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Equal Protection: Barth v. Crosson

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).

family court judges, violated their equal protection of the laws under the Federal[1012] and New York State[1013] Constitutions.[1014] The appellate division held that the plaintiffs' equal protection rights had been violated because a salary disparity existed. Additionally, family court judges of Erie and Monroe Counties,[1015] whose claims were not time barred, were entitled to back pay.[1016] As for the disparity between the plaintiffs' salaries and the judges in the first and second departments, the court held that there was no constitutional violation because there was a rational basis for the disparity.[1017] With respect to the third department, however, the court held that the evidence presented did not support an award of summary judgment for either the plaintiffs or defendants.[1018]

The appellate division stated that the defendant had failed to establish a rational basis for the salary disparity within the fourth department.[1019] The court, however, found that the higher cost of living in the first and second departments provided a rational basis for the disparate salaries between those departments and the fourth department.[1020]

The plaintiffs based their claim on the salary variations set forth in section 221-e of the Judiciary Law.[1021] Salaries for Onondaga and Oneida family court judges have remained at the low end of the ranges specified by the Judiciary Law. Plaintiffs

1012. U.S. CONST. amend. XIV. The Fourteenth Amendment provides in pertinent part: "No state shall make or enforce law which shall . . . deny to any person within its jurisdiction the equal protection of the laws." *Id.*

1013. N.Y. CONST. art. 1, § 11. This section provides in pertinent part: "No person shall be denied the equal protection of the laws of this state . . . ." *Id.*

1014. *Barth*, ___ A.D.2d at ___, 607 N.Y.S.2d at 201.

1015. *Id.* at ___, 607 N.Y.S.2d at 201-02. Erie and Monroe Counties are both located in the fourth department.

1016. *Id.* at ___, 607 N.Y.S.2d at 201-02.

1017. *Id.* at ___, 607 N.Y.S.2d at 201-02.

1018. *Id.* at ___, 607 N.Y.S.2d at 202.

1019. *Id.* at ___, 607 N.Y.S.2d at 201. The court stated "[t]he duties and responsibilities of all plaintiffs are equivalent to those of Family Court Judges in Erie or Monroe County and caseloads in the four counties are comparable. Differences in the costs of living in those counties are insignificant." *Id.*

1020. *Id.* at ___, 607 N.Y.S.2d at 201-02.

1021. N.Y. JUD. LAW § 221-e (McKinney Supp. 1993).

successfully instituted the present action challenging the constitutionality of the differentials. On appeal, the appellate division followed the reasoning of *Pomilio v. Crosson*,[1022] where the Supreme Court, Oneida County, concluded that a rational basis existed for the salary disparity.[1023]

In evaluating the disparity between family court judges in several judicial districts, the court reviewed cost of living differences, including the cost of acquiring a home and judicial duties, such as responsibilities and caseloads to determine whether the disparity was constitutional.[1024] In reviewing judicial salaries and claims of disparity based on equal protection of the laws, New York courts presume legislation is valid as long as "the classification created by the statute is rationally related to a legitimate state interest."[1025] A test used by the New York Court of Appeals in determining whether a judicial salary disparity is constitutional, is to determine if there exists a "true unity of . . . judicial interest . . . indistinguishable by separate geographic considerations.[1026] In *Davis v. Rosenblatt*,[1027] the court, used this test for the salary disparity existing among city court judges, and stated that while "equal protection does not require territorial uniformity, . . . a territorial distinction which has no rational basis will not support a state statute."[1028] In other words, if the counties where the disparity exists are all located

1022. 1993 WL 560808 (4th Dep't 1993).

1023. *Barth*, ___ A.D.2d at ___, 607 N.Y.S.2d at 201.

1024. *Id.* at ___, 607 N.Y.S.2d at 201-02; *see also* Burke v. Crosson, 191 A.D.2d 997, 998 595 N.Y.S.2d 272, 273 (4th Dep't 1993); Edelstein v. Crosson, 187 A.D.2d at 691, 695-96, 590 N.Y.S.2d 277, 278 (2d Dep't 1992).

1025. Davis v. Rosenblatt, 159 A.D.2d 163, 170, 559 N.Y.S.2d 401, 405 (3d Dep't 1990) (stating that city court judges successfully appealed on the issue of salary disparities set forth by the New York State Judiciary Law).

1026. *See* Weissman v. Evans, 56 N.Y.2d 458, 463, 438 N.E.2d 397, 399, 452 N.Y.S.2d 864, 866 (1982) (stating that district court judges in neighboring counties successfully appealed salary disparities set forth in the New York State Judiciary Law).

1027. 159 A.D.2d 163, 559 N.Y.S.2d 401 (3d Dep't 1990).

1028. *Id.* at 171, 559 N.Y.S.2d at 405.

within the same judicial departments, unity of judicial interest can be established.

In reaching its decision in *Barth*, the court found that unity of judicial interest existed among the counties located within the fourth department.[1029] The court, however, found higher salaries in the remaining first and second department counties were justified because "a significantly higher cost of living" provided a rational basis for the geographic disparities.[1030]

In determining the level of rational basis that its courts should use for equal protection cases involving judicial salary disparity, New York has followed federal equal protection requirements.[1031] In *Weissman v. Evans*,[1032] the New York Court of Appeals, relied on *Reed v. Reed*.[1033] *Reed* supports the United States Supreme Court's view that "[a] classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly [situated] shall be treated alike.'"[1034] Thus, *Reed* stands for the proposition that even legislation that serves a state interest is forbidden by the Equal Protection Clause unless it is supported by a fair and substantial relationship to that interest.[1035]

In conclusion, under the Equal Protection Clause of both the United States and New York State Constitutions, legislation that causes a disparity in judicial salaries requires that the law be sustained if: a rational basis exists it can withstand a claim based on evidence of geographic and cost of living differences, as well

1029. *Barth*, ___ A.D.2d at ___, 607 N.Y.S.2d at 201.

1030. *Id.* at ___, 607 N.Y.S.2d at 201-02.

1031. *See Weissman*, 56 N.Y.2d at 465-66, 438 N.E.2d at 400-01, 452 N.Y.S.2d at 867 (holding that there was no rational basis for the salary disparity between district court judges in the neighboring counties of Suffolk and Nassau which were both in the same department).

1032. *Id.*

1033. 404 U.S. 71 (1971) (stating that Iowa State code which provided that males would be preferred over females to administer intestate estates was an arbitrary classification).

1034. *Id.* at 76 (quoting Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920)).

1035. *Id.*

as differences in judicial duties, functions, responsibilities and caseloads.[1036]

1036. *See, e.g.*, Mackston v. State, ___ A.D.2d ___, 607 N.Y.S.2d 357 (2d Dep't 1994); Vogt v. Crosson, ___ A.D.2d ___, 606 N.Y.S.2d 57 (3d Dep't 1993); Davis v. Rosenblatt, 159 A.D.2d 163, 559 N.Y.S.2d 401 (3d Dep't 1990); *Weissman*, 56 N.Y.2d at 466, 438 N.E.2d at 400, 452 N.Y.S.2d at 867.