep't 1991). In 1991, the appellate division held that the supreme court had erred when it had resolved the equal protection issue *sua sponte* because the Nassau County Board of Assessors had not received proper notice or an opportunity to be heard. *Id. at* 803, 609 N.Y.S.2d at 132.

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

108. *Id.* "[A] coefficient of dispersion is a statistical comparison of 'the closeness of assessment ratios on individual parcels to each other.'" *Id.* (quoting Waccabuc Construction Corp. v. Assessor of the town of Lewisboro, 166 A.D.2d 523, 560 N.Y.S.2d 805 (2d Dep't 1990)). The lower the coefficient the closer to an equal rate the parcels of property are being assessed at. *Id.*

109. *Id.* at 500, 609 N.Y.S.2d at 28-29. The petitioners' expert also noted that the 15% is a "goal for taxing jurisdiction" and no penalty is imposed for violating the goal. *Id.*

110. *Id.* at 500-01, 609 N.Y.S.2d at 29.

taxation, "complete uniformity" was not needed to establish the equal protection requirements.[111] All that was needed to be proven was a "rough equality" between similarly situated taxpayers.[112] In support of this contention, the court relied on the New York Court of Appeals decision in *Foss v. City of Rochester*,[113] which held that "the integrity of any system of taxation, and particularly real property taxation, rests upon the premise that similarly situated taxpayers pay the same share of tax burden."[114] The court concluded that the evidence presented by the petitioners did not establish inequality but merely "a moderate deviation from a hypothetical norm."[115] This deviation, based on information reported by SBEA,[116] was in conformity with the statewide and national average.[117]

The second basis for the court's holding was that "'gross disparities in the taxation of similarly-situated taxpayers can constitute a violation of the constitutional right to equal

111. *Id.* at 501, 609 N.Y.S.2d at 29.

112. *Id.*

113. 65 N.Y.2d 247, 480 N.E.2d 717, 491 N.Y.S.2d 128 (1985). In *Foss,* the court held that real property taxation is based upon the principle that "similarly situated taxpayers" are to pay equal taxes. *Id.* at 254, 480 N.E.2d at 720, 491 N.Y.S.2d at 132.

114. *Id. See* Hagy v. Lewis, 280 N.Y. 184, 186, 20 N.E.2d 386, 386 (1939) (stating that the tax law provides that a court must "secure equality of assessment"); Warren v. Carter, 109 N.Y. 576, 579, 17 N.E. 222, 223 (1888) (stating that tax law proceeds upon the premise that all properties must "bear its equal share of the burden of taxation"); Mid-Island Shopping Plaza, Inc. v. Podeyn, 25 Misc. 2d 972, 204 N.Y.S.2d 11 (Sup. Ct. Nassau County 1960) (holding that assessment ratios are to be uniform in all taxable properties), *aff'd,* 14 A.D.2d 581, 218 N.Y.S.2d 249 (2d Dep't), *aff'd,* 10 N.Y.2d 966, 180 N.E.2d 63, 224 N.Y.S.2d 283 (1961).

115. *Chasalow,* 202 A.D.2d at 501, 609 N.Y.S.2d at 29. The *Chasalow* court held that the cost method utilized by Nassau county only made a moderate distinction between owners of class I property. *Id.*

116. *Id.* In *Chasalow,* the Court referred to an SBEA report that obtained data establishing the coefficient of dispersion. The findings concluded that "only 7.2% of all assessing units in the State of New York met the SBEA's residential standard," while the rest of the state and country were substantially above the standard recommended by the SBEA. *Id.*

117. *Id.*

protection of the laws.'"[118] In support of this holding, the court cited *Allegheny Pittsburgh Coal Co. v. County Commission of Webster County*,[119] in which the United States Supreme Court established that a taxpayer's constitutional right to equal protection of the law was denied when the county's tax assessor created "gross disparities in the assessed value of generally comparable property."[120] The *Chasalow* court stated that the petitioner's failed to prove that the cost method utilized by Nassau County in fact made a "distinction between owners of Class I property that would constitute a disparate tax treatment" in a constitutional sense.[121] In addition, the court found the methodology utilized by Nassau County to be both a reasonable and equitable system.[122] Further, federal law allows states to classify and tax properties differently, so long as these differences are not arbitrary or capricious.[123] .

In conclusion, both the New York State and the federal courts interpret a "gross disparity" in the taxation of similarly-situated taxpayers as being violative of their respective equal protection clauses. Moreover, both federal and state courts hold that distinctions made on an arbitrary basis without a legitimate state purpose would be violative of the Equal Protection Clauses. Therefore, due to the absence of evidence demonstrating "gross disparities" or "invidious discrimination" no violation of either the Federal or New York State Equal Protection Clauses was established.

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118. *Id.* (citations omitted).

119. 488 U.S. 336 (1989).

120. *Id.* at 337.

121. *Chasalow*, 202 A.D.2d at 501, 609 N.Y.S.2d at 29.

122. *Id.*

123. *Allegheny*, 488 U.S. at 343. The Court stated that the states have broad powers to "impose and collect taxes." The Court further held that the states can impose different tax burdens to different divisions of property so long as the divisions and differences are reasonable. *Id. See* Nordlinger v. Hahn, 112 S. Ct. 2326 (1992) (stating that the Equal Protection Clause requires that tax assessments have a legitimate state interest).