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## State Debt: Schulz v. State of New York

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**STATE DEBT**

*N.Y. CONST. art. VII, § 11:*

*[N]o debt shall be hereafter contracted by or in behalf of the state unless such debt shall be authorized by law . . . . No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all votes cast for and against it at such election . . . .*

**COURT OF APPEALS**

Schulz v. State of New York<sup>3146</sup>  
(decided May 11, 1993)

A group of voters claimed their rights under the New York State Constitution<sup>3147</sup> were violated when they were denied standing to challenge, in separate lawsuits, two state financing schemes incurring state debt.<sup>3148</sup> The voters alleged that these schemes had taken effect before appellants were provided with an opportunity to exercise their right to vote on the desirability of the debt-incurring legislation.<sup>3149</sup> The New York Court of Appeals held that voter standing should be recognized in the suit

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3146. 81 N.Y.2d 336, 615 N.E.2d 953, 599 N.Y.S.2d 469 (1993).

3147. See N.Y. CONST. art. VII, § 11 which provides in pertinent part:

*[N]o debt shall be hereafter contracted by or in behalf of the state unless such debt shall be authorized by law . . . . No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all votes cast for and against it at such election . . . .*

*Id.*

3148. *Schulz*, 81 N.Y.2d at 342, 615 N.E.2d at 954, 599 N.Y.S.2d at 470.

3149. *Id.* at 345, 615 N.E.2d at 955, 599 N.Y.S.2d at 471. This right to vote on the desirability of debt-incurring legislation was provided for in the New York State Constitution due to the skeptical view of public indebtedness shared by the people of New York. *Id.* at 346, 615 N.E.2d at 956, 599 N.Y.S.2d at 472. The people feared their elected representatives would be tempted to borrow against the future by using long-term debt to finance day to day operating expenses of the government. *Id.* Therefore, article VII, § 11 of the New York State Constitution was enacted as a check against the government contracting public debt. *Id.*

involving the first financing scheme (Schulz Appeal #1) as “the express voter referendum requirement to incur debt contained in article VII, section 11 is inextricably linked to the constitutional grant of debt- incurring authority.”<sup>3150</sup> In the suit brought against the second financing scheme (Schulz Appeal #2), the court dismissed the appeal as the plaintiffs failed to allege voter standing in the prior proceeding.<sup>3151</sup> While the court addressed the issue of standing in Schulz Appeal #1, the constitutional merits of the appellants’ fiscal challenges were not addressed “on the sole ground that the commencement of the legislation [did] not satisfy the equitable laches doctrine . . . .”<sup>3152</sup>

Schulz Appeal #1 involved Chapter 190 of the State Laws of 1990<sup>3153</sup> which provided for the sale and leaseback of the Attica Correctional Facility and Interstate Highway 287 by the state to a state-created public corporation.<sup>3154</sup> These purchases were financed by bond issues of the UDC,<sup>3155</sup> thus creating the state debt which appellants challenged.<sup>3156</sup> Schulz Appeal #2

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3150. *Id.* at 345, 615 N.E.2d at 955, 599 N.Y.S.2d at 471. The defendant state argued, to no avail, that “article VII § 11 did not allow for separate standing [for taxpayers] to sue.” *Id.* at 347, 615 N.E.2d at 956, 599 N.Y.S.2d at 472. The state premised its argument on *Wein v. Comptroller of State of New York*, 46 N.Y.2d 394, 386 N.E.2d 242, 413 N.Y.S.2d 633 (1979) (refusing to accord taxpayer standing in challenge to issuance of state bond anticipation notes) and *New York State Coalition for Criminal Justice v. Loughlin*, 64 N.Y.2d 660, 474 N.E.2d 607, 485 N.Y.S.2d 247 (1984) (denying taxpayers standing to challenge issuance of bonds by the New York Urban Development Corporation [hereinafter “UDC”]). The *Schulz* court responded to this argument by stating that although such cases did “bar ‘taxpayer’ standing to challenge the issuance of bonds . . . they should not be followed, at least with respect to voter standing to sue on financing schemes subject to voter referendum approval.” 81 N.Y.2d at 317, 615 N.E.2d at 956, 599 N.Y.S.2d at 472.

3151. *Id.* at 344, 615 N.E.2d at 955, 599 N.Y.S.2d at 471.

3152. *Id.* at 350, 615 N.E.2d at 958, 599 N.Y.S.2d at 474.

3153. 1990 N.Y. Laws 190.

3154. *Schulz*, 81 N.Y.2d at 344, 615 N.E.2d at 955, 599 N.Y.S.2d at 471.

3155. The UDC is a non-profit organization created by the New York State Legislature to address urban decay through urban renewal projects. *See* N.Y. UNCONSOL. LAW §§ 6251-58 (McKinney 1979).

3156. *Schulz*, 81 N.Y.2d at 344, 615 N.E.2d at 955, 599 N.Y.S.2d at 471.

concerned Chapter 220 of the laws of 1990<sup>3157</sup> which called for the creation of the New York Local Government Assistance Corporation, a body authorized to issue 4.7 billion dollars in bond obligations, payable from state taxes.<sup>3158</sup>

As neither statutory provision was submitted for approval in a voter referendum, appellants challenged the constitutionality of the legislation under article VII, section 11, of the New York State Constitution.<sup>3159</sup> Until 1976, standing was recognized only for one personally aggrieved by a state statute and only if that grievance implicated a determination of constitutionality.<sup>3160</sup> These prerequisites to standing were lessened when the court of appeals chose to recognize “the failure to accord such standing would be in effect to erect an impenetrable barrier to any judicial scrutiny of legislative action.”<sup>3161</sup> Consequently, in the case at hand, the court stated that withholding standing to voters “denied access to the voting booth in alleged violation of an express referendum right conferred by the New York Constitution” would erect such an impenetrable barrier.<sup>3162</sup> It was this concern which led the court to recognize standing in *Schulz Appeal #1*.

The determination of standing in *Schulz Appeal #1*, however, was not followed by a determination of the constitutionality of the legislation in question, as the court’s application of the

3157. 1990 N.Y. Laws 220.

3158. *Schulz*, 81 N.Y.2d at 351, 615 N.E.2d at 959, 599 N.Y.S.2d at 475 (Smith, J., dissenting).

3159. *Id.* at 344, 615 N.E.2d at 955, 599 N.Y.S.2d at 471.

3160. *See St. Clair v. Yonkers Raceway, Inc.*, 13 N.Y.2d 72, 76, 192 N.E.2d 15, 15-16, 242 N.Y.S.2d 43, 44 (1963) (stating that constitutionality of state statute may be challenged only by one personally effected), *cert. denied*, 375 U.S. 970 (1964).

3161. 81 N.Y.2d at 345, 615 N.E.2d at 955, 599 N.Y.S.2d at 471 (quoting *Boryszewski v. Brydges*, 37 N.Y.2d 361, 364, 334 N.E.2d 579, 581 372 N.Y.S.2d 623, 626 (1975)). The court of appeals in *Boryszewski* departed from the holding in *St. Clair* and allowed taxpayers standing to bring Constitutional challenges against enactments of the state legislature where challenges would be unlikely from any other source. *Id.* at 362, 334 N.E.2d at 956, 371 N.Y.S.2d at 624.

3162. *Schulz*, 81 N.Y.2d at 345, 615 N.E.2d at 955, 599 N.Y.S.2d at 471.

equitable doctrine of laches proved fatal to the litigation.<sup>3163</sup> Stated simply, the court found that the events which transpired between the signing of the law and the commencement of the litigation had progressed too far to be undone.<sup>3164</sup> Given this inability to satisfy the equitable doctrine of laches, the court affirmed the ruling of the lower court dismissing the entire proceeding.<sup>3165</sup>

The conclusions of the court were met with a vigorous dissent which agreed with the court in according plaintiffs standing in Schulz Appeal #1, but which disagreed with the dismissal of Schulz Appeal #2 and the barring of both suits under the equitable doctrine of laches.<sup>3166</sup> Judge Smith dissented and argued with respect to Schulz Appeal #2 that, although no express allegation of voter standing appeared in the pleadings, defendants clearly understood that voter standing was being alleged.<sup>3167</sup> Therefore, Schulz Appeal #2 should not have been dismissed for lack of voter standing.<sup>3168</sup>

In addressing the threshold issue concerning the doctrine of laches, Judge Smith felt the court erred in erecting the doctrine as a bar to suit, as both appeals involved alleged constitutional violations which were “continuing in nature because of their long-term fiscal impact and continuing authority under the

3163. *Id.* at 347, 615 N.E.2d at 957, 599 N.Y.S.2d at 473; *see In Re Barabash*, 31 N.Y.2d 76, 81, 286 N.E.2d 268, 271, 334 N.Y.S.2d 890, 894 (1972) (stating that the “essential element of this equitable defense is delay prejudicial to the opposing party”).

3164. *Schulz*, 81 N.Y.2d at 348, 615 N.E.2d at 957, 599 N.Y.S.2d at 473. During this time, bonds were issued and sold for \$377,326,674, Attica and Highway 287 had been sold and \$220 million in proceeds had been deposited in the capital projects and general fund. *Id.*

3165. *Id.* at 343, 615 N.E.2d at 954, 599 N.Y.S.2d at 470.

3166. *Id.* at 351, 615 N.E.2d at 959, 599 N.Y.S.2d at 475 (Smith, J., dissenting).

3167. *Id.* at 354, 615 N.E.2d at 961, 599 N.Y.S.2d at 477 (Smith, J., dissenting). The amended complaint of February 10, 1992 read “plaintiffs Schultz, Salvador and Boehm each alleged that he was ‘a registered voter registered to vote . . . .’” *Id.* (Smith, J., dissenting).

3168. *Id.* at 354-55, 615 N.E.2d at 961, 599 N.Y.S.2d at 477 (Smith, J., dissenting).

challenged legislation.”<sup>3169</sup> Succinctly put, the incurring of debt before the suit should not bar a determination on the merits as the authority to incur additional debt remained.<sup>3170</sup>

In conclusion, the court held that voter standing will be recognized when a voting right is constitutionally mandated and when failure to recognize that right would result in the placement of “‘an impenetrable barrier to any judicial scrutiny of legislative action[s].’”<sup>3171</sup> The dissent by Judge Smith does not cloud this holding of the court.

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3169. *Id.* at 351, 615 N.E.2d at 959, 599 N.Y.S.2d at 475 (Smith, J. dissenting).

3170. *Id.* at 353, 615 N.E.2d at 960, 599 N.Y.S.2d at 476 (Smith, J., dissenting).

3171. *Id.* at 345, 615 N.E.2d at 955, 599 N.Y.S.2d at 471 (quoting *Boryszewski v. Brydges*, 37 N.Y.2d 361, 364, 334 N.E.2d 579, 581, 372 N.Y.S.2d 623, 626 (1975)).

