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Equal Protection

Maryland economic assistance program.[456] The Court further wrote that a state did not have to "choose between attacking every aspect of a problem or not attacking the problem at all. It is enough that the state's action be rationally based and free from invidious discrimination."[457]

New York State has likewise adopted the rational basis standard enunciated in *Dandridge* when determining whether legislation is not unconstitutional under the equal protection clause of the New York State Constitution. In *Alevy v. Downstate Medical Center*,[458] the New York Court of Appeals referred to *Dandridge* and found that the rational relation standard is accepted as the proper test to be applied in the areas of economic and social welfare legislation.[459]

Therefore, in analyzing an equal protection claim under the New York State Constitution, the New York Court of Appeals utilizes the same principles as the United States Supreme Court uses in analyzing an equal protection claim under the United States Constitution.[460] To wit, social and economic legislation is subject to the lowest form of judicial scrutiny, the rational relation standard. Additionally, each court system condones a "one step at a time" program for dealing with social and economic reform.

Golden v. Clark[461]
(decided October 23, 1990)

Plaintiffs, various city and political party officials, voters, and political parties, challenged the constitutionality of New York

456. *Id.* at 487.

457. *Id.* at 486-87 (citations omitted).

458. 39 N.Y.2d 326, 348 N.E.2d 537, 384 N.Y.S.2d 82 (1976).

459. *Id.* at 332, 348 N.E.2d at 542, 384 N.Y.S.2d at 87.

460. *See, e.g.*, Diamond v. Cuomo, 70 N.Y.2d 338, 342, 514 N.E.2d 1356, 1357, 520 N.Y.S.2d 732, 733 (1987); Elmwood-Utica Houses, Inc., v. Buffalo Sewer Auth., 65 N.Y.2d 489, 495, 482 N.E.2d 549, 552, 492 N.Y.S.2d 931, 934 (1985); Under 21, Catholic Home Bureau for Dependent Children v. City of New York, 65 N.Y.2d 344, 364, 482 N.E.2d 1, 10, 492 N.Y.S.2d 522, 531 (1985).

461. 76 N.Y.2d 618, 564 N.E.2d 611, 563 N.Y.S.2d 1 (1990).

City Charter provision, section 2604(b)(15),[462] contending that it violated their state[463] equal protection rights, impaired their fundamental rights of free association and free speech under the state[464] constitution, and constituted an impermissible delegation of rule-making authority to a non-legislative body.[465] The Supreme Court, Kings County granted plaintiffs' motion for summary judgment and declared the charter provision unconstitutional. On direct appeal, the court of appeals reversed and held that the provision was constitutional.[466]

The plaintiffs' first contention was that section 2604(b)(15),[467] denied them their constitutional right to equal protection under the law by infringing on various fundamental rights. The court explained that if the section creates classifications that burden the exercise of a fundamental right, then the section must survive strict scrutiny analysis in order to be declared constitutional. That is, the classification must promote a compelling state interest and be narrowly tailored to achieve that interest.[468] However, if fundamental rights are not burdened, then the classification will be

462. New York City Charter § 2604, subd. b, para. 15.

463. N.Y. CONST. art. I, § 11.

464. N.Y. CONST. art. I, § 8 ("Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press.").

465. N.Y. CONST. art. III, § 1 ("The legislative power of this state shall be vested in the state and assembly.").

466. *Golden*, 76 N.Y.2d at 631, 564 N.E.2d at 618, 563 N.Y.S.2d at 8.

467. Section 2604(b)(15) states:

> No elected official, deputy mayor, deputy to a citywide or boroughwide elected official, head of any agency, or other public servant who is charged with substantial policy discretion as defined by rule of the board may be a member of the national or state committee of a political party, serve as an assembly district leader of a political party or serve as the chair or as an officer of the county committee or county executive committee of a political party, except that a member of the council may serve as an assembly district leader or hold any lesser political office as defined by rule of the board.

New York City Charter § 2604, subd. b, para. 15.

468. *Golden*, 76 N.Y.2d at 623-24, 564 N.E.2d at 613-14, 563 N.Y.S.2d at 3-4.

upheld if there is a "rational basis for its enactment."[469] The court concluded that strict scrutiny analysis would not apply in this case because the city charter provision did not sufficiently impair the plaintiffs' rights.[470]

In coming to this conclusion, the court analogized this case to *Rosenstock v. Scaringe*.[471] In *Rosenstock*, the plaintiff challenged a section of the Education Law which prohibited more than one family member from being a member of the same board of education in any school district.[472] Plaintiff claimed that the section violated the fundamental right to seek office and to vote. The court held that the only right directly or indirectly impacted was the right to hold office, which is not sufficient to invoke a strict scrutiny analysis because the right to hold office is not a fundamental right.[473] The *Golden* court stated that it applied a rational basis analysis and found that the section of the Education Law in issue "was rationally related to the legitimate state interest of insuring that a board of education represent a wide cross section of the community."[474] The *Golden* court further noted that in *Rosenstock*, the impact on the right to vote was incidental and "did not disenfranchise any identifiable class of the electorate."[475] Consequently, the court concluded that the same rational relation analysis applied in *Rosenstock* should be utilized in *Golden*.

Applying the rational basis test, the court noted that the purpose of section 2604(b)(15) is:

> [T]o eliminate conflicts of interest that arise when public officials are simultaneously subject to the demands of both their constituencies and their political parties, to broaden opportunities for political and public participation, to reduce the opportunities

469. *Id.* at 624, 564 N.E.2d at 614, 563 N.Y.S.2d at 4 (citing Maresca v. Cuomo, 64 N.Y.2d 242, 475 N.E.2d 95, 485 N.Y.S.2d 724 (1984); Rosenstock v. Scaringe, 40 N.Y.2d 563, 357 N.E.2d 347, 388 N.Y.S.2d 876 (1976)).

470. *Id.* at 626, 564 N.E.2d at 615, 563 N.Y.S.2d at 5.

471. 40 N.Y.2d 563, 357 N.E.2d 347, 388 N.Y.S.2d 876 (1976).

472. *Id.* at 564, 357 N.E.2d at 348, 388 N.Y.S.2d at 877.

473. *Id.* (citing Bullock v. Carter, 405 U.S. 134, 142-43 (1972)).

474. *Golden*, 76 N.Y.2d at 624, 564 N.E.2d at 614, 563 N.Y.S.2d at 4.

> for corruption inherent in dual officeholding, and, through all of these methods, to increase citizens' confidence in the integrity and effectiveness of their government.[476]

The court concluded that section 2604(b)(15) was intended to address these legitimate state interests. Furthermore, the court found that the section was rationally related to furthering those interests because section 2604(b)(15) seeks to eliminate potential conflicts of interest and opportunity for corruption. Therefore, the statute does not violate plaintiffs' equal protection rights under the state constitution.[477]

The plaintiffs' second contention was that section 2604(b)(15) violated their fundamental rights of free speech and association guaranteed by the New York State Constitution article I, sections 8[478] and 9.[479] The court stated that the analysis to be applied is an examination of whether the statute significantly burdens rights guaranteed by the state constitution. If so, then the statute can only remain "valid if it advances a compelling state interest."[480] The court found that the city need not supply a compelling interest because section 2604(b)(15) did not impair the constitutional rights of political parties. The section "is entirely neutral on issues involving party politics . . . [and] does not deprive political parties or their members of the right to associate with the individuals of their choosing or the right to identify the people who constitute a political party."[481] Accordingly, the court determined that there was no violation of section 8 or section 9 of article I of the New York State Constitution.

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475. *Id.*

476. *Id.* at 626, 564 N.E.2d at 615, 563 N.Y.S.2d at 5.

477. *Id.* at 627, 564 N.E.2d at 616, 563 N.Y.S.2d at 6.

478. N.Y. CONST. art. I, § 8 ("Every citizen may freely speak, write and publish his sentiments on all subjects . . . and no law shall be passed to restrain or abridge the liberty of speech or of the press.").

479. *Golden*, 76 N.Y.2d at 627, 564 N.E.2d at 616, 563 N.Y.S.2d at 6; N.Y. CONST. art. I, § 9 ("No law shall be passed abridging the rights of the people peaceably to assemble and petition the government or any department thereof. . . .").

480. *Golden*, 70 N.Y.2d at 627-28, 564 N.E.2d at 616, 563 N.Y.S.2d at 6 (citing Eu v. San Fransisco Democratic Comm., 489 U.S. 214 (1989)).

481. *Id.* at 628, 564 N.E.2d at 616, 563 N.Y.S.2d at 6.

The plaintiffs' final claim was that section 2604(b)(15) "constitute[d] an impermissible delegation of rule-making authority to the Conflicts of Interest Board,"[482] a non-legislative body. The section allows the Conflicts of Interest Board (Board) to create rules in defining two specific terms. These terms are "(1) which enumerated public servants are 'charged with substantial policy discretion' . . . and (2) the 'lesser political office[s]' a member of City Council may hold."[483] The court cited *Levine v. Whalen*[484] for the general rule that the legislature may delegate its rule-making power to another agency "only if it limits the field" of rule-making authority of the agency.[485] The court noted that section 2600 sets the guiding purpose of the entire chapter. Section 2603(a) delegates the rule-making authority to the Board, but the Board must act "consistent with" the guiding purpose of the chapter. The court found that these two provisions, limit the field of the Board's authority and, therefore, section 2604(b)(15) is constitutional.[486]

Judge Hancock dissented from the majority's decision.[487] Judge Hancock referred to New York's long history of reading the New York State Constitution as more protective of personal liberties than the Federal Constitution. The dissent noted that a strict scrutiny analysis is required for cases involving an infringement of the rights of freedom of speech, association, and the right to vote. Judge Hancock saw the failure to apply strict scrutiny as a severe curtailment of the fundamental rights involved.[488]

The majority, however, had conceded that these rights are fundamental, but found that they were not directly impaired and, therefore, a strict scrutiny analysis was not required. Judge

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482. *Id.* at 630, 564 N.E.2d at 618, 563 N.Y.S.2d at 8.

483. *Id.*

484. 39 N.Y.2d 510, 349 N.E.2d 820, 384 N.Y.S.2d 721 (1976).

485. *Id.* at 515, 349 N.E.2d at 822, 384 N.Y.S.2d at 723.

486. *Golden*, 76 N.Y.2d at 630-31, 564 N.E.2d at 618, 563 N.Y.S.2d at 8.

487. *Id.* at 631, 564 N.E.2d at 618, 563 N.Y.S.2d at 8 (Hancock, J., dissenting).

488. *Id.* at 632, 564 N.E.2d at 619, 563 N.Y.S.2d at 9 (Hancock, J., dissenting).

Hancock reasoned that when there is a significant intrusion on the freedom of expression and association, a strict scrutiny analysis must be applied in order to avoid a severe curtailment of these fundamental rights.[489]

Further, Judge Hancock concluded that when strict scrutiny is applied to section 2604(b)(15), it does not pass constitutional muster. Stating that the main purposes of section 2604(b)(15) was to prevent corruption and conflicts of interest, Judge Hancock doubted whether these were real or compelling. Even assuming that the interests were compelling, Judge Hancock did not believe that section 2604(b)(15) was narrowly tailored to serve those interests. In sum, Judge Hancock would prefer relying on "an alert citizenry, diligent prosecutors and resourceful reporters" to battle the evils of corruption rather than resorting to legislation that burdens fundamental rights.[490]

The plaintiffs' also relied on several federal decisions.[491] The majority noted that the Supreme Court has identified two fundamental rights with respect to ballot access. These rights arise in cases involving restrictions based on wealth and restrictions flowing from classifications that burden small or new parties or independents.[492]

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489. *Id.* at 633, 564 N.E.2d at 620, 563 N.Y.S.2d at 10 (Hancock, J., dissenting).

490. *Id.* at 643, 564 N.E.2d at 626, 563 N.Y.S.2d at 16 (Hancock, J., dissenting).

491. It should be noted that the plaintiffs relied solely on the state constitution. The majority stated in a footnote that:

> Although plaintiffs rest their case solely on State grounds, they have not distinguished the State constitutional provisions from their Federal counterparts nor have they attempted to demonstrate how the State provisions, either singly or in combination establish any more or greater rights than those guaranteed to the citizens of New York by the Federal Constitution.

Id. at 623 n.2, 564 N.E.2d at 623 n.2, 563 N.Y.S.2d at 3 n.2.

492. *See* Illinois Elections Bd. v. Socialist Workers Party, 440 U.S. 173 (1979) (striking down provisions that required a certain number of signatures on a petition to run for office because the provision burdened the right to associate, burdened small parties and burdened the right to vote); Bullock v. Carter, 405 U.S. 134 (1972) (applying "close scrutiny" to a statute that imposed large filing fees on potential candidates and held that since the state

The court examined section 2604(b)(15) in light of the United States Supreme Court decision in *Clements v. Fashing*.[493] In *Clements*, the Supreme Court upheld two provisions of the Texas Constitution that restricted a public official from running for another office until he had served his current term.[494] The Court reasoned that these provisions did not limit political opportunity or burden minority parties or independents.[495] Similarly, the New York Court of Appeals found that section 2604(b)(15) imposes no barrier based on wealth nor does it restrict small parties and independents. The court stated that there was no direct impact on voting rights and, therefore, no fundamental rights are infringed.[496]

With respect to the plaintiffs' free speech and association claim the court was not persuaded by Supreme Court cases which plaintiffs' relied on.[497] In *Eu v. San Francisco Democratic Committee*,[498] the Supreme Court addressed the constitutionality of a California statute that attempted to control the size and composition of political parties.[499] The Court struck down the provision because it hardened the associational and free speech rights of the members of the political parties to choose their leaders.[500] Similarly, in *Tashjian v. Republican Party of Connecticut*,[501] the Court dealt with a Connecticut statute that required primary voters to be registered with that primary party.[502] Because this statute limited the party's associational rights at the "crucial juncture" of the primary, the Court held the statute invalid.[503]

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used arbitrary means to further its interests, the statute violated equal protection).

493. 457 U.S. 957 (1982).
494. *Id.* at 971.
495. *Id.* at 965.
496. *Golden*, 76 N.Y.2d at 626, 564 N.E.2d at 615, 563 N.Y.S.2d at 5.
497. *Id.* at 629, 564 N.E.2d at 617, 563 N.Y.S.2d at 7.
498. 489 U.S. 214 (1989).
499. *Id.* at 218.
500. *Id.* at 229-31.
501. 479 U.S. 208 (1986).
502. *Id.* at 210-11 (citing CONN. GEN. STAT. § 9-431 (1985)).
503. *Id.* at 216-17.

These cases involved restrictions upon the internal affairs of the political party and, hence, violated the party's and individuals' rights to speech and association. Whereas in the case at hand, the court of appeals stated that section 2604(b)(15) "leaves political parties free to organize and participate in the election process without constraint."[504]

SUPREME COURT, APPELLATE DIVISION

FIRST DEPARTMENT

Margolis v. New York City Transit Authority[505]
(decided May 15, 1991)

Petitioner, one of three New York City Transit Authority (TA) employees remaining in the position of trainmaster, was denied a wage increase granted to other supervisory personnel in the years 1985 through 1987. He claimed the denial was arbitrary and capricious,[506] and therefore constituted a violation of the equal protection clause of the federal[507] and state[508] constitutions.[509] The court stated that the petitioner had an equal protection claim and reversed the supreme court's decision that granted the defendant's motion to dismiss.[510] The court stated that "the singling out of petitioner as uniquely unqualified for general wage increases granted all other supervisory personnel is subject to equal protection scrutiny, and cannot be sustained in the absence of a rational basis."[511] The court stated further that the question of whether denial of the wage increase had the rational basis of avoiding "the evil[s] of 'salary compression'"[512] was a

504. *Golden*, 76 N.Y.2d at 629, 564 N.E.2d at 617, 563 N.Y.S.2d at 7.
505. 157 A.D.2d 238, 555 N.Y.S.2d 711 (1st Dep't 1990).
506. *Id.* at 242, 555 N.Y.S.2d at 714.
507. U.S. CONST. amend. XIV, § 1.
508. N.Y. CONST. art. I, § 11.
509. *Margolis*, 157 A.D.2d at 240, 555 N.Y.S.2d at 712.
510. *Id.* at 241-43, 555 N.Y.S.2d at 713-14.
511. *Id.* at 241, 555 N.Y.S.2d at 713.
512. *Id.* at 242, 555 N.Y.S.2d at 714.