



1994

## Equal Protection: Chin v. Board of Elections

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### Recommended Citation

(1994) "Equal Protection: Chin v. Board of Elections," *Touro Law Review*. Vol. 10: No. 3, Article 31.  
Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol10/iss3/31>

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the legitimate legislative purpose, the statute will survive constitutional muster.<sup>806</sup>

In areas of economic and social welfare legislation, both State and Federal Constitutions require equal treatment for similarly situated individuals unless the government can demonstrate a rational basis for imposing disparate treatment.

## SUPREME COURT, APPELLATE DIVISION

### FIRST DEPARTMENT

Chin v. Board of Elections<sup>807</sup>  
(decided June 29, 1993)

Petitioner claimed that the failure of New York City to provide language translation assistance to Asian voters at a primary election violated the State<sup>808</sup> and Federal<sup>809</sup> Equal Protection Clauses.<sup>810</sup> The Appellate Division, First Department, held that there was no constitutional violation because the Federal Voting

806. *See, e.g.*, *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 461-62 (1981). The United States Supreme Court found discrimination between “plastic and nonplastic nonreturnable milk containers” was rationally related to state’s legitimate interests in “promoting resource conservation, easing solid waste disposal problems, and conserving energy . . . .” *Id.*; *City of New Orleans v. Dukes*, 427 U.S. 297, 304-05 (1976) (excluding street vendors who had worked less than eight years was rationally related to state objective of preserving the custom and appearance of the French Quarter); *but see Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 439-42 (1982) (treating differently employment discrimination claims processed within 120 days and those processed after, could not rationally achieve the state objective of “expediting” disputes).

807. 194 A.D.2d 480, 599 N.Y.S.2d 569 (1st Dep’t 1993).

808. N.Y. CONST. art. I, § 11. This provision provides: “No person shall be denied the equal protection of the laws of this state or any subdivision thereof.” *Id.*

809. U.S. CONST. amend. XIV, §1, cl. 3. This provision provides: “No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.” *Id.*

810. *Chin*, 194 A.D.2d at 481, 599 N.Y.S.2d at 570.

Rights Act,<sup>811</sup> as well as the State Constitution, did not prohibit the differential treatment the Asian population was subjected to during the election.<sup>812</sup>

Petitioner, Margaret S. Chin, after unsuccessfully bidding for a City Council seat in the 1991 Democratic primary, "sought to set aside the election pursuant to" section 16-102(3) of the New York State Election Law.<sup>813</sup> Upon recommendation from the referee to whom the matter was referred, the lower court dismissed the petition.<sup>814</sup> The court, however, ordered that in future elections in New York City districts where the Asian population exceeds 5%, "all election materials must be offered in the language native to that population, interpreters . . . must be made available, and non-English speaking, Asian voters must be permitted to bring a person of their choice into the voting booth to assist in reading the ballot and operating the machine."<sup>815</sup>

Although the lower court cited no specific authority for making such an order, the petitioner argued on appeal that the failure to impose such requirements would result in a denial of equal protection, as election materials were provided in Spanish and English at the challenged election sites.<sup>816</sup> In addressing the petitioner's equal protection argument, the court held that under the circumstances of this case, the New York State Constitution did not require any further protection than "that required by its federal counterpart."<sup>817</sup> The New York courts, when considering

811. 42 U.S.C. § 1973 (1965). The first section of the Voting Rights Act of 1965 states in pertinent part: "No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color . . ." *Id.*

812. *Chin*, 194 A.D.2d at 481, 599 N.Y.S.2d at 570.

813. *Id.* at 480, 599 N.Y.S.2d at 570. Section 16-102(3) of the New York State Election Law authorizes "the holding of a new primary election . . . where it finds there has been such fraud or irregularity as to render impossible a determination as to who rightfully was nominated or elected." N.Y. ELEC. LAW § 16-102(3) (McKinney 1978).

814. *Chin*, 194 A.D.2d at 480, 599 N.Y.S.2d at 570.

815. *Id.* at 480-81, 599 N.Y.S.2d at 570.

816. *Id.* at 481, 599 N.Y.S.2d at 570.

817. *Id.*

equal protection challenges, have typically adopted a standard which is consistent with both the Federal and State Constitutions.<sup>818</sup> The same holds true in the voting rights arena. In *Golden v. Clark*,<sup>819</sup> for instance, a charter provision preventing high city officials from holding political offices<sup>820</sup> withstood an equal protection challenge on state and federal grounds as “the section has no direct impact on one’s fundamental right to vote[,] it does not disfranchise any identifiable class of voters [and] [i]ts impact on voting rights is at most, only incidental.”<sup>821</sup>

Additionally, in *Esler v. Walters*,<sup>822</sup> the New York Court of Appeals went so far as to deny an equal protection challenge on state and federal constitutional grounds to section 206 (7) of the New York State Town Law,<sup>823</sup> which limits voter eligibility in certain special elections to landowners.<sup>824</sup> Therefore, it is clear, based upon the aforementioned precedent, that conditions as seen in *Chin*, which impact an individual’s right to vote do not necessarily offend notions of equal protection on the state and federal levels.

818. See *Golden v. Clark*, 76 N.Y.2d 618, 624, 564 N.E.2d 611, 614, 563 N.Y.S.2d 1, 4 (1990) (stating that the New York State equal protection guarantee is as broad in its coverage as the Fourteenth Amendment to the United States Constitution); *Under 21 v. City of N.Y.*, 65 N.Y.2d 344, 360 n.6, 482 N.E.2d 1, 7 n.6, 492 N.Y.2d 522, 528 n.6 (1985) (stating that the New York State Constitution’s Equal Protection Clause is no broader in coverage than the federal provision).

819. 76 N.Y.2d 627, 564 N.E.2d 611, 563 N.Y.S.2d 1 (1990).

820. The challenged provision was § 2604(9)(b)(15) of the New York City Charter, which states in pertinent part: “No elected official . . . may be a member of the national or state committee of a political party, serve as an assembly district leader or a political party or serve as the chair or as an officer of the county committee or county executive committee of a political party . . . .” N.Y.C. CHARTER § 2604(9)(b)(15) (1989).

821. *Golden*, 76 N.Y.2d at 626, 564 N.E.2d at 615, 563 N.Y.S.2d at 5.

822. 56 N.Y.2d 306, 437 N.E.2d 1090, 452 N.Y.S.2d 333 (1982).

823. New York State Town Law § 206(7) provides “[n]o person shall be entitled to vote upon any such provision unless he or she has the following qualifications: (a) is an elector of the town, and (b) is the owner of taxable property . . . .” N.Y. TOWN LAW § 206(7) (McKinney 1987).

824. *Golden*, 56 N.Y.2d at 314, 437 N.E.2d at 1095, 452 N.Y.S.2d at 338.

Faced with a consistent federal and state equal protection standard, the court embarked on a brief federal analysis of the petitioner's claims. The court determined that the differential treatment alleged by petitioner was not prohibited by the Federal Voting Rights Act<sup>825</sup> nor was it in contravention of the precedent espoused in *Burdick v. Takushi*.<sup>826</sup> In *Burdick*, the Supreme Court held that Hawaii's prohibition on write-in voting did not unreasonably infringe upon petitioner's right to vote, as the burdens imposed were reasonable.<sup>827</sup> The Court in *Burdick* reasoned that "to subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest . . . would tie the hands of states seeking to assure that elections are operated equitably and efficiently."<sup>828</sup> Consequently, New York City's incidental burdening of the Asian population in *Chin* is justified by no more than the state goal of efficient operation of elections.

Given such a justification, coupled with the consistent federal and state equal protection standard in this area, the court held that the petition challenging the election should have been dismissed without the imposition of any remedial requirements.<sup>829</sup>

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825. 42 U.S.C. § 1973b (f)(1) provides in pertinent part: "The Congress declares that in order to enforce the guarantees of the Fourteenth and Fifteenth Amendments . . . it is necessary to eliminate such discrimination by prohibiting English-only elections and by prescribing other remedial devices." *Id.*

826. 112 S. Ct. 2059 (1992).

827. *Id.* at 2066-67.

828. *Id.* at 2063.

829. *Chin*, 194 A.D.2d at 181, 599 N.Y.S.2d at 571 (1st Dep't 1993).

**SECOND DEPARTMENT***In re Cooper*<sup>830</sup>  
(decided February 1, 1993)

Petitioner, who was the surviving partner of a homosexual relationship, claimed that his state equal protection rights<sup>831</sup> were violated.<sup>832</sup> Petitioner alleged he was prohibited from exercising his right of election against the decedent's will as a "surviving spouse,"<sup>833</sup> as set forth in section 5-1.1(c)(1)(B) of the New York Estates, Powers and Trusts Law (E.P.T.L.).<sup>834</sup> The Appellate Division, Second Department concluded that the survivor of a homosexual relationship is not deserving of a right of election because he is not deemed to be a "surviving spouse."<sup>835</sup> Consequently, the court held that the petitioner's constitutional rights had not been violated.<sup>836</sup>

The petitioner had lived with his lover, the decedent, in a spousal-type relationship for approximately four years.<sup>837</sup>

830. 187 A.D.2d 128, 592 N.Y.S.2d 797 (2d Dep't 1993).

831. N.Y. CONST. art I, § 11 ("No person shall be denied the equal protection of the laws of this state or any subdivision thereof . . .").

832. *Cooper*, 187 A.D.2d at 132, 592 N.Y.S.2d at 799.

833. *Id.* at 130, 592 N.Y.S.2d at 798.

834. N.Y. EST. POWERS & TRUSTS LAW § 5-1.1(c)(1)(B) (McKinney 1981 & Supp. 1994) provides in relevant part:

(c) Election by surviving spouse against wills executed and testamentary provisions made after August thirty-first, nineteen hundred sixty-six . . . .

(1) Where, after August thirty-first, nineteen hundred sixty-six, a testator executes a will disposing of his entire estate, and is survived by a spouse, a personal right of election is given to the surviving spouse to take a share of the decedent's estate, subject to the following: . . .

(B) The elective share . . . is one-third of the net estate if the decedent is survived by one or more issue and, in all other cases, one-half of such net estate.

*Id.*

835. *Cooper*, 187 A.D.2d at 134-35, 592 N.Y.S.2d at 801.

836. *Id.* at 135, 592 N.Y.S.2d at 801.

837. *Id.* at 129, 592 N.Y.S.2d at 797.