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## Equal Protection

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## EQUAL PROTECTION

*N.Y. CONST. art I, § 11:*

*No person shall be denied the equal protection of the laws of this state or any subdivision thereof.*

*U.S. CONST. amend XIV, § 1:*

*No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.*

### SUPREME COURT, APPELLATE DIVISION

#### SECOND DEPARTMENT

Lovelace v. Gross<sup>327</sup>  
(decided August 26, 1991)

The plaintiffs challenged the determination by the Supreme Court, Queens County, that Social Services Law section 131-c(2)<sup>328</sup> was not violative of the equal protection clauses of either the state<sup>329</sup> or federal<sup>330</sup> constitutions, or the aid of the needy provision of the New York State Constitution.<sup>331</sup> In a unanimous

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327. 573 N.Y.S.2d 752 (2d Dep't 1991), *appeal dismissed without opinion*, 79 N.Y.2d 914 (1992).

328. N.Y. SOC. SERV. LAW § 131-c(2) (McKinney Supp. 1992). This section provides:

For the purposes of determining eligibility for and the amount of assistance payable, the social services districts shall deem available to any minor whose parent or legal guardian is a minor, any income of the parent or legal guardian of such minor parent or legal guardian residing in the same dwelling unit, to the same extent that the income of a stepparent would be included pursuant to subdivision nine of section one hundred thirty-one-a of this article.

*Id.*

329. N.Y. CONST. art. I, § 11.

330. U.S. CONST. amend. XIV, § 7.

331. *Lovelace*, 573 N.Y.S.2d 752; *see* N.Y. CONST. art. XVII, § 1 ("The

decision the court held that Social Services Law section 131-c(2) was consistent with the equal protection clauses of both the state and federal constitutions, as well as the state provision mandating that the state provide for the needy.<sup>332</sup>

Social Services Law section 131-c(2) mandates that the income of a child's grandparent be considered in an application for public assistance by the child's parent, if the parent is under 18 years of age and both the child and the parent reside in the same household as the grandparent. The plaintiffs alleged that their right to equal protection was violated because the Social Services Law made an impermissible classification in distinguishing between young single parents with children who choose to live with their parents and young single parents with children who choose to maintain their own household.<sup>333</sup>

In reaching its decision, the court noted that equal protection challenges to classifications made in Social Services Laws are decided under a rational basis analysis.<sup>334</sup> The court further noted that in the area of social welfare, a classification will not offend the equal protection clause if it has some rational basis, even when the classification results in some inequality.<sup>335</sup> The court reasoned that the law's classification was rationally related to the state's legitimate governmental interest of distributing limited resources in a manner which optimally assists those persons whose needs are greatest.<sup>336</sup>

The plaintiffs' second constitutional claim alleged that the subject legislation violated their right, as needy persons, to state assistance, as provided for in the New York State Constitution, ar-

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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.").

332. *Lovelace*, 573 N.Y.S.2d at 753.

333. *Id.*

334. *Id.*; see also *In re Davis*, 57 N.Y.2d 382, 389, 442 N.E.2d 1227, 1230, 456 N.Y.S.2d 716 719 (1982).

335. *Lovelace*, 573 N.Y.S.2d at 753; see also *Dandridge v. Williams*, 397 U.S. 471, 485 (1970).

336. *Lovelace*, 573 N.Y.S.2d at 753; see also *Bernstein v. Toia*, 43 N.Y.2d 437, 446, 373 N.E.2d 238, 243, 402 N.Y.S.2d 342, 347 (1977).

ticle XVII, section 1.<sup>337</sup> The court quickly dismissed this claim, holding that it could not disturb or question the legislature's determination of need<sup>338</sup> in that article XVII, section 1, on its face, "mandates only that the State provide 'for the aid, care and support of the needy . . . in such manner and by such means, as the legislature may from time to time determine.'"<sup>339</sup>

#### FOURTH DEPARTMENT

*In re* Jessie C.<sup>340</sup>

(decided Feb. 1, 1991)

The defendant, Jessie C., challenged part of New York's Sexual Misconduct Statute, Penal Law section 130.20(1),<sup>341</sup> as discriminatory on the basis of gender in violation of the equal protection provisions of the federal<sup>342</sup> and state<sup>343</sup> constitutions. The appellate division, fourth department, in a unanimous decision reversed the order of the family court. The court held that the statute was unconstitutionally underinclusive and struck the gender exemption portion of the statute.<sup>344</sup>

The defendant, a 13 year old male, was declared a juvenile delinquent because he committed the offense of sexual misconduct with a 15 year old female in violation of Penal Law section 130.20(1). "The parties stipulated that there was no allegation of force and that the female could not consent to sexual intercourse by reason of her age."<sup>345</sup>

337. *Lovellace*, 573 N.Y.S.2d at 753.

338. *Id.*; see also *Capozzi v. New York State Dep't of Social Servs.*, 137 Misc. 2d 193, 196, 520 N.Y.S.2d 471, 473 (Sup. Ct. Oswego County 1987).

339. *Lovellace*, 573 N.Y.S.2d at 753 (quoting N.Y. CONST. art. XVII, § 1), *appeal dismissed without opinion*, 78 N.Y.2d 907, 577 N.E.2d 1059, 573 N.Y.S.2d 467 (1991).

340. 164 A.D.2d 731, 565 N.Y.S.2d 941 (4th Dep't 1991).

341. N.Y. PENAL LAW. § 130.20 (McKinney 1987) ("A person is guilty of sexual misconduct when: 1. Being a male, he engages in sexual intercourse with a female without her consent . . .").

342. U.S. CONST. amend. XIV, § 1.

343. N.Y. CONST. art. 1, § 11.

344. *Jessie C.*, 164 A.D.2d at 734-36, 565 N.Y.S.2d at 943-44.

345. *Id.* at 733, 565 N.Y.S.2d at 942.