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Equal Protection

Mackston v. State[124]
(decided January 31, 1994)

The plaintiff brought suit seeking a declaratory judgment that the application of the Judiciary Law section 221-i (formerly section 221-g),[125] which provided for an unfavorable salary differential between the judges of the City Court of the City of Long Beach and the judges of the City Court of White Plains, was unconstitutional and violative of his right to the equal protection of the laws under the Fourteenth Amendment of the Federal Constitution.[126] The Appellate Division, Second Department held that Judiciary Law section 221-i was constitutional and did not violate the plaintiff's right to equal protection of the laws.[127]

The plaintiff, a retired judge from the City Court of the City of Long Beach, Nassau County, brought this suit some time after the Unified Court Budget Act was enacted on April 1, 1977,[128] seeking a declaratory judgment that Judiciary Law section 221-i violated his equal protection right under the Fourteenth Amendment.[129] Plaintiff's equal protection claim was based on

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124. 200 A.D.2d 717, 607 N.Y.S.2d 357 (2d Dep't 1994).

125. Judiciary Law § 221-i specifies the annual salaries for judges presiding over city courts outside of New York City. N.Y. JUD. LAW § 221-i (McKinney Supp. 1994).

126. *Id.* The Fourteenth Amendment provides in pertinent part that: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, § 1, cl. 3.

127. *Mackston*, 200 A.D.2d at 717, 607 N.Y.S.2d at 358.

128. The New York Court of Appeals in Weissman v. Evans, 56 N.Y.2d 458, 462, 438 N.E.2d 397, 398, 452 N.Y.S.2d 864, 865 (1982), noted that the Unified Court Budget Act provided that "judicial personnel were henceforth State employees and that, concordantly, they would be placed on the State payroll on April 1, 1977" for the purpose of creating a state unified court system that is "'*unimpeded by artificial local boundaries* and the diverse competing needs of local governmental agencies.'" (quoting N.Y. JUD. LAW § 39 (McKinney 1988)).

129. *Mackston*, 200 A.D.2d at 717, 607 N.Y.S.2d at 358. As of October 1, 1994, the annual salary for full-time judges in the City Court of Long Beach was $86,000.00. N.Y. JUD. LAW § 221-i (McKinney Supp. 1994). In contrast,

the fact that it provided higher annual salaries for judges of the City Court of White Plains, Westchester County.[130] In addition to the declaratory judgment, the plaintiff sought monetary relief, consisting of retroactive pay increases including interest as well as attorney's fees.[131] After finding that the state lacked any rational basis for creating a statutory disparity of salaries between the judges of City Courts of Long Beach and White Plains, the trial court granted the plaintiff both the declaratory judgment and the monetary relief sought.[132]

In reversing the decision of the trial court, the appellate division reaffirmed the New York Court of Appeals' well-settled holdings in *Cass v. State*[133] and *Weissman v. Evans*[134] that, in

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the annual salary for full-time judges in the City Court of White Plains was $92,300.00.

130. *Mackston*, 200 A.D.2d at 717, 607 N.Y.S.2d at 358.

131. *Id.*

132. *Id.* at 717, 607 N.Y.S.2d at 358-59.

133. 58 N.Y.2d 460, 448 N.E.2d 786, 461 N.Y.S.2d 1001 (1983). In *Cass*, the New York Court of Appeals affirmed that a "State budgetary act 'will not be struck as violative of equal protection merely because it creates differences in geographical areas. . . . As long as the State had a rational basis for making such a distinction, it will pass constitutional muster under an equal protection challenge.'" *Id.* at 463-64, 448 N.E.2d at 787, 461 N.Y.S.2d at 1002 (quoting Tolub v. Evans, 58 N.Y.2d 1, 8, 444 N.E.2d 1, 4, 457 N.Y.S.2d 751, 754 (1982)).

134. 56 N.Y.2d 458, 438 N.E.2d 397, 452 N.Y.S.2d 864 (1982). In *Weissman*, the court of appeals held that there was no rational basis for the disparate judicial salaries between the judges of Suffolk County District Court and of Nassau County District Court because there was no geographic distinction to justify such disparity in similar adjacent counties on Long Island. *Id.* at 466, 438 N.E.2d at 400-01, 452 N.Y.S.2d at 867-68. The court of appeals stated the applicable rule that "while equal protection does not necessarily require territorial uniformity . . . '[a] territorial distinction which has no rational basis will not support a state statute.'" *Id.* at 464-65, 438 N.E.2d at 400, 452 N.Y.S.2d at 867 (quoting Manes v. Goldin, 400 F. Supp. 23, 29 (E.D.N.Y. 1975), *aff'd*, 423 U.S. 1068 (1976)). The court further noted that although geographical distinctions "'are not, in and of themselves, violative of the Fourteenth Amendment . . . a state must demonstrate . . . that the classification is neither capricious nor arbitrary but rests upon some reasonable consideration of difference or policy.'" *Id.* at 465, 438 N.E.2d at 400, 452 N.Y.S.2d at 867 (quoting Levy v. Parker, 346 F. Supp. 897, 902 (E.D. La. 1972), *aff'd*, 411 U.S. 978 (1973)). *See* Weissman v. Bellacosa,

evaluating the "constitutionality of a statutorily created judicial pay disparity among Judges of comparable courts," the geographical distinctions between the areas where the courts are situated must be based upon a rational basis.[135] The court reasoned that, based on government statistics, because the full-time population and cost of living in White Plains were found to be greater and substantially higher, respectively, than that of Long Beach, there was a rational basis for the disparate salaries on the basis of geography.[136] Specifically, the court noted that between 1981 and 1982, the cost of purchasing a residential home in White Plains was twice the amount of one on Long Island, and the per capita property taxes were higher in White Plains than in Long Beach.[137] Consequently, because it was more expensive to live in White Plains than in Long Beach, the court held that Judiciary Law section 221-i, which allows the geographically disparate salaries between the judges of the City Court of Long Beach and the judges of City Court of White Plains, was supported by a rational basis, and therefore, constitutional. Thus, the law did not violate plaintiff's right to the equal protection of laws under the Fourteenth Amendment of the Federal Constitution.[138]

If this suit had been brought under the New York State Constitution, article I, section 11, the outcome of the case would probably have been the same.[139] In *Burke v. Crosson*,[140] the

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129 A.D.2d 189, 517 N.Y.S.2d 734 (2d Dep't 1987) (extending the holding in *Weissman* to include County Court Judges of Suffolk and Nassau Counties).

135. *Mackston*, 200 A.D.2d at 717-18, 607 N.Y.S.2d at 359.

136. *Id.* at 718, 607 N.Y.S.2d at 359.

137. *Id.*

138. *Id.* The court stated that "as long as any conceivable statement of facts will support a classification by the Legislature, it cannot be held to be violative of equal protection." *Id.* (citing Maresca v. Cuomo, 64 N.Y.2d 242, 250, 475 N.E.2d 95, 98, 485 N.Y.S.2d 724, 727 (1984)).

139. Similar to United States Constitution, amendment XIV, § 1, the New York State Constitution, article I, § 11 provides that "[n]o person shall be denied the equal protection of the laws of this state or any subdivision thereof." N.Y. CONST. art. I, § 11.

140. 191 A.D.2d 997, 595 N.Y.S.2d 272 (4th Dep't 1993), *rev'd on other grounds*, No. 18, 1995 WL 50675 (N.Y. 1995).

plaintiffs, county court judges of Onondaga County, brought suit seeking to declare that section 221-d of the Judiciary Law[141] deprived them of equal protection under both the New York State and Federal Constitutions because it provided for a disparity in salaries among the judges of different counties within New York State.[142] The court held that "the significantly higher cost of living in [various c]ounties provide[d] a rational basis for the geographically disparate salaries . . . . "[143]

In *Barth v. Crosson*,[144] the Appellate Division, Fourth Department, addressed the constitutionality of Judiciary Law section 221-e.[145] The court upheld the salary differentials between the family court judges of certain counties, but found that the salary differentials in other counties violated their right to equal protection under the federal and state constitutions.[146] Specifically, the court found that "because Onondaga, Oneida, Erie and Monroe Counties are all located within the Fourth Department," there was no rational basis for the geographically disparate salaries of the family court judges within those counties.[147] In regard to Onondaga, Oneida, Erie, and Monroe Counties, the court noted that the duties, responsibilities, and caseloads among the Family Court Judges were "comparable," while the differentials in the costs of living among those counties were "insignificant."[148] Therefore, the court reasoned that, because there was a "'true unity of . . . judicial

141. N.Y. JUD. LAW § 221-d (McKinney Supp. 1994) (listing the annual salaries for some of the county court judges of New York State).

142. 191 A.D.2d at 997, 595 N.Y.S.2d at 273.

143. *Id.* at 998, 595 N.Y.S.2d at 273.

144. 199 A.D.2d 1050, 607 N.Y.S.2d 200 (4th Dep't 1993).

145. N.Y. JUD. LAW § 221-e (McKinney Supp. 1994) (providing for differing salaries between family court judges according to county).

146. *Id.* at 1050, 607 N.Y.S.2d at 201. *See* U.S. CONST. amend. XIV; N.Y. CONST. art. I, § 11.

147. *Barth*, 199 A.D.2d at 1051, 607 N.Y.S.2d at 201. For example, the salary for Oneida and Onondaga Counties, effective April 1, 1993, until September 30, 1993, was $86,250.00. N.Y. JUD. LAW § 221-e. In contrast the salary for Erie and Monroe Counties, effective April 1, 1993, was $90,450.00. *Id.*

148. *Barth*, 199 A.D.2d at 1051, 607 N.Y.S.2d at 201.

interest . . . indistinguishable by separate geographic considerations [among the counties in question],'" the plaintiffs were entitled to declaratory judgment.[149]

However, the *Burke* court found the disparity in salaries between the counties in the First and Second Departments[150] and Onondaga and Oneida Counties to be constitutional.[151] The court reasoned that, because of the "higher cost of living in those first and second department counties, as compared to Onondaga and Oneida counties, [there was] a rational basis for the geographically disparate salaries."[152]

As *Mackston* illustrates, state and federal constitutional geographical distinctions are not limited to differences between counties and appellate departments, but also between the cities within the counties, as well as within the appellate departments. Furthermore, even if the duties, responsibilities, and caseloads among the city court judges were shown to be comparable, a rational basis for geographically disparate salaries may still be found where it is demonstrated that a significant differential in population and cost of living exists.[153] Thus, if the *Mackston* case had been brought under the New York State Constitution,

149. *Id.* (quoting Weissman v. Evans, 56 N.Y.2d 458, 463, 438 N.E.2d 397, 399, 452 N.Y.S.2d 864, 866 (1982)).

150. The First and Second Departments consist of the Bronx, Dutchess, Kings, Nassau, Orange, Queens, Rockland, Suffolk, and Westchester counties. *Id.*

151. *Id.* at 1051, 607 N.Y.S.2d at 202.

152. *Id.*

153. *See* Edelstein v. Crosson, 187 A.D.2d 694, 590 N.Y.S.2d 277 (2d Dep't 1992). In *Edelstein*, the plaintiffs, six county court Judges from Dutchess, Rockland, and Orange Counties, submitted evidence that demonstrated the similarity between their caseloads and the caseloads of the Westchester County Court Judges, while the defendants submitted evidence that demonstrated that the population and the cost of living in Westchester County were higher than in Dutchess, Rockland, and Orange Counties. *Id.* at 696, 590 N.Y.S.2d at 278. The court held that there was a rational basis for the disparate salaries where the average home in Westchester was sold in late 1987 for $361,094 while at the same time, an average home in Orange County sold for $132,050. By contrast, in Rockland County the average home sold for $185,000 in 1988, and in Dutchess County, for $149,270 in 1989. *Id.*

rather than the Federal Constitution, it is likely that the outcome would have been the same.

People v. Jones[154]
(decided May 9, 1994)

The defendant claimed that the prosecutor failed to create a prima facie example of race discrimination required to trigger a *Batson* inquiry.[155] The use of peremptory challenges by counsel for the purpose of excluding jurors on the basis of race is a violation of the Equal Protection Clause of both the United States[156] and New York State[157] Constitutions.[158] The Appellate Division, Second Department, affirmed the trial court's decision to seat two challenged jurors based on the court's finding that the race neutral explanations given by defense counsel for exclusion were pretextual.[159]

During jury selection for the trial, the prosecutor claimed defense counsel was using his peremptory challenges[160] to remove venirepersons from the jury panel due to the fact that they were white.[161] In response, defense counsel provided race neutral explanations to the court for his strikes.[162] However, although defense counsel's explanations were facially race

154. 204 A.D.2d 485, 611 N.Y.S.2d 640 (2d Dep't 1994).

155. *Id.* at 485, 611 N.Y.S.2d at 641 (referring to a test used for prompt resolution to objections to peremptory challenges found in the famous case of Batson v. Kentucky, 476 U.S. 79 (1986)).

156. U.S. CONST. amend. XIV, § 1. The Equal Protection Clause provides in pertinent part: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." *Id.*

157. N.Y. CONST. art. I, § 11. Section 11 states in relevant part: "No person shall be denied the equal protection of the laws of this state or any subdivision thereof." *Id.*

158. *Jones*, 204 A.D.2d at 485, 611 N.Y.S.2d at 641.

159. *Id.*

160. The permitted amount of peremptory challenges, challenges made without a showing of reason, are permitted in state criminal cases is provided by N.Y. CRIM. PROC. LAW § 270.25 (McKinney 1993 & Supp. 1994).

161. *Jones*, 204 A.D.2d at 485, 611 N.Y.S.2d at 641.

162. *Id.*