Touro Law Review

Volume 10 | Number 3 Article 37

1994

Equal Protection: New York State Clinical Laboratory Ass'n Inc. v. Kaladjian

court further noted that employees of the same agency were treated similarly since the same effective date was established as to all of them.[962]

Section 115 of the Civil Service Law provides that the policy of the state is "to provide equal pay for equal work."[963] However, the New York courts have never required this principle to be applied in every case regardless of the conditions, which is clearly evidenced by this case. However, the *McDermott* court noted that "[e]qual protection, especially in matters regarding the State budget, 'does not require that all classifications be made with mathematical precision.'"[964]

The Equal Protection Clauses of the State and Federal Constitutions provide for similar protection in such cases.[965] In fact, the United States Supreme Court uses the same standard for review of state action in cases not involving a suspect class or a fundamental right.[966] Further, the *McDermott* court relied not only on New York cases but also on United States Supreme Court decisions that applied the rational relation standard in arriving at its decision. The analysis of an equal protection claim under both the New York and United States Constitutions is identical.

New York State Clinical Laboratory Ass'n Inc. v. Kaladjian[967] (decided December 16, 1993)

Petitioner, an organization of private diagnostic laboratories, claimed that the 1992 amendment to the Official Compilation of the New York Codes, Rules, and Regulations title 18 section

962. *Id.* at 177, 594 N.Y.S.2d at 439.

963. N.Y. CIV. SERV. LAW § 115 (McKinney 1988).

964. *McDermott*, 188 A.D.2d at 177, 594 N.Y.S.2d at 439 (quoting Shattenkirk v. Finnerty, 97 A.D.2d 51, 57-58, 471 N.Y.S.2d 149, 154 (3d Dep't 1983)).

965. *Id.* at 175, 594 N.Y.S.2d at 437 ("The breadth of coverage afforded by these two clauses has been held to be equal.").

966. *See* Reed v. Reed, 404 U.S. 71 (1971) (using a mere rationality standard to strike down a statute preferring men over women as administrators of estates).

967. 194 A.D.2d 189, 605 N.Y.S.2d 499 (3d Dep't 1993).

505.7(g)(4)[968] [hereinafter N.Y.C.R.R.] violated the Equal Protection Clauses of both the New York State[969] Constitution and the United States Constitution.[970]

The Appellate Division, Third Department held that there was no violation of equal protection rights if a private diagnostic laboratory was held to more stringent restrictions for services being billed to Medicaid, than a private hospital doing similar diagnostic tests. The court found that curbing the abuses of private diagnostic laboratories was rationally related to the legitimate state interest of saving taxpayer money and preserving the agency's budget.[971]

In this case there were two types of tests at issue, "panels" which are a series of different tests performed on the same specimen sample, requiring the use of only one piece of equipment[972] and "profiles" which evaluate a body organ or tissue in a series of tests performed on a number of different specimens using more than one piece of equipment.[973] Before the use of profiles and panels became popular, doctors would normally order only one or two of the tests that comprise a specific panel or profile.[974] In an effort to boost profits these private laboratories began removing the individual tests from the test order forms and replacing them with profiles and panels.[975] Thus, in order for doctors to receive the information they could normally get from one or two tests they now had to order a whole profile or panel which could group together as many as

968. N.Y. COMP. CODES R & REGS. tit 18 § 505.7(g)(4) (1992).

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

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

971. *Id.* at 192, 605 N.Y.S.2d at 501.

972. *Id.* at 190, 605 N.Y.S.2d at 500.

973. *Id.*

974. *Id.* at 191, 605 N.Y.S.2d at 500.

975. *Id.* at 190, 605 N.Y.S.2d at 500.

fifteen different tests. This resulted in doctors ordering more tests than needed.[976]

Medicaid was being charged by the independent labs for each panel or profile as if each test had been ordered separately by the doctor.[977] The Department of Social Services (hereinafter DSS) recognized the wasted tax money being spent on these unnecessary medical tests and therefore, reformed the law which addressed how these private laboratories would be paid by Medicaid.[978] It was this reform that resulted in the lawsuit.[979]

The amendment to N.Y.C.R.R. 505.7(g)(4) in essence refused the payment by Medicaid to independent laboratories for any panels or profiles performed.[980] Now, Medicaid would only pay for "individually ordered tests."[981] The independent laboratories claimed this amendment violated both New York State's and the Federal Equal Protection Clauses because it restricted "independent laboratories" but not "hospital-based laboratories."[982] In addition, the independent laboratories also claimed that the classification drawn by the DSS was arbitrary and capricious.[983] The lower court, without revealing any significant reasoning, decided that the reform measure had a "rational basis" but because DSS' interpretation was in disharmony with the amendment and its administrative history it violated the Equal Protection Clauses.[984]

On appeal, the Appellate Division, Third Department agreed with the New York Supreme Court that the law was not arbitrary or capricious, however they concluded that the amendment was

---

976. *Id.* at 191, 605 N.Y.S.2d at 500 (stating that even though doctors knew the tests were unnecessary, they were ordered solely out of convenience).

977. *Id.* at 190-91, 605 N.Y.S.2d at 500.

978. *Id.* at 191, 605 N.Y.S.2d at 500.

979. Id. at 192, 605 N.Y.S.2d 501.

980. N.Y. COMP. CODES R. & REGS. tit. 18 § 505.7(g)(4) (1992) provides in pertinent part: "[p]ayment for laboratory services provided by independent laboratories . . . only for individually ordered tests." *Id.*

981. *Kaladjian*, 194 A.D.2d at 191, 605 N.Y.S.2d at 501.

982. *Id.* at 192, 605 N.Y.S.2d at 501.

983. *Id.*

984. *Id.*

not in violation of the Equal Protection Clause.[985] To determine the proper equal protection analysis, the court relied on the New York Court of Appeals decision, *Maresca v. Cuomo*.[986] In *Maresca*, the court of appeals distinguished the rational relation or rational basis test from the strict scrutiny test. The case involved a New York statute which mandated retirement of certain judges at the age of seventy.[987] The court decided that when examining legislation affecting the exercise of a fundamental right the judiciary was obligated to examine the law with strict judicial scrutiny.[988] However, if the legislation did not involve a fundamental right the court need only apply the less rigorous, rational relation test.[989] This involves showing there is a rational basis to support the classification[990] or, put another way, there exists the presence of "some conceivable and legitimate state interest" to justify distinguishing between classifications.[991]

In *Forti v. New York State Ethics Commission*[992] in order to be entitled to a higher level of scrutiny then the rational relation test, plaintiffs were required to show they were either members of an identifiable suspect class[993] or they had a "fundamental right to engage in the unrestricted practice of their profession."[994]

Finding that the independent labs did not constitute a "suspect class," nor did they claim the deprivation of a fundamental right,[995] the court held that a rational relation test was the proper level of judicial scrutiny for this matter.[996] The justification for the law was "to prevent abuse of the Medicaid system through

985. *Id.* at 192, 605 N.Y.S.2d at 501.
986. 64 N.Y.2d 242, 475 N.E.2d 95, 485 N.Y.S.2d 724 (1984).
987. *Id.* at 247, 475 N.E.2d at 96, 485 N.Y.S.2d at 725.
988. *Id.* at 250, 475 N.E.2d at 98, 485 N.Y.S.2d at 727.
989. *Id.*
990. *Id.*
991. *Id.*
992. 75 N.Y.2d 596, 554 N.E.2d 876, 555 N.Y.S.2d 235 (1990).
993. *Id.* at 612, 554 N.E.2d 882, 555 N.Y.S.2d at 241.
994. *Id.*
995. *Kaladjian*, 194 A.D.2d at 192, 605 N.Y.S.2d at 501.
996. *Id.*

the ordering of unnecessary tests."[997] The Appellate Division, Third Department found that these independent labs were responsible for 93% of the Medicaid reimbursement costs for laboratory tests and that they were also responsible for most of the abuses in the system.[998] The court found that the DSS was justified in regulating the independent labs because they were contributing the most to the problem. Thus, the classification was found to have satisfied the rational basis test for the different treatment of private and hospital labs under the system. Therefore, the amendment did not violate the New York state Equal Protection Clause.

The court in *Sisario v. Amsterdam Memorial Hospital*[999] elaborated even further on the "rational basis" test and held that when a court is analyzing legislation under that test, they do not even need to know the specific reasons the legislature may have had for enacting it. The court is free to hypothesize as to what those reasons could have been and if they satisfied the test then no violation of the Equal Protection Clause would be found.[1000]

The United States Supreme Court has also ruled in the area of equal protection classification. According to the Court in *Williamson v. Lee Optical*,[1001] a statute would be constitutional under a rational relation test even if the law was not "in every respect logically consistent with its aims."[1002] The Court further stated that "[i]t is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it."[1003]

In *Williamson*, the Oklahoma legislature passed a law where opticians could no longer fit lenses or duplicate a prescription for eyeglasses without a written prescription from a licensed

997. *Id.*
998. *Id.*
999. 159 A.D.2d 843, 552 N.Y.S.2d 989 (3d Dep't 1990).
1000. *Id.* at 844, 552 N.Y.S.2d at 990 (quoting Maresco v. Cuomo, 64 N.Y.2d 242, 251, 475 N.E.2d 95, 99, 485 N.Y.S.2d 724, 728 (1984)).
1001. 348 U.S. 483 (1955).
1002. *Id.* at 487.
1003. *Id.* at 488.

optometrist or ophthalmologist.[1004] The Court determined that eye care was related to the health and welfare of the citizens of Oklahoma and as a result the legislature could regulate it.[1005] The legislature was within its police power to determine that poor eyesight was the "evil at hand for correction"[1006] and that requiring its citizens to see an optometrist or opthamologist every time they needed new glasses was a rational way to correct this evil.[1007] The Court concluded that because there was a rational basis for the legislation then there was no violation of the Equal Protection Clause. Therefore, the law was constitutional.[1008]

As the law currently stands there seems to be no notable difference between an equal protection analysis under the Federal Constitution and the New York State Constitution when no suspect class or fundamental right is at issue. If the court can find a rational basis for the legislation, be it expressly provided by the legislature or inferred by the courts, no violation of the Equal Protection Clause will be found.

FOURTH DEPARTMENT

Barth v. Crosson[1009]
(decided December 29, 1993)

Plaintiffs, present and former family court judges of Onondaga and Oneida Counties in the fourth department, brought an action seeking to set aside the disparity between their salaries and those of judges in twelve other New York Counties located in the first, second, third and fourth departments.[1010] The plaintiffs claimed that the salary disparity, pursuant to New York Judiciary Law, section 221-e,[1011] which sets salaries by county for all New York

1004. *Id.* at 485.
1005. *Id.* at 487.
1006. *Id.* at 488.
1007. *Id.* at 490.
1008. *Id.* at 488.
1009. ___ A.D.2d ___, 607 N.Y.S.2d 200 (4th Dep't 1993).
1010. *Id.* at ___, 607 N.Y.S.2d at 201.
1011. N.Y. JUD. LAW § 221-e (McKinney Supp. 1993).