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Due Process

like" was deemed reasonable, as they tend to present urban problems.[170]

The New York Court of Appeals subsequently invalidated a similar ordinance on state due process grounds.[171] The New York court found that "restricting occupancy of single-family housing based on the biological or legal relationships between its inhabitants bears no reasonable relationship" to the legitimate goals of zoning legislation.[172] In order not to "exclude any households that due process requires be included" such an ordinance must contain an "alternative definition of family" which would include "any number of unrelated persons living together" as the "functional equivalent of a traditional family."[173]

Thus, the New York State Constitution provides protection under its due process clause that is not available under the parallel provision in the Federal Constitution.

SUPREME COURT

ALBANY COUNTY

Quirk v. Regan[174]
(decided January 15, 1991)

Non-judicial state court employees[175] challenged the constitu-

170. *Id.*

171. *See McMinn,* 66 N.Y.2d 544, 488 N.E.2d 1240, 498 N.Y.S.2d 128 (1985).

172. *Id.* at 549, 488 N.E.2d at 1243, 498 N.Y.S.2d at 131.

173. *Id.* at 550, 488 N.E.2d at 1243-44, 498 N.Y.S.2d at 132 (citing *Group House of Port Washington, Inc.*, 45 N.Y.2d at 272-73, 380 N.E.2d at 210, 408 N.Y.S.2d at 380; City of White Plains v. Ferraioli, 34 N.Y.2d 300, 305-06, 313 N.E.2d 756, 758, 357 N.Y.S.2d 449 (1974)).

174. 565 N.Y.S.2d 422 (Sup. Ct. Albany County 1991).

175. *Id.* at 423. Petitioners were the collective bargaining representatives of the state court employees. *Id.* In addition, other labor organizations representing non-judicial employees of the New York State Court system brought a claim to federal court asserting that chapter 190 was unconstitutional under the contracts clause of the United States Constitution. Association of

tionality of section 375 of chapter 190 of the Laws of 1990,[176] which allowed the state to withhold fourteen days of wages earned by non-judicial state court employees who were hired after 1982. The Albany County Supreme Court held that the statute was violative of the employees' due process rights guaranteed under the state[177] and federal[178] constitutions.[179]

In 1982, a labor agreement between the state and non-judicial state court employees called for wages to be withheld for every

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Surrogates and Supreme Court Reporters within City of New York v. New York, 749 F. Supp. 97 (S.D.N.Y. 1990), *rev'd*, 940 F.2d 766 (2d Cir. 1991), *cert. denied*, 112 S. Ct. 936 (1992).

176. Act of May 25, 1990, ch. 190, 1990 N.Y. Laws 369, 587 (McKinney). Section 375 of chapter 190 provides:

> b. (1) Notwithstanding the provisions of subdivision a of this section or of section 200 of the state finance law, commencing with the last bi-weekly payroll period ending at least fourteen days before March 31, 1991 for each nonjudicial officer or employee, the salary or wages of such officer or employee shall be payable by the state two weeks after they shall have become due. Until such time, an alternative procedure for the payment of salaries and wages, to be determined by the comptroller, may be implemented in lieu of the procedure specified in subdivision 1 of such section 200 or in other provisions of law. The procedure set forth in this paragraph (including any alternative procedure determined by the comptroller) shall remain in effect until the state and an employee organization representing nonjudicial officers and employees who are in positions which are in collective negotiating units established pursuant to article 14 of the civil service law enter into agreement providing otherwise for the payment of salaries and wages to such officers and employees.
>
> (2) The provisions of paragraph 1 of this subdivision shall not apply to any alternative procedure for the payment of salaries and wages to nonjudicial officers and employees that was adopted pursuant to law and in effect immediately preceding the effective date of this subdivision.

Id.

177. N.Y. CONST. art I, § 6.

178. U.S. CONST. amend. VI.

179. *Quirk*, 565 N.Y.S.2d at 425. In addition, the court held that chapter 190 violated article I, section 17 of the New York State Constitution, which guarantees the right to organize and bargain collectively. *Id.* Article I section 17 provides in pertinent part: "Employees shall have the right to organize and to bargain collectively through representatives of their own choosing." N.Y. CONST. art. I, § 17.

tenth day of work.[180] In 1990, the state legislature passed chapter 190 which permitted the state to withhold the state court employees' wages earned on every ninth day, resulting in fourteen days of wages withheld for the year. Therefore, these employees would be paid for fifty weeks while working fifty-two weeks. Chapter 190 implies that the state could withhold wages indefinitely by not specifying a time period for reimbursement.[181]

The non-judicial state court employees claimed that, along with being violative of the state and federal due process guarantees, this provision violated section 209-a of the state's Civil Service Law which provides, in substance, that the state employer cannot modify a labor agreement without good faith negotiations.[182] Respondents, Edward V. Regan, Comptroller of the State of New York and Matthew T. Crosson, Chief Administrator of the Courts of the Unified Court System of the State of New York, claimed that the state legislature had the right to modify the labor agreement without collective bargaining due to state fiscal problems.[183] To support their claim, respondents relied upon *Subway-Surface Supervisors Ass'n v. New York City Transit Authority*.[184] In *Subway-Surface*, the court of appeals upheld the constitutionality of the New York State Financial Emergency Act for the City of New York which called for wage deferment without collective bargaining.[185]

The Albany County Supreme Court determined, however, that the fiscal condition in the case at bar did not rise to the level of the financial crises confronted by the court of appeals in *Subway-*

180. Act of June 21, 1982, ch. 353, 1982 N.Y. Laws 901 (McKinney).

181. *Quirk*, 565 N.Y.S.2d at 424-25.

182. *Id.* at 423. Section 209-a of the state's Civil Service Law provides in part:

> It shall be an improper practice for a public employer or its agents deliberately . . . (d) to refuse to negotiate in good faith with the duly recognized or entitled representatives of its public employees; or (e) to refuse to continue all the terms of an expired agreement until a new agreement is negotiated . . . .

N.Y. CIV. SERV. LAW § 209-a(1) (McKinney 1983).

183. *Quirk*, 565 N.Y.S.2d at 423-24.

184. 44 N.Y.2d 101, 375 N.E.2d 384, 404 N.Y.S.2d 323 (1978).

185. *Id.* at 106-07, 375 N.E.2d at 386, 404 N.Y.S.2d at 326.

Surface. According to the supreme court, "[t]here is no proclamation in the subject legislation declaring the existence of a financial crises."[186] Furthermore, the court noted that in the *Subway-Surface* case, the payments were only deferred and later paid, while in the case at bar these payments were deferred indefinitely.

Addressing the state and federal due process claims, the court ruled that section 375 of chapter 190 of the Laws of 1990 was unconstitutional because it deprived the non-judicial state court employees of wages without due process of law.[187] The court noted that "[t]he concept in confiscating the public employees wages to meet the government's emergency must be crucial and of the highest importance."[188] Here, the court found that the state failed to meet this burden.

Aside from the holding that chapter 190 was unconstitutional on state and federal due process grounds, the supreme court also found that the provision was violative of article I, section 17 of the New York State Constitution.[189] The court found that "[t]o withhold and keep the wages of the working person is repugnant to those rights guaranteed under the State Constitution."[190] Here, the court determined that chapter 190 violated this provision because it usurped the state employees' right to organize and bargain collectively.

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186. *Quirk*, 565 N.Y.S.2d at 424.

187. *Id.* at 425.

188. *Id.*

189. *Id.* Section 17 of article I provides:

> Labor of human beings is not a commodity nor an article of commerce and shall never be so considered or construed.
>
> No laborer, workman or mechanic, in the employ of a contractor or subcontractor engaged in the performance of any public work, shall be permitted to work more than eight hours in any day or more than five days in any week, except in cases of extraordinary emergency; nor shall be paid less than the rate of wages prevailing in the same trade or occupation in the locality within the state where such public work is to be situated, erected or used.
>
> Employees shall have the right to organize and to bargain collectively through representatives of their own choosing.

N.Y. CONST. art. I, § 17.

190. *Id.* at 425.

The United States Supreme Court, in *United States Trust Co. of New York v. New Jersey*,[191] stated that state contracts can be constitutionally impaired under the Contract Clause[192] if "that impairment was both reasonable and necessary to serve the admittedly important purposes claimed by the State."[193] The Court noted that impairment of a state contract is reasonable, provided the parties failed, at the time of contracting, to foresee the possibility of changed circumstances.[194] The Court further explained that impairment of a state contract is necessary as long as the state could not have adopted alternative means of achieving their goal.[195]

Recently, the United States Court of Appeals for the Second Circuit was confronted with the constitutionality of chapter 190 in light of the Contract Clause and held that the provision was unconstitutional.[196] Applying the *United States Trust* test, the Second Circuit found that the state could find other alternative means to finance the expansion of the New York court system.[197] According to the Second Circuit, "[t]he state could have shifted the seven million dollars from another governmental program, or it could have raised taxes."[198]

Similarly, in *Quirk*, the Albany County Supreme Court apparently believed that the state failed to meet the standard announced in *United States Trust*. The court noted: "Why a subsequent legislative body may by amendment nullify a previous contractual debt of the State is beyond comprehension. The State having made those appropriations as to the period covering the method of payments may not subsequently cancel a contractual obliga-

191. 431 U.S. 1 (1977).

192. U. S. CONST. art. I, § 10, cl. 1 ("No state shall . . . pass any Bill of Attainder, *ex post facto* law, or Law impairing the obligation of Contracts . . . .").

193. *United States Trust Co.*, 431 U.S. at 29.

194. *Id.* at 31.

195. *Id.* at 30.

196. *See* Association of Surrogates and Supreme Court Reporters Within City of New York v. New York, 940 F.2d 766, 774 (2d Cir. 1991), *cert. denied*, 112 S. Ct. 936 (1992).

197. *Id.* at 773.

198. *Id.*

tion."[199]

In conclusion, the *Quirk* court found that section 375 of chapter 190 was violative of both the state and federal due process provisions. In addition to the due process violations, the court further found that the statute was violative of the state constitution provision guaranteeing that the state will collectively bargain with a union.[200] The Federal Constitution has no equivalent provision that explicitly provides for the state to collectively bargain with a union. The Federal Constitution has, however, a Contract Clause which guarantees that the state will not breach its contracts. As previously mentioned, the Second Circuit, in *Association of Surrogates and Supreme Court Reporters within the City*, applying the Contract Clause, similarly found section 375 of chapter 190 to be unconstitutional.

NEW YORK COUNTY

Hope v. Perales[201]
(decided April 15, 1991)

The plaintiffs challenged the constitutionality of the Prenatal Care Assistance Program (PCAP)[202] as violative of the rights of pregnant eligible women,[203] because it did not provide funds for eligible women for whom an abortion is medically necessary. The court found that "[t]he right of a pregnant woman to choose an abortion in circumstances where it is medically indicated is one component of the right of privacy rooted in the due process clause of the New York State Constitution."[204] Therefore, the court held that PCAP's exclusion of funding for medically necessary abortions was unconstitutional under the due process clause,[205] the equal protection clause[206] and sections 1 and 3 of

199. *Quirk*, 565 N.Y.S.2d at 424.

200. *Id.* at 425.

201. 150 Misc. 2d 985, 571 N.Y.S.2d 972 (Sup. Ct. New York County 1991).

202. N.Y. PUB. HEALTH LAW § 2520-2529 (McKinney 1992).

203. *Hope*, 150 Misc. 2d at 986-87, 571 N.Y.S.2d at 974.

204. *Id.* at 993-94, 571 N.Y.S.2d at 978.

205. *Id.* at 997, 571 N.Y.S.2d at 980; N.Y. CONST. art. I, § 6.