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Public Relief

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et al.: Public Relief

SUPREME COURT

MONROE COUNTY

Aumick v. Bane[24]
(decided May 18, 1994)

Upon denial of relief under section 158(f) of the Social Services Law, the petitioners, New York State public assistance recipients, who resided in the state for less than six months, challenged the constitutionality of an amendment to the Home Relief public assistance program. They argued that Social Services Law section 158(f)[25] was a violation of both article XVII, section 1,[26] and article I, section 11,[27] of the New York State Constitution. The court held that the amendment violated both state constitutional provisions, as well as the Equal

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24. 161 Misc. 2d 271, 612 N.Y.S.2d 766 (Sup. Ct. Monroe County 1994).

25. N.Y. SOC. SERV. LAW § 158(f) (McKinney 1994). Section 158(f) states in relevant part:

> Notwithstanding any other provision of the law, the home relief payment for any person who applied for home relief benefits within six months of establishing residency in the state, shall, for the first six months after establishing residency, be limited to the greater of: (i) eighty percent of the home relief grant set forth in section one hundred thirty-one-a of this chapter, or (ii) the standard of payment, if any, that would apply to the applicant under the laws of the state, if any, in which he or she resided immediately prior to establishing residency in this state, provided that in no event shall such amount be greater than one hundred percent of the home relief grant set forth in section one hundred thirty-one-a of this chapter . . . .

Id.

26. N.Y. CONST. art. XVII, § 1. The provision states: "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." *Id.*

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

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Protection Clause,[28] and fundamental right to travel[29] guaranteed by the Federal Constitution.[30]

The State of New York, in keeping with the state constitutional mandate to support the needy, provides two major public assistance programs.[31] These programs are known as Aid to Families with Dependent Children[32] and Home Relief.[33] The petitioners' challenge was directed toward an amendment to the legislative guidelines that regulate the disposition of Home Relief public assistance.[34] The challenged amendment instituted what amounted to a durational residency requirement, "resulting in reduced benefits for those individuals who have been residents for six months or less and have come from states without comparable public assistance benefits."[35] Each of the four petitioners,[36] upon application to the program, had resided in

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28. U.S. CONST. amend. XIV, § 1. The Equal Protection Clause states in pertinent part: "No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws." *Id.*

29. *See* Attorney General of N.Y. v. Soto-Lopez, 476 U.S. 898, 901-02 (1986) (affirming that the right to travel throughout the United States, and reside in any State in the Union, is a fundamental right protected under the United States Constitution); *see also* Memorial Hosp. v. Maricopa County, 415 U.S. 250, 254 (1974); Shapiro v. Thompson, 394 U.S. 618, 629-31 (1969).

30. *Aumick*, 161 Misc. 2d at 279-80, 612 N.Y.S.2d at 771-72.

31. *Id.*

32. *See* N.Y. SOC. SERV. LAW § 349 (McKinney 1994). This program provides aid to needy children, and needy families with children, by way of funding from the federal government in conjunction with state and local government financial assistance. *Aumick*, 161 Misc. 2d at 274, 612 N.Y.S.2d at 769.

33. *See* N.Y. SOC. SERV. LAW §§ 157-65 (McKinney 1994). This program is subsidized solely by the State of New York and local counties, unlike Aid to Families with Dependent Children [hereinafter AFDC], and is designed to provide individuals with needed financial assistance. *Aumick*, 161 Misc. 2d at 274, 612 N.Y.S.2d at 769.

34. *Aumick*, 161 Misc. 2d at 274, 612 N.Y.S.2d at 769.

35. *Id.* Prior to July 1, 1992, the recipient's length of residency in New York State was irrelevant in determining the amount of public assistance he or she should receive under the Home Relief program. *Id.*

36. The court denied the petitioners' application for class action certification despite evidence to the effect that there were many persons

New York for less than six months and had come from states that had public assistance programs that provided lower benefits than the State of New York.[37]

Petitioner, George Aumick, moved to New York from New Jersey, on July 1, 1992, in order to obtain employment in Cayuga County and to be nearer to family members. After participating in alcohol abuse programs, he applied for public assistance with the Ontario County Department of Social Services and on November 5, 1992, he was granted Home Relief public assistance.[38] Petitioner, Beverley Powell, employed as a migrant farm worker in Florida, moved back to New York in the fall of 1992 to secure work. Due to an injury to her companion, she could not obtain employment and, thus, upon application in Ontario County, qualified for Home Relief aid on October 11, 1992.[39] Petitioner, Frank McDivitt, returned to New York, the state of his birth, from Utah in order to tend to his deceased grandfather's affairs. Due to an injury that forced him to leave his place of employment in Utah, he applied, and subsequently qualified, for Home Relief from Cattaraugus County on July 14, 1992.[40] Finally, the petitioner-intervenor, Joyce Aldridge, returned to New York, the state of her birth, after separating from her husband in North Carolina. She subsequently qualified for Home Relief as of April 23, 1993.[41] Hence, in accordance with the durational residency requirement instituted by the amendment, each petitioner received a reduced Home Relief benefit up until the time that he or she had resided in New York for more than six months.[42]

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similarly situated to petitioners. *Id.* at 281-82, 612 N.Y.S.2d at 774. The court claimed that even though "the doctrine of *stare decisis* will presumably benefit and protect all petitioners in the purported class . . . this [c]ourt would be agreeable to permitting these individuals the status of Petitioner-Intervenors upon the consent of all parties." *Id.*

37. *Id.* at 274-75, 612 N.Y.S.2d at 769-70.

38. *Id.* at 275, 612 N.Y.S.2d at 770.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

It has been unequivocally stated that the New York State Constitution expressly imposes "an affirmative duty to aid the needy."[43] In *Tucker v. Toia*,[44] the New York Court of Appeals stated that the adoption of article XVII, section 1 of the State Constitution "is indicative of a clear intent that State aid to the needy was deemed to be a fundamental part of the social contract . . . [since] the care of the unemployed and their dependents is in our modern industrial society a permanent problem of major importance affecting the whole of society. . . ."[45] The New York Court of Appeals held that an amendment to Social Services Law section 158(a), which made home relief benefits for persons under the age of twenty-one who did not live with a parent or legal guardian contingent on that person commencing a support proceeding and receiving a disposition order against any such parent or legal guardian, violative of section 1 of article XVII of the New York Constitution.[46] In so finding, the court noted that despite this mandate that the state provide assistance to the poor, the Legislature retains discretion as to the manner and means by which such assistance is to be provided.[47] However, as the Court held earlier in *Lovelace v. Gross*,[48] this permissible discretion is balanced by the Legislature's inability to refuse or curtail a particular group's public assistance benefit once that particular

43. Tucker v. Toia, 43 N.Y.2d 1, 8, 371 N.E.2d 449, 452, 400 N.Y.S.2d 728, 731 (1977).

44. *Id.*

45. *Id.* at 7, 371 N.E.2d at 451, 400 N.Y.S.2d at 730-31.

46. *Id.* at 8, 371 N.E.2d at 452, 400 N.Y.S.2d at 731.

47. *Id.* As the court of appeals pointed out:

> Although our Constitution provides the Legislature with discretion in determining the means by which . . . [the affirmative duty to aid the needy] is to be effectuated, in determining the amount of aid, and in classifying recipients and defining the term 'needy,' it unequivocally prevents the Legislature from simply refusing to aid those whom it has classified as needy.

Id.

48. 80 N.Y.2d 419, 605 N.E.2d 339, 590 N.Y.S.2d 852 (1992).

group has been categorically deemed to be needy.[49] The court determined that this was precisely what the state did with respect to the petitioners in this case.[50] Each petitioner qualified to receive benefits through the Home Relief program since each one fell below the income standard that the state used to define an applicant as being needy.[51] However, despite the fact that the petitioners were legitimately classified as needy, the state withheld payment of full public assistance benefits based solely on the fact that petitioners, at the time of application, had not resided in New York State for more than six months.[52] The court, therefore, held that this durational residency requirement imposed by the state on the petitioners and on those similarly situated violated article XVII, section 1 of the State

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49. *Id.* at 424-25, 605 N.E.2d at 341-42, 590 N.Y.S.2d at 854-55. The court of appeals, in *Lovelace*, ruled that amending eligibility requirements for state offered public assistance programs to include the grandparent-deeming rule (which in determining eligibility operates to impute a certain portion of a grandparents income to a child who is residing with his or her grandparents) was within permissible legislative discretion and thus not violative of the State Constitution. *Id.* at 426, 605 N.E.2d at 343, 590 N.Y.S.2d at 856. The rationale the court offered was that since the amendment operated "to ascertain and define the State standard of need" with respect to a particular group, the grandparent-deeming rule did not violate section 1 of article XVII of the State Constitution. *Id.* The New York Court of Appeals pointed out that *Lovelace* "differs fundamentally from *Tucker v. Toia* . . . [since in] *Tucker*, the impermissible burden fell on minors already classified under State law as needy, who were nonetheless compelled to prosecute often lengthy, futile legal proceedings before they could receive any benefits . . . [while *Lovelace* involved] a challenge to the Legislature's definition of 'needy.'" *Id. See* Barie v. Lavine, 40 N.Y.2d 565, 570, 357 N.E.2d 349, 352, 388 N.Y.S.2d 878, 881 (1976) (finding a social services requirement providing for temporary suspension of benefits to recipients who unjustifiably refuse to accept employment to be a reasonable legislative determination that such persons were not needy). *But see* Lee v. Smith, 43 N.Y.2d 453, 373 N.E.2d 247, 402 N.Y.S.2d 351 (1977) (holding that the state's duty, under section 1 of article XVII of the State Constitution, to provide for needy aged, blind, and disabled persons does not cease because it has adopted the federal Supplemental Security Income program).

50. *Aumick*, 161 Misc. 2d at 277-78, 612 N.Y.S.2d at 771-72.

51. *Id.* at 274-75, 612 N.Y.S.2d at 769-70.

52. *Id.* at 278, 612 N.Y.S.2d at 771-72.

Constitution.[53] Such a requirement created a separate classification of public assistance recipients based on reasoning unrelated to need and, hence, the imposition of such a durational residency requirement was outside the permissible discretion of the Legislature.[54]

The court also addressed the issue of whether such a requirement violated petitioners equal protection rights as provided by article I, section 11 of the State Constitution.[55] In *Lee v. Smith*,[56] the New York Court of Appeals held that "under equal protection requirements . . . any classification which denies to one class of needy persons public assistance which is available to all others, cannot be justified unless it is rationally related to a legitimate State interest."[57] The state must first show that it has a legitimate governmental objective.[58] Only then will the means by which the state attempts to achieve its objective be judged as to whether it bears a rational relationship to the achievement of such end.[59] Therefore, although the reduction of the Home Relief

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53. *Id.*

54. *Id.*

55. *Id.* at 278, 612 N.Y.S.2d at 772.

56. 43 N.Y.2d 453, 373 N.E.2d 247, 402 N.Y.S.2d 351 (1977).

57. *Id.* at 460, 373 N.E.2d at 250, 402 N.Y.S.2d at 355 (holding that the refusal to provide home relief assistance to a group consisting of applicants who are aged, disabled, or blind, and also receiving federal Supplemental Security Income, while not denying such relief to other needy groups, is violative of the Equal Protection Clause as provided in section 11 of article I of the State Constitution). *See* Bernstein v. Toia, 43 N.Y.2d 437, 446, 373 N.E.2d 238, 243, 402 N.Y.S.2d 342, 347 (1977) (holding that the implementation of a flat rate grant approach to the provision of shelter costs did not violate equal protection rights because such approach was rationally related to the legitimate state interest of optimizing available public assistance funds).

58. *See Lovelace*, 80 N.Y.2d at 427, 605 N.E.2d at 343, 590 N.Y.S.2d at 856 (1992) (ruling that the state has a legitimate interest in "allocating limited public assistance resources to the neediest applicants"); *see also Lee*, 43 N.Y.2d at 461-62, 373 N.E.2d at 251, 402 N.Y.S.2d at 356 (finding the state's desires to meet federal requirements in order to qualify for continued Supplemental Security Income benefits and to reduce administrative costs by reducing the home relief caseload are both legitimate state interests).

59. *See Lovelace*, 80 N.Y.2d at 427, 605 N.E.2d at 344, 590 N.Y.S.2d at 857 (applying the rational relationship test in holding that the grandparent-

caseload was found to be a legitimate state objective, the court held that "the accomplishment of such result by arbitrarily denying full benefits to one class of person," by way of a durational residency requirement, "cannot be justified as rationally related to a legitimate State interest."[60] Therefore, the court agreed with the petitioners' claims that this disparate treatment violated the equal protection guarantee of the State Constitution.[61]

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deeming rule, added to home relief eligibility requirements, was rationally related to the legitimate goal of allocating limited relief funds to the neediest persons because not to do so could lead to the "complete erosion" of other public assistance programs); *see also Lee*, 43 N.Y.2d at 461-62, 373 N.E.2d at 251, 402 N.Y.S.2d at 356 (applying the rational relationship test in holding that denial of public assistance benefits to the aged, disabled, or blind applicants who receive federal public assistance while not denying home relief to other needy individuals who receive other sources of relief is not a rationally related means to achieve an otherwise legitimate state interest of reducing the home relief caseload).

60. *Aumick*, 161 Misc. 2d at 278, 612 N.Y.S.2d at 772.

61. *Id.* In addition, three of the four petitioners challenged the constitutionality of the procedural requirements of the statutory amendment by claiming that the failure to provide notice of reduced benefits violated their due process rights. *Id.* at 280, 612 N.Y.S.2d at 773. However, in finding no due process violation, the court reasoned that even had the petitioners been notified that their benefits would be reduced in accordance with the durational residency requirement, there existed no administrative remedy to challenge the reduction. *Id.* The court distinguished the petitioners' situations from those cases where reduction or termination of benefits came after recipients had previously been receiving them for some time. *Id.* The court drew a comparison between the present situation and the situation that arose in Goldberg v. Kelly, 397 U.S. 254 (1970) where, in response to a challenge by New York City residents to the constitutionality of notice procedures instituted by the City for terminating AFDC and Home Relief public assistance, the Supreme Court held that a pre-termination evidentiary hearing was required to provide the welfare recipients with procedural due process. Likewise, the court also distinguished petitioners' situations from those cases involving failure to notify applicants of the availability of certain public assistance benefits. The court contrasts the present situation with that in Gonzalez v. Blum, 127 Misc. 2d 558, 486 N.Y.S.2d 630 (Sup. Ct. Westchester County 1985), *aff'd*, 96 A.D.2d 1091, 467 N.Y.S.2d 58 (2d Dep't 1983), where, in response to public assistance recipients allegation that New York State Department of Social Services failed to inform them of pre-investigative grants for those in

The court also found the state's creation of a durational residency requirement for Home Relief applicants to be violative of the United States Constitution.[62] As the *Aumick* court stated, "the Supreme Court of the United States has frequently declared durational residency requirements unconstitutional as violative of our right to travel."[63] The Supreme Court has reiterated on numerous occasions that "[f]reedom to travel throughout the United States has long been recognized as a basic right under the Constitution."[64] This fundamental right is directly implicated by state action which creates a classification that penalizes the exercise of the right to travel.[65] While the precise textual source of the right to travel has been elusive,[66] the Court has observed that it "is clear from our cases [that] the right to travel achieves its most forceful expression in the context of equal protection analysis."[67] Consequently, when the state creates two classifications between otherwise needy residents based solely on the length of their residency, equal protection concerns are raised.[68] Moreover, "[w]henever a state law infringes a

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immediate need, the court held that the state is required to inform applicants of available welfare benefits in order to comport with due process guarantees.

62. *Aumick*, 161 Misc. 2d at 278, 612 N.Y.S.2d at 772.

63. *Id.*

64. Attorney General of N.Y. v. Soto-Lopez, 476 U.S. 898, 901 (1986) (quoting United States v. Guest, 383 U.S. 745, 758 (1966)). *See* Dunn v. Blumstein, 405 U.S. 330, 338 (1972).

65. *Soto-Lopez*, 476 U.S. at 903.

66. *See* Zobel v. Williams, 457 U.S. 55, 71 (1982) (assigning the Privileges and Immunities Clause of article IV, section 2, of the United States Constitution as the source of the right to travel); Shapiro v. Thompson, 394 U.S. 618, 630-31 (1969) (suggesting the source of the fundamental right to travel to be the very federal structure that the Constitution sought to create); Edwards v. California, 314 U.S. 160, 173-74, 177-78 (1941) (alternately declaring that the right to travel could be said to emanate from the Commerce Clause and/or the Privileges and Immunities Clause of the Fourteenth Amendment).

67. *Zobel*, 457 U.S. at 67 (Brennan, J., concurring).

68. *Soto-Lopez*, 476 U.S. at 904. The Court went on to state that "[t]he analysis in . . . these cases . . . is informed by the same guiding principle - the right to migrate protects residents of a State from being disadvantaged, or from

constitutionally protected right," such as the right to travel, the Court "undertake[s] intensified equal protection scrutiny of that law."[69] This intensified scrutiny requires the state to come forth with a compelling justification for its actions if such action is found to penalize, by way of burdening, those persons who seek to exercise their right to travel.[70]

Thus, consistent with the federal courts, this court determined that the six month residency requirement clearly penalized the exercise of the right to travel.[71] Given the burden imposed on this fundamental right, the state failed to meet the strict scrutiny test.[72] As the court stated, "'the conservation of the taxpayers' purse is simply not a sufficient state interest to sustain a durational residency requirement.'"[73] Therefore, any law deterring persons from migrating into another state is constitutionally impermissible.[74] The reduction of Home Relief benefits to one class of recipients, due to their length of residence in the state, violated both the right to travel and the equal protection guarantees of the United States Constitution when such reduction was not imposed on other similarly situated classes.[75]

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being treated differently, simply because of the timing of their migration, from other similarly situated residents."

69. *Id.*

70. *Id.* at 909. (stating that the denial of civil service employment preference to veterans who were not residents of the State upon entering military service operated to penalize such persons for exercising or more specifically not exercising their rights to migrate); Memorial Hosp. v. Maricopa County, 415 U.S. 250, 253 (1974) (finding that the denial of free non emergency medical care to an indigent resident based on a durational residency requirement operated to burden such resident's right to travel); *Shapiro*, 394 U.S. at 627 (stating that the denial of state public assistance based on a one year durational residency requirement penalized appellee's fundamental right to travel).

71. *Aumick*, 161 Misc. 2d at 279, 612 N.Y.S.2d at 772.

72. *Id.*

73. *Id.* (quoting *Memorial Hosp.*, 415 U.S. at 263).

74. *Id.*

75. *Id.* Likewise, the Minnesota Court of Appeals, when faced with a similar situation involving a six month durational residency requirement operating to reduce public assistance benefits, also found such action to be constitutionally impermissible. *Id.* at 773. *See* Mitchell v. Steffen, 487

While the New York State Constitution mandates that the state provide for the needy, federal public assistance programs are implemented via statutory authority.[76] In providing such public assistance to those categorically defined as needy, the State Legislature cannot arbitrarily create a classification based on criteria unrelated to need. In creating classifications, the State Legislature may not abridge its residents equal protection rights by imposing requirements on one class through means not rationally related to a legitimate goal. Alternately, the equal protection right of the Federal Constitution requires the state to overcome strict scrutiny when instituting regulations that abridge fundamental rights such as the right to travel.

SUPREME COURT

QUEENS COUNTY

Pastore v. Sabol[77]
(decided March 9, 1994)

Petitioners, as applicants for Medicaid, sought declaratory and injunctive relief[78] in order to receive temporary medical assistance to meet their "immediate medical needs" while awaiting a decision on their Medicaid applications.[79] However,

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N.W.2d 896, 907 (Minn. Ct. App. 1992), *aff'd*, 504 N.W.2d 198 (Minn. 1993), *cert. denied*, 114 S. Ct. 902 (1994).

76. *See, e.g.*, 49 Stat. 627 (as amended 42 U.S.C.A. §§ 601-09). The Social Security Act of 1935 established the program Aid to Families with Dependent Children.

77. 160 Misc. 2d 983, 611 N.Y.S.2d 755 (Sup. Ct. Queens County 1994).

78. The petitioners also sought an award of attorneys' fees. *Id.* at 994, 611 N.Y.S.2d at 762. However, the court denied this request based on the reasoning that CPLR article 86, a provision which shifts to the state the obligation to pay counsel fees, is restricted and narrowly interpreted. *Id.* (citing Peck v. State Div. of Hous., 188 A.D.2d 327, 590 N.Y.S.2d 498 (1st Dep't 1992)).

79. *Id.* at 985, 611 N.Y.S.2d at 756. Robert Pastore was the original petitioner. In separate motions, Mr. and Mrs. Timmes for themselves, and on behalf of their granddaughter Lisa Cannalonga, and Belva Frank and her