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Due Process: Hope v. Perales

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heard. Only when the defendant raises a truly reasonable suspicion as to the validity of the subsequent arrest must a more formal inquiry take place. Whereas, if the defendant offers either no excuse or no reasonable explanation for his subsequent arrest, an evidentiary hearing into the matter is not required.

SUPREME COURT, APPELLATE DIVISION

FIRST DEPARTMENT

Hope v. Perales[453]
(decided March 23, 1993)

Plaintiffs, who included "income-eligible women, physicians and various health care organizations,"[454] claimed that the New York State Prenatal Care Assistance Program[455] (hereinafter PCAP) is violative of the New York State Constitution because it does not include financial assistance for "medically necessary abortions" for similarly situated women eligible under PCAP provisions.[456] Plaintiffs, seeking declaratory and injunctive relief,[457] contended that the "funding scheme"[458] violated their

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453. 189 A.D.2d 287, 595 N.Y.S.2d 948 (1st Dep't 1993) (per curiam).

454. *Id.* at 290, 595 N.Y.S.2d at 949.

455. N.Y. PUB. HEALTH LAW §§ 2520-29 (McKinney 1993). An "eligible service recipient" is defined under § 2521 as:

> [A] pregnant, low-income woman, who is not otherwise eligible for medical assistance and whose income is one hundred eighty-five percent or less of the comparable federal income official poverty line . . . . Pregnant women eligible pursuant to this subdivision shall continue to be eligible for assistance, without regard to any change in income of the families of which they are members, through the end of the month in which a sixty day period which begins on the last day their pregnancies shall end.

Id.

456. *Hope*, 189 A.D.2d at 291, 595 N.Y.S.2d at 950.

457. *Id.* at 290, 595 N.Y.S.2d at 949.

458. *Id.* at 291, 595 N.Y.S.2d at 950. PCAP's funding scheme is set forth in Chapter 584 and § 2522 of the New York Public Health Law, which provides:

constitutional rights to the free exercise of religion,[459] due process,[460] equal protection,[461] the aid, care and support of the

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Comprehensive prenatal care services available under the prenatal care assistance program include:

(a) prenatal risk assessment;
(b) prenatal care visits;
(c) laboratory services;
(d) health education for both parents regarding prenatal nutrition and other aspects of prenatal care, alcohol and tobacco use, substance abuse, use of medication, labor and delivery, family planning to prevent future unintended pregnancies, breast feeding, infant care and parenting;
(e) referral for pediatric care;
(f) referral for nutrition services including screening, education, counseling, follow-up and provision of services under the women, infants and children's program and the supplemental nutrition assistance program;
(g) mental health and related social services including screening and counseling;
(h) transportation services for prenatal care services;
(i) labor and delivery services;
(j) post-partum services including family planning services;
(k) inpatient care, specialty physician and clinic services which are necessary to assure a healthy delivery and recovery;
(l) dental services;
(m) emergency room services;
(n) home care; and
(o) pharmaceuticals.

N.Y. PUB. HEALTH LAW § 2522 (McKinney 1993).

459. N.Y. CONST. art. I, § 3. Section 3 provides in pertinent part:

> The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

Id. The trial court rejected the plaintiffs' contention that the PCAP program interferes with women's free exercise of religion. Discussions concerning the trial court's conclusion were not published. *See* Hope v. Perales, 150 Misc. 2d 985, 987, 571 N.Y.S.2d 971, 981 (Sup. Ct. New York County 1991) [hereinafter *Perales*].

needy,[462] and the protection and promotion of the state's inhabitant's health, by interfering with affected women's reproductive choice.[463] Under PCAP, pregnant women are reimbursed according to the comprehensive list of prenatal and postpartum care, however, no reimbursements are made for terminating a pregnancy when it is medically advisable.[464] Affirming the trial court's decision, the appellate court held that the failure to provide funding for abortions is unconstitutional.[465] Further, the court stated that in order to uphold the constitutionality of the statute, it must be expanded to include the funding of therapeutic abortions.[466]

The nineteen year old plaintiff, Jane Hope, "a carrier of sickle cell anemia, . . . work[ed] forty-four hours [a] week and attend[ed] college at night."[467] Because she had been experiencing feelings of nausea and dizziness and had lost a significant amount of weight, Hope went for a pregnancy test at a clinic, the results of which "came back positive."[468] She was "advised that an abortion would cost $900."[469] After four weeks, now twenty-one weeks pregnant, she returned to the clinic and was advised that the cost of the abortion would now be between

460. N.Y. CONST. art. I, § 6. Section 6 provides in pertinent part: "No person shall be deprived of life, liberty or property without due process of law." *Id.*

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

462. N.Y. CONST. art. XVII, § 1. Section 1 provides in pertinent part: "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.*

463. *Hope*, 189 A.D.2d at 291, 595 N.Y.S.2d at 950.

464. *Id.* at 290-91, 595 N.Y.S.2d at 950 ([P]ursuant to PCAP, "pregnant women are entitled to receive financial assistance for a wide range of prenatal and postpartum care whenever their family incomes are between 100 and 185% of the poverty level.").

465. *Id.* at 297-98, 595 N.Y.S.2d at 954.

466. *Id.* at 297, 595 N.Y.S.2d at 954.

467. *Perales*, 150 Misc. 2d at 994, 571 N.Y.S.2d at 978.

468. *Id.*

469. *Id.*

$1,000 and $1,500.[470] Aside from the increased cost, the physician informed her that "under the Medicaid standard, an abortion was *medically necessary in her circumstance.*"[471] Despite the fact that Hope could not afford to maintain medical insurance, she was not eligible for Medicaid and thus could not afford the abortion.[472]

The first department agreed with the trial court's ruling, which declared that "chapter 584 of the Laws of 1989 violate[d] . . . the New York State Constitution, insofar as it denies funding for medically necessary abortions for otherwise eligible women . . . ."[473] The court proceeded to "enjoin[] defendants from denying such funding and ordered . . . that the subject [PCAP] be expanded to include funds for medically necessary abortions . . . ."[474] Defendants, the Commissioners of the New York State Department of Health and the Department of Social Services, argued that the legislation does not interfere or "impair the ability of women . . . to procure abortions."[475] In asserting their argument, defendants relied on the expressed legislative purpose of the PCAP program to expand government-funded prenatal care "in order to remedy a special significant problem, the detrimental effect on the health of infants caused by the lack of prenatal care . . . ."[476] The defendants also argued that such legislative intent "in no way damages, discriminates against, or even meaningfully relates to a woman's right to an abortion, and, therefore, PCAP is constitutional in all respects."[477] However, the appellate division failed to find the defendants' arguments of "legitimate and limited legislative purpose" persuasive.[478] Despite the contentions proffered by the defendants, the court looked to the practical effect of limiting the entitlements under

470. *Id.*
471. *Id.* at 994, 571 N.Y.S.2d at 979 (emphasis added).
472. *Id.* at 994-95, 571 N.Y.S.2d at 979.
473. *Hope*, 189 A.D.2d at 292, 595 N.Y.S.2d at 954.
474. *Id.*
475. *Id.* at 291, 595 N.Y.S.2d at 950.
476. *Id.*
477. *Id.*
478. *Id.* at 292-93, 595 N.Y.S.2d at 950.

PCAP to specified types of prenatal services.[479] Noting that PCAP will provide funding solely for prenatal and postpartum care, the court recognized such a policy would have the effect of pressuring woman to give birth,[480] which in turn would act as a limitation upon the reproductive freedom of similarly situated women whose family incomes range from 100 to 185 percent of the poverty level.[481]

Addressing the due process claim, the court concluded that in forcing women to postpone a procedure, increase the medical risk to themselves, incur greater costs, or forego the procedure altogether would work a "constitutionally impermissible result."[482] Recognizing that PCAP does not directly interfere with a woman's right to an abortion, the appellate division emphasized the fact that the options for poor woman are more "circumscribed."[483] The appellate division, citing to the trial court, noted that:

> [T]he dichotomy of care created by PCAP is not designed to ensure that an eligible woman receives that medical assistance best suited for her for it ignores the risks to her health and the likelihood of grave fetal defects if she is left with no alternative but to bear the child when medically unwarranted.[484]

Moreover, the appellate division agreed with the trial court's reasoning which analyzed the provisions of PCAP under the aforementioned state constitutional sections and affirmed the ruling of the lower court which held Chapter 584 unconstitutional

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479. *Id.*

480. *Id.* at 293-94, 595 N.Y.S.2d at 951. The trial court agreed with the plaintiffs' argument that PCAP impermissibly steers women toward childbirth even where a therapeutic abortion could be life saving, the trial court remarked that "PCAP becomes an affirmative act by the State blocking a woman without means from obtaining an abortion, possibly creating a serious risk to the woman's life and/or health." *Perales*, 150 Misc. 2d at 993, 571 N.Y.S.2d at 977.

481. *Hope*, 189 A.D.2d at 294, 595 N.Y.S.2d at 951.

482. *Id.* at 293, 595 N.Y.S.2d at 951.

483. *Id.* at 293, 595 N.Y.S.2d at 950.

484. *Id.* at 291, 595 N.Y.S.2d at 950 (citing *Perales*, 150 Misc. 2d at 990, 571 N.Y.S.2d at 976).

for failing to provide for "medically necessary abortions."[485] Specifically, the court held that PCAP did not conform to the Due Process Clause[486] because it "encompasse[d] the right to reproductive choice which is an integral part of the right to privacy and bodily autonomy."[487] The appellate division reasoned that the only logical explanation for the legislature's discriminatory funding scheme in PCAP was that "a majority . . . was endeavoring to avoid the political pitfalls accompanying anything even remotely connected to the subject of abortion."[488] The court further remarked that "so long as abortion remains legal in New York State, the Legislature has no power to abolish women's constitutional rights no matter what the personal views of the individual members of that institution might be toward abortions."[489]

Relying on the New York Court of Appeal's decision in *Golden v. Clark*,[490] the court turned its discussion to equal protection principles. The appellate division focused on whether Chapter 584, by excluding funding for medically warranted abortions, established a "'classification which burdens [fundamental] rights.'"[491] Furthermore, the court noted that "'[i]f it does, it must withstand strict scrutiny and is void unless [the court finds it is] necessary to promote a compelling [s]tate interest and narrowly tailored to achieve that purpose.'"[492] Applying this test, the appellate division rejected "[t]he state's interest in advancing the cause of healthy mothers bearing healthy

485. *Id.* at 298, 595 N.Y.S.2d at 954. This case, *Hope v. Perales*, had been appealed by the defendants and was argued before the New York Court of Appeals on March 17, 1994, where a decision is pending. *See* James Dao, *Lawyer Takes Abortion - Rights Case to Top Albany Court*, N.Y. L.J., Mar. 18, 1994, at B5.

486. N.Y. CONST. art. I § 6.

487. *Hope*, 189 A.D.2d at 297, 595 N.Y.S.2d at 954.

488. *Id.*

489. *Id.*

490. 76 N.Y.2d 618, 564 N.E.2d 611, 563 N.Y.S.2d 1 (1990).

491. *Hope*, 189 A.D.2d at 295, 595 N.Y.S.2d at 952 (quoting Golden v. Clark, 76 N.Y.2d 618, 623, 564 N.E.2d 611, 613, 563 N.Y.S.2d 1, 3).

492. *Id.* at 295, 595 N.Y.S.2d at 952 (quoting *Golden*, 76 N.Y.2d at 623, 564 N.E.2d at 613, 563 N.Y.S.2d at 3).

babies [as having] no reasonable relationship to the statutory abortion exclusion."[493] The appellate division criticized the defendants' position that "no one is illegally prohibited from procuring an abortion" as being "extremely facile."[494] By recognizing that pregnant women whose income falls between 100 and 185 percent of the federal poverty level as being "'needy' and requir[ing] help in obtaining pregnancy-related health services, the legislature violated section 1, article XVII, as well as section 3, article XVII, . . . by conditioning aid to this needy class on a standard totally unconnected to need or health; that is, whether an otherwise eligible woman undergoes an abortion or gives birth."[495] The court explained that upon assuming a duty or "responsibility" of helping an identified class, such as, pregnant women eligible under PCAP, "it was required to do so in a neutral nondiscriminatory manner that does not coerce poor women into choosing childbirth even at the expense of their health and well-being."[496] Although indigency or pregnancy does not in itself place a woman in a suspect class, the

493. *Id.* at 295, 595 N.Y.S.2d at 952-53.

494. *Id.* at 295, 595 N.Y.S.2d at 953. In discussing the effect of PCAP's exclusion of funding for "therapeutic abortions," the court found it to "support[ ] childbirth, sometimes at the expense of the mother's health . . . [which thus] clearly renders chapter 584 in conflict with the requirement that government actions must be constitutionally neutral in affecting the exercise of fundamental rights." *Id.* at 296, 595 N.Y.S.2d at 953. The court stated:

> '[O]nce the Legislature identifies a group as needy, it may not exclude individuals from the benefits extended to that group by imposing criteria having nothing to do with need. Thus, the [s]tate constitutional obligation of article XVII § 1 to aid, care and support the needy is a 'fundamental part of the social contract' which 'is not a matter of legislative grace; rather, it is specifically mandated by our Constitution.'

Id. (quoting Tucker v. Toia, 43 N.Y.2d 1, 7, 371 N.E.2d 449, 451, 400 N.Y.S.2d 728, 730 (1977)).

495. *Id.* at 296, 595 N.Y.S.2d at 953. *See, e.g.*, Klein v. Broderick, 145 A.D.2d 145, 538 N.Y.S.2d 274 (1989).

496. *Hope*, 189 A.D.2d at 297, 595 N.Y.S.2d at 954. *See also* Harris v. McRae, 448 U.S. 297, 334 (1980) (Brennan, J., dissenting) ("[D]iscriminatory distribution of the benefits of government largesse can discourage the exercise of fundamental liberties just as effectively as can an outright denial of those rights through criminal and regulatory sanctions.")

court recognized that the circumstances under PCAP effectively jeopardize the woman's constitutional right to choose.[497]

Finally, the appellate division found the trial court had properly chosen the appropriate remedy when it decided to expand the scope of the program to "include funding for medically indicated abortions rather than voiding the law in its entirety . . . ."[498] The appellate division did not consider whether such claims were viable under the Federal Constitution because, as mentioned in dicta, "federal constitutional law appears to be insufficient to afford relief, and the United States Supreme Court has already upheld the sort of restrictions involved [therein]."[499] The court proceeded to delineate support for allowing consideration of the issue based on the additional protections set forth in the New York State Constitution.[500]

Clearly this case illustrates the important components of our system of federalism by enforcing rights and protections not provided for under Federal law and allowing states, through their own legislature and judiciary, to create additional constitutional rights for individuals.

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497. *Id.* at 297, 595 N.Y.S.2d at 954.

498. *Id.*

499. *Id.* at 294, 595 N.Y.S.2d at 952.

500. *Id.* The court recognized the historical practices of expanding upon constitutional protections through interpretation of a states constitution where such protections had not been incorporated into the federal constitutional rights or protections. *Id.* (quoting People v. P.J. Video, Inc., 68 N.Y.2d 296, 302, 501 N.E.2d 556, 559-60, 508 N.Y.S.2d 907, 911 (1986)). The court further stated:

> [U]nder established principles of federalism . . . the States also have sovereign powers. When their courts interpret State statutes or the State Constitution the decisions of these courts are conclusive if not violative of Federal law. Although State courts may not circumscribe rights guaranteed by the Federal Constitution, they may interpret their own law to supplement or expand them.

Hope, 189 A.D.2d at 294, 595 N.Y.S.2d at 952 (citations omitted).