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Public Relief: Childs v. Bane

PUBLIC RELIEF

N.Y. CONST. art. XVII, § 1:

The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine.

SUPREME COURT, APPELLATE DIVISION

THIRD DEPARTMENT

Childs v. Bane[1762]
(decided December 16, 1993)

Plaintiffs claimed that they had standing to "prevent the wrongful expenditure, misappropriation . . . or any other illegal or unconstitutional disbursement of state funds"[1763] based on State Finance Law section 123-b.[1764] Plaintiffs also contended that there was a violation of the New York State Constitution[1765] because "the denial of assistance to an applicant who has not complied with a repayment agreement constitutes a blanket elimination of benefits to persons in need of aid."[1766] Furthermore, the plaintiffs claimed that their right to equal protection pursuant to both the New York State[1767] and Federal

1762. 194 A.D.2d 221, 605 N.Y.S.2d 488 (3d Dep't 1993).

1763. *Id.* at 225, 605 N.Y.S.2d at 491 (citing N.Y. FIN. LAW § 123-b) (McKinney 1993)).

1764. N.Y. FIN. LAW § 123-b.

1765. N.Y. CONST. art. XVII, § 1. This section states that "the aid, care and support of the needy are public concerns and shall be provided by the state . . . ." *Id.*

1766. *Childs*, 194 A.D.2d at 225, 605 N.Y.S.2d at 491.

1767. N.Y. CONST. art. I, § 11. Article I, § 11 provides in pertinent part: "No person shall be denied the equal protection of the laws of this state or any subdivision thereof." *Id.*

Constitutions[1768] was violated.[1769] The Appellate Division, Third Department held that Niagara Mohawk Power Corporation had standing to maintain the proposed expenditure of state funds.[1770] The court further held that denying assistance to those applicants who had not signed a repayment agreement was constitutional on two grounds.[1771] First, the state had the discretion to determine who was eligible for state aid and the amount of aid that person is entitled to.[1772] Second, the court ruled that once an applicant became eligible for public assistance, they could still apply for and receive state funds "even though they may have defaulted upon a previously executed repayment agreement."[1773] Finally, the court held that requiring signed repayment plans furthers the state's legitimate goal of providing limited assistance to the neediest individuals.[1774]

Utility customers and Niagara Mohawk Power Corporation filed suit to challenge an administrative directive and an amended regulation to 18 N.Y.C.R.R. 352.5(d)[1775] promulgated by the State Commissioner of Social Services in response to New York

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1768. U.S. CONST. amend. XIV, § 1. This amendment provides in pertinent part: "No state shall make or enforce any law . . . [that will] deny to any person within its jurisdiction the equal protection of the laws." *Id.*

1769. *Childs*, 194 A.D.2d at 225, 605 N.Y.S.2d at 491.

1770. *Id.* at 225, 605 N.Y.S.2d at 490.

1771. *Id.*

1772. *Id.* at 225, 605 N.Y.S.2d at 491.

1773. *Id.*

1774. *Id.* at 225-26, 605 N.Y.S.2d at 491.

1775. N.Y. COMP. CODES R. & REGS. tit. 18 § 352.5(d) (1992). Section 352.5(d) provides in pertinent part: "A payment must be made for utilities previously provided to an applicant for . . . emergency public assistance if such payment is essential to continue or restore utility service . . . ." *Id.* The amended regulation to N.Y. COMP. CODES R. & REGS. tit. 18, § 352.5(d) states that "assistance cannot be provided to an applicant whose gross household income exceeds the public assistance standard of need for the same sized household unless he or she signs a repayment agreement." *Childs*, 194 A.D.2d at 224, 605 N.Y.S.2d at 490. The amendment also provides that "an applicant who is in default on a repayment agreement is not eligible for subsequent assistance." *Id.*

Social Services Law section 131-s,[1776] which set forth the eligibility requirements for utility service assistance. Plaintiff maintained that the administrative directive and amended regulation violated the New York Constitution by eliminating benefits to all persons in need of aid.[1777]

The first constitutional issue the court addressed was whether plaintiff, Niagara Mohawk Power Corporation, had standing as a taxpayer to bring an action for declaratory relief under State Finance Law section 123-b.[1778] The defendant alleged that, since the amended regulation did not constitute an expenditure of state funds, Niagara Mohawk did not have standing to bring the action.[1779] However, in relying on *Community Service Society v. Cuomo*,[1780] the court held that Niagara Mohawk had standing to bring suit because "[a]lthough the promulgation of the amended regulation and [the administrative directive] did not involve the expenditure of state funds, *their implementation will.*"[1781] Therefore, since Niagara Mohawk alleged that the expenditure of

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1776. N.Y. SOC. SERV. LAW § 131-s (McKinney 1993). This section states in relevant part:

> In the case of a person applying for public assistance, supplemental security income benefits of additional state payments pursuant to this chapter, the social services official of the social services district . . . [shall] . . . make a payment to a gas corporation, electric corporation . . . during a period of up to, but not exceeding, four months . . . if such payment is needed to prevent shut-off or to restore service.

Id.

1777. *Childs*, 194 A.D.2d at 225, 605 N.Y.S.2d at 491.

1778. *Id.* at 225, 605 N.Y.S.2d at 490.

1779. *Id.*

1780. 167 A.D.2d 168, 561 N.Y.S.2d 461 (1st Dep't 1990). In *Cuomo*, the court rejected the argument that no taxpayer may bring an action under State Finance Law § 123-b when the challenge does not involve "the direct expenditure of state funds." *Id.* at 170, 561 N.Y.S.2d at 463-64. The court held that where there was a challenge to the "promulgation of . . . regulations . . . involv[ing] the expenditure of state funds," and there were sufficient allegations "to constitute a proper challenge to . . . a 'wrongful expenditure . . . '" thus, plaintiff had standing. *Id.*

1781. *Childs*, 194 A.D.2d at 225, 605 N.Y.S.2d at 490 (emphasis added).

funds might lead to an "unconstitutional disbursement and misapplication of state funds," it had standing to file suit.[1782]

Under federal law, however, Niagara Mohawk would not have standing to sue as a taxpayer. Whether a plaintiff has federal standing as a taxpayer is governed by Article III of the United States Constitution.[1783] Article III limits federal courts to hear "cases" and "controversies."[1784] In *Valley Forge v. Americans United*,[1785] the United States Supreme Court recognized that "'the interests of a taxpayer are too indeterminable, remote, uncertain and indirect to furnish a basis for an appeal to the preventive powers of the Court over their manner of expenditure'"[1786] and upheld a two-part test, defined in *Flast v. Cohen*.[1787] The *Flast* test assesses whether a taxpayer has federal standing. First, "'a taxpayer will be a proper party to allege the unconstitutionality only of exercises of congressional power under the taxing and spending clause of Art. I, § 8 of the Constitution.'"[1788] Second, a taxpayer must "'show that the challenged enactment exceeds specific constitutional limitations upon the exercise of the taxing and spending power and not simply that the enactment is generally beyond the powers

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1782. *Id.*

1783. U.S. CONST. art. III, § 2. Article III, § 2 states in pertinent part: "The judicial power shall extend to all [c]ases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . . ." *Id.*

1784. *Id.* Federal law requires that a litigant must "show he personally suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant," as well as have a "redress[able injury] by a favorable decision." Valley Forge v. Americans United, 454 U.S. 464, 472 (1982).

1785. 454 U.S. 464 (1982). In *Valley Forge*, an organization concerned for separation of church and state lacked standing as a taxpayer to bring suit against the federal government for transferring property to a religious organization without financial payment because the source of plaintiff's complaint was not a congressional action nor "an exercise of authority conferred by the Taxing and Spending Clause of Art. I, § 8." *Id.* at 480.

1786. *Id.* at 478 (quoting Frothingham v. Mellon, 262 U.S. 447 (1923)).

1787. 392 U.S. 83 (1968).

1788. *Id.* at 102.

delegated to Congress by Art. I, § 8.'"[1789] Furthermore, the United States Supreme Court has held that a federal plaintiff's generalized grievance will not satisfy the requirements of standing.[1790]

It is clear that "taxpayer standing has been treated liberally" in New York State.[1791] Thus, it follows from *Valley Forge* that plaintiffs who sue in federal court as taxpayers, have a more difficult time establishing standing than if the same plaintiffs were to challenge an economic or social welfare statute in state court.

The Appellate Division, Third Department found that the amended regulation and administrative directive violated the New York Constitutional mandate that "the aid, care and support of the needy are public concerns and shall be provided by the State . . . ."[1792] Relying on *Tucker v. Toia*,[1793] plaintiff contended that requiring an applicant to sign a repayment plan limited the number of applicants who would benefit from New York Social Services Law section 131-s and was in direct contradiction with the New York State Constitution[1794] because it was a "blanket elimination of benefits to persons in need of aid."[1795]

In reaching its conclusion, the court stated that the plaintiff's reliance on *Tucker* was misguided.[1796] The court relied on

1789. *Id.* at 102-03.

1790. *Valley Forge*, 454 U.S. at 486.

1791. Community Serv. Soc'y v. Cuomo, 167 A.D.2d 168, 170, 561 N.Y.S.2d 461, 463 (1st Dep't 1990).

1792. *Childs*, 194 A.D.2d at 225, 605 N.Y.S.2d at 491 (citing N.Y. CONST. art. XVII, § 11).

1793. 43 N.Y.2d 1, 371 N.E.2d 449, 400 N.Y.S.2d 728 (1977).

1794. *Childs*, 194 A.D.2d at 225, 605 N.Y.S.2d at 491.

1795. *Id.*

1796. *Id.* While the court held in *Tucker* that New York refused to aid those who the state had classified as needy, 43 N.Y.2d at 8, 371 N.E.2d at 452, 400 N.Y.S.2d at 731, the court, in *Childs*, held that by requiring signed payment plans, the state was not refusing to aid those who were classified as eligible for public assistance. 194 A.D.2d at 225, 605 N.Y.S.2d at 491.

Lovelace v. Gross[1797] to substantiate its conclusion that the amended regulation and administrative directive were constitutional.[1798] By upholding the proposition espoused in both *Lovelace* and *Tucker*,[1799] the amended regulation and administrative directive only denied assistance "to persons who d[id] not fall within the statutory definition of needy because their household income exceed[ed] the public assistance standard of need . . . ."[1800] Furthermore, the record showed that once an individual became eligible for public assistance because of his or her low income, the applicant could still receive public assistance even where he or she "may have defaulted upon a previously executed repayment agreement."[1801] Thus, the court ruled that the amended regulation and administrative directive did not violate article XVII, section 1 of the New York Constitution.[1802]

Finally, the court held that the amended regulation and administrative directive did not violate the Equal Protection

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1797. 80 N.Y.2d 419, 605 N.E.2d 339, 590 N.Y.S.2d 852 (1992). In *Lovelace*, a statute limited the amount of public assistance applicants could receive by creating the "grandparent-deeming rule," which required that a part of the "grandparents' income be deemed available to the [applicants] in determining their eligibility for Home Relief payments." *Id.* at 422, 605 N.E.2d at 340, 590 N.Y.S.2d at 853. The court upheld the law, and recognized that although "assisting the needy is a matter of constitutional command[,]" the New York Constitution "vests the legislature with discretion 'in determining the amount of aid and in classifying recipients and defining the term of need.'" *Id.* at 424, 605 N.E.2d at 341, 590 N.Y.S.2d at 852 (citations omitted). Since the grandparent-deeming rule was not a complete bar to public assistance and since an applicant was still eligible for assistance where "available income still falls below the standard of need," the legislative modification of the term "needy" was within the discretion of the legislature, and therefore, constitutional. *Id.* at 426, 605 N.E.2d at 342, 590 N.Y.S.2d at 852.

1798. *Childs*, 194 A.D.2d at 225, 605 N.Y.S.2d at 491.

1799. The principle espoused in these two cases is that the state legislature has discretion in determining who can collect public assistance, as well as what characteristics determine the standard of need. *Lovelace*, 80 N.Y.2d at 424, 605 N.E.2d at 342, 590 N.Y.S.2d at 855; *Tucker*, 43 N.Y.2d at 8, 371 N.E.2d at 452, 400 N.Y.S.2d at 731.

1800. *Childs*, 194 A.D.2d at 225, 605 N.Y.S.2d at 491.

1801. *Id.*

1802. *Id.*

Clause of the New York Constitution.[1803] In reaching its conclusion the court relied on *Jones v. Blum*.[1804] In *Jones*, the court stated that providing a "cutoff point" in determining neediness is "rationally related to the legitimate goals of . . . allocating limited welfare funds to the neediest of applicants."[1805] Similarly, in *Childs*, the court determined that the state had a "legitimate goal of allocating limited public assistance resources to the neediest applicants"[1806] and requiring repayment plans was well within the discretion of the State Commissioner.[1807]

1803. N.Y. CONST. art. I, § 11.

1804. 101 A.D.2d 330, 476 N.Y.S.2d 214 (3d Dep't 1984), *aff'd*, 64 N.Y.2d 918, 477 N.E.2d 620, 488 N.Y.S.2d 379 (1985). In *Jones*, the court held that a 150% gross income rule used to define "needy" in determining the eligibility for Aid to Families with Dependent Children, does not violate the equal protection clause of the New York Constitution. *Id.* at 333, 476 N.Y.S.2d at 217. The 150% gross income rule "assumes that individuals whose gross income exceeds 150% of the established standard of need are capable of self-support . . . ." *Id.* at 333, 476 N.Y.S.2d at 216. The court eventually held that "[a] state does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because . . . it results in some inequality.'" *Id.* at 334, 476 N.Y.S.2d at 217 (quoting Dandridge v. Williams, 397 U.S. 471, 485 (1970)).

1805. *Id.* at 334, 476 N.Y.S.2d at 217.

1806. *Childs*, 194 A.D.2d at 226, 605 N.Y.S.2d at 491.

1807. *Id.* The court stated that "the Commissioner's power to deny assistance is derived by implication from the statutory requirement which conditions the receipt of assistance upon the signing of a repayment plan." *Id.* Furthermore, the court said that "[w]ithout the power to deny assistance, the repayment agreement would be rendered essentially meaningless as it could be ignored with impunity because the failure to abide by it would have no immediate consequences." *Id.*

The court also found that the definition of "household" and "standard of need" did not "impermissibly expand the number of applicants required to sign repayment agreements." *Id.* Since the Commissioner's amended definition of household, found in 18 N.Y.C.R.R. 352.5(d), "was in accord with the commonly understood meaning of 'household,'" the court stated that the definition was rational. *Id.*; *see also* Bates v. Toia, 45 N.Y.2d 460, 464, 382 N.E.2d 1128, 1129, 410 N.Y.S.2d 265, 267 (1978) (holding that where the

Both New York and federal courts apply a rational relationship test to social welfare or economic statutes in assessing whether the Equal Protection Clause has been violated. Thus, there must be a rational relationship between the means and the legislative objective.[1808] For example, the Supreme Court held, in *Dandridge v. Williams*,[1809] that "[in] the area of economics and social welfare, a [s]tate does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect."[1810] As long as the classification has some "reasonable basis," the Supreme Court will not strike down state laws that create such classifications for public assistance programs.[1811] Thus, the administrative directive and amended regulation did not violate the Equal Protection Clause of the United States Constitution.

After addressing several other administrative issues,[1812] the court concluded that there was neither a violation of the New

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commissioner's construction of the relevant statutes "is not irrational or arbitrary, judicial inquiry is foreclosed").

1808. *See, e.g.*, Nordlinger v. Hahn, 112 S. Ct. 2326 (1992) (holding that proposed amendment to state constitution in which longer-term property owners pay lower property taxes than newer owners was rationally related to the legitimate state interest of preserving neighborhoods).

1809. 397 U.S. 471, 486 (1970) (holding that a Maryland maximum grant regulation which places an absolute limit of $250 per month on the amount of a grant under AFDC regardless of the size of the family and its actual need does not violate the Equal Protection Clause).

1810. *Id.* at 485.

1811. *Id.*

1812. *Childs*, 194 A.D.2d at 226-28, 605 N.Y.S.2d at 491-92. The court held that the amendment to 18 N.Y.C.R.R. 352.5(d), which defined the standard of need including 18 N.Y.C.R.R. 352.1(a) and (b), but not (c) and which increased the number of applicants who will have to participate in the repayment agreements, is consistent with the Laws of 1992 (ch. 41, § 165[p]). *Id.* at 227, 605 N.Y.S.2d at 492. The Laws of 1992, ch. 41, § 165[p] allows the Commissioner to promulgate regulations including the determination of client eligibility "to meet emergency circumstances." *Id.* The court ruled that "because the Legislature clearly envisioned a narrowing of the eligibility standards as a means of achieving savings . . . the [amended] definition of standard of need . . . is reasonable." *Id.*; *see* Lovelace v. Gross, 80 N.Y.2d 419, 422 605 N.E.2d 339, 590 N.Y.S.2d 852 (1992) (stating that the Legislature, in having discretion to determine the amount of aid and to define

York Constitutional mandate of providing assistance for the needy, nor a violation of the Equal Protection Clause.[1813]

Therefore, it follows that the federal court system applies a more stringent test for taxpayer standing than do New York courts. With regard to economic and social welfare statutes, although there is no federal constitutional mandate to provide for the needy, both state and federal constitutions allow legislatures the necessary discretion in adopting social welfare programs where there is a legitimate state purpose and a rational relationship between the state goal and the means to achieve that goal.

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the term "needy," "'may continue the system of relief now in operation [or] it may devise new ways of dealing with the problem . . . [so long as it does not] shirk its responsibilit[ies]'") (citations omitted); Beer Garden v. New York State Liquor Auth., 79 N.Y.2d 266, 276, 590 N.E.2d 1193, 1197, 582 N.Y.S.2d 65, 69 (1992) (holding that when "broad rule-making authority has been granted, an agency cannot 'promulgate rules in contravention of the will of the Legislature'") (citations omitted). Furthermore, the court held that "the additional costs of meals for persons unable to prepare meals at home, [wa]s specifically required by Social Services Law § 131-a (2)(b) [and] to be included in the determination of standard of need." *Childs*, 194 A.D.2d at 227, 606 N.Y.S.2d at 492. Also, the court said that determining eligibility under Social Services Law § 131-s is to be based upon one's income rather than gross income, thus invalidating 18 N.Y.C.R.R. 352.5(d) "as it employs a gross household income standard." *Id.* at 228, 606 N.Y.S.2d at 492. Moreover, the court held that enforcing the repayment plans by "recoup[ing] from public assistance grants and garnish[ing] of the wages of the household members which the Commissioner has limited to the wages of the recipient's spouse" was invalid. *Id.* Finally, the court ruled that the administrative directive and the repayment agreements did not have to be "published in the State Register . . . ." *Id.*

1813. *Childs*, 194 A.D.2d at 225, 606 N.Y.S.2d at 491.