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### Equal Protection

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New York State Society of Enrolled Agents v. New York State  
Division of Tax Appeals<sup>567</sup>  
(decided August 13, 1990)

The appellants, a voluntary association of enrolled agents authorized to represent clients in tax disputes before the United States Internal Revenue Service, commenced this action to invalidate Tax Law section 2014,<sup>568</sup> which prohibits enrolled agents from representing clients regarding state tax appeals.

New York State Society of Enrolled Agents argued that the statute was unconstitutional because it violated their state<sup>569</sup> and federal<sup>570</sup> rights guaranteed by the equal protection clauses of both constitutions.<sup>571</sup> The court held that the statute was constitutional.<sup>572</sup>

In 1986, State Tax Law article 40 was enacted "to remove any perception of unfairness or inequity in the tax appeals hearing system . . . ." <sup>573</sup> The law precludes enrolled agents from appearing on behalf of petitioners at state tax appeal hearings; they may only represent their clients up to the hearing stage. The statute allows "an attorney admitted to practice in the courts of record of this state, . . . a certified public accountant licensed in this state or . . . a public accountant licensed in this state" <sup>574</sup> to appear on behalf of the petitioners.

The court, in evaluating the plaintiffs' equal protection claim, stated that this law did not interfere with the plaintiffs' exercise of a fundamental right, nor was a suspect classification at issue. Therefore, the court employed a 'reasonable basis' standard.

567. 161 A.D.2d 1, 559 N.Y.S.2d 906 (2d Dep't 1990).

568. N.Y. TAX LAW § 2014 (McKinney 1987 & Supp. 1990).

569. N.Y. CONST. art. I, § 11.

570. U.S. CONST. amend. XIV, § 1.

571. *Enrolled Agents*, 161 A.D.2d at 3, 559 N.Y.S.2d at 907. The plaintiff's other claims included that the law was an invalid exercise of the State's police power and that the law violated the plaintiff's right to contract as guaranteed by the Federal Constitution. *Id.*

572. *Id.* at 9, 556 N.Y.S.2d at 911.

573. *Id.* at 4, 556 N.Y.S.2d at 908.

574. *Id.* (citing N.Y. TAX LAW § 2014 (McKinney 1987 & Supp. 1990)).

"[A] governmental classification will not offend the Equal Protection Clauses of the State and Federal Constitutions if it bears a fair and substantial relation to some conceivable and legitimate State interest."<sup>575</sup> Because the state is in control of regulating and disciplining the classes of professionals listed in the statute, allowing only specified professionals to represent clients at state tax hearings promotes the state's interest of ensuring professional competence in representation in state tax disputes. Therefore, the law was rationally related to the state interest promoted and was constitutional.<sup>576</sup>

People v. Blunt<sup>577</sup>  
(decided October 22, 1990)

The defendant, convicted of first degree burglary and first degree assault, contended that his right to equal protection guaranteed by the federal<sup>578</sup> and the state constitutions<sup>579</sup> was violated by the prosecution's alleged use of gender based peremptory challenges. Under section 270.25 of the state's Criminal Procedure Law,<sup>580</sup> an attorney can peremptorily challenge a prospective juror without having to state a reason why he or she was excluded. The prosecution countered that the defendant, a male, had no standing to assert an equal protection claim regarding possible discrimination against women. The court determined that the state constitution, under the equal protection clause, prohibits the use of gender based peremptory challenges and held that a *prima facie* case of improper discrimination was established. The appeal was held in abeyance and the case remitted to the county court "to hear and report on the prosecutor's

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575. *Id.* at 8, 556 N.Y.S.2d at 910 (citations omitted).

576. *Id.* at 8-9, 556 N.Y.S.2d at 910-11. For a discussion of equal protection doctrine under the federal law, see *supra* notes 454-457 and accompanying text.

577. 162 A.D.2d 86, 561 N.Y.S.2d 90 (2d Dep't 1990), *aff'd on remand*, No. 901-05958, 1991 N.Y. App. Div. LEXIS 12602 (2d Dep't Oct. 7, 1991).

578. U.S. CONST. amend. XIV, § 1.

579. N.Y. CONST. art. I, § 11.

580. N.Y. CRIM. PROC. LAW § 270.25 (McKinney 1982).