



1991

Equal Protection

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/lawreview>



Part of the [Civil Law Commons](#), [Civil Procedure Commons](#), [Constitutional Law Commons](#), [Courts Commons](#), [Fourteenth Amendment Commons](#), [Labor and Employment Law Commons](#), [State and Local Government Law Commons](#), and the [Supreme Court of the United States Commons](#)

Recommended Citation

(1991) "Equal Protection," *Touro Law Review*. Vol. 8 : No. 1 , Article 42.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol8/iss1/42>

This New York State Constitutional Decisions is brought to you for free and open access by Digital Commons @ Touro Law Center. It has been accepted for inclusion in Touro Law Review by an authorized editor of Digital Commons @ Touro Law Center. For more information, please contact lross@tourolaw.edu.

Therefore, the *Sisario* court is consistent with current federal standards on equal protection and due process analyses with respect to the issues addressed in that case. The federal courts use a “one step at a time approach” to legislative initiative intending to remedy a social or economic problem. As articulated in *Sisario*, equal protection will not be violated if every aspect of an issue is not addressed by the legislature. Further, federal analysis parallels the *Sisario* decision in that access to the courts for civil proceedings is generally not an absolute right and may be restricted, absent a violation of fundamental constitutional rights, if there is a rational basis for doing so.

Arnold v. Constantine⁶³¹
(decided November 15, 1990)

Recent appointees to the aviation unit of the state police contended that the police superintendent’s failure to compensate them at the same pay rate as other pilots in the aviation unit violated their equal protection rights under the federal⁶³² and state⁶³³ constitutions. The court held that there was no equal protection violation under either the federal or state constitutions.⁶³⁴

In 1985, respondent, police superintendent decided to expand the types of duties to be performed by the aviation unit and increased the unit number of operational hours. Additionally, respondent re-classified new applicants for the aviation unit as troopers instead of the higher ranked position of technical sergeant.⁶³⁵ In 1986, four new appointees, petitioners herein, were assigned to the aviation unit as troopers. Upon respondent’s failure to promote petitioners to technical sergeants, petitioners brought an article 78 proceeding challenging this failure to compensate them at a pay rate equal to the other pilots in the unit.⁶³⁶

631. 164 A.D.2d 203, 563 N.Y.S.2d 259 (3d Dep’t 1990).

632. U.S. CONST. amend. XIV, § 1.

633. N.Y. CONST. art. I, § 11.

634. *Arnold*, 164 A.D.2d at 206, 563 N.Y.S.2d at 261.

635. *Id.* at 204-05, 563 N.Y.S.2d at 260.

636. *Id.* at 205, 563 N.Y.S.2d at 261.

The court based its decision on the rational relation test set forth in *Shattenkirk v. Finnerty*.⁶³⁷ For equal protection purposes, the rational relation test requires that a regulation “be sustained unless it bears no rational relation to a legitimate government interest.”⁶³⁸ In applying the rational relation test to the case at hand, the court determined that: 1) the government interest in obtaining additional pilots in order to expand the pilot program for the aviation unit was vital to the public’s interest, and hence a legitimate goal,⁶³⁹ and 2) re-classifying entry-level rank was rationally related to achieving the aforesaid purpose because reclassification made it possible to “maintain a continuity of qualified pilots for a vital public service without dependence upon the availability of budget appropriations needed to create Technical Sergeant positions.”⁶⁴⁰ Therefore, since the re-classification in *Arnold* was rationally related to a legitimate government interest, the court found that there was no equal protection violation.⁶⁴¹

For equal protection purposes, New York courts apply the same judicial standard when reviewing compensation regulations as do the federal courts. The court in *Shattenkirk* stated: 1) the equal protection clauses of the New York State Constitution and United States Constitution provide equal coverage; 2) both provisions apply to disputes involving compensation; and 3) “[f]or equal protection purposes, the appropriate standard for judicial review of a regulation, absent a suspect classification, is that it be sustained unless it bears no rational relation to a legitimate government interest.”⁶⁴² Based on the foregoing, it is evident that the State of New York and the federal government apply the same standard when reviewing the validity of a compensation

637. 97 A.D.2d 51, 471 N.Y.S.2d 149 (3d Dep’t 1983), *aff’d*, 62 N.Y.2d 949, 468 N.E.2d 53, 479 N.Y.S.2d 215 (1984).

638. *Arnold*, 164 A.D.2d at 206, 563 N.Y.S.2d at 261 (quoting *Shattenkirk*, 97 A.D.2d at 55, 471 N.Y.S.2d at 153).

639. *Id.*

640. *Id.*

641. *Id.*

642. *Shattenkirk*, 97 A.D.2d at 55, 47 N.Y.S.2d at 153.

regulation that is challenged on equal protection grounds.⁶⁴³

SUPREME COURT

WESTCHESTER COUNTY

People v. Green⁶⁴⁴
(decided October 3, 1990)

Defendant was accused of unauthorized use of a vehicle in the second degree, two counts of criminal possession of stolen property in the fourth degree and unlawful possession of marijuana. During jury selection, the prosecutor peremptorily challenged a prospective juror who was deaf. When questioned by the trial judge as to why the prospective juror was being challenged, the prosecutor responded that he had no other reason other than the prospective juror's deafness. The court rejected the prosecutor's explanation and permitted the prospective juror to be sworn and seated among the other accepted jurors.⁶⁴⁵

The county court held that the state constitution's equal protection clause⁶⁴⁶ prohibits the use of peremptory challenges based solely upon a person's deafness.⁶⁴⁷

In *People v. Guzman*,⁶⁴⁸ the court of appeals held that a prospective juror who was also deaf could not be challenged for cause.⁶⁴⁹ In the case at bar, the court believed that *Guzman* should be extended to peremptory challenges. The court began its analysis by observing that the state constitutional civil rights clause was inapplicable in this case because being deaf was not an

643. For a discussion of the federal equal protection doctrine, see *supra* notes 454-57 and accompanying text.

644. 148 Misc. 2d 666, 561 N.Y.S.2d 130 (County Ct. Westchester County 1990).

645. *Id.* at 667, 561 N.Y.S.2d at 131.

646. N.Y. CONST. art. I, § 11.

647. *Green*, 148 Misc. 2d at 667, 561 N.Y.S.2d at 133.

648. 76 N.Y.2d 1, 555 N.E.2d 259, 556 N.Y.S.2d 7 (1990).

649. *Id.* at 3, 555 N.E.2d at 260, 556 N.Y.S.2d at 10; see N.Y. CRIM. PROC. LAW § 270.20 (McKinney 1982 & Supp. 1991).