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Education

EDUCATION

N.Y. CONST. art XI, § 1:

The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated.

COURT OF APPEALS

Campaign for Fiscal Equity, Inc. v. State of New York[1]
(decided June 15, 1995)

The plaintiffs challenged the constitutionality of the financing systems for public schools implemented by the State of New York, claiming that it violated the Education Article of the New York State Constitution[2] and the Equal Protection Clauses of the Federal[3] and New York State[4] Constitutions.[5] The New York

1. 86 N.Y.2d 307, 655 N.E.2d 661, 631 N.Y.S.2d 565 (1995).

2. N.Y. CONST. art. XI, § 1. The Education Article provides: "The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated." *Id.*

3. U.S. CONST. amend. XIV, § 1. This section provides in pertinent part: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." *Id.*

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

5. *Campaign for Fiscal Equity*, 86 N.Y.2d at 312-13, 655 N.E.2d at 663, 631 N.Y.S.2d at 567. In addition, the plaintiffs asserted that the state's financing scheme violated Title VI of the Civil Rights Act of 1964 and its implementing regulations. *Id.* at 313, 655 N.E.2d at 664, 631 N.Y.S.2d at 568. The court held that the plaintiffs' Title VI claim could not succeed since their complaint failed to show intentional discrimination by the state financing system, which is required for all Title VI claims. *Id.* at 321-22, 655 N.E.2d at 669, 631 N.Y.S.2d at 573 (citing Alexander v. Choate, 469 U.S. 287 (1985) and Guardians Ass'n v. Civil Serv. Comm'n, 463 U.S. 582, *cert. denied*, 463 U.S. 1228 (1983)). Nonetheless, the court determined that the plaintiffs had a valid claim under Title VI's implementing regulations, more specifically 34 C.F.R. § 100.3(b)(2) (1995), which does not require a showing of intent to discriminate. *Campaign for Fiscal Equity*, 86 N.Y.2d at 322, 655 N.E.2d at 669, 631 N.Y.S.2d at 573. It merely requires a showing that "a challenged practice has a sufficiently adverse racial impact-in other words, whether it falls

Court of Appeals reinstated the plaintiffs' Education Article claim, since the plaintiffs had "alleged facts which fit within a cognizable legal theory"[6] that inadequate funding impeded a student's opportunity to receive a "sound basic education."[7] In analyzing the plaintiff's equal protection claim, the court applied rational basis review to plaintiffs' equal protection claim and found that the state's educational financing system was rationally related to its legitimate interest in controlling education on a local level.[8] Based on this finding, the court dismissed the plaintiffs' equal protection claim.[9]

The plaintiffs consisted of fourteen school districts within New York City, individual public school students, and a not-for-profit corporation composed of school boards, citizens, and parent advocacy groups.[10] At the time this case was first decided by the Appellate Division, First Department, the State of New York distributed approximately nine billion dollars state-wide to public school districts.[11] The plaintiffs alleged that only 34% of those funds went to New York City public schools, even though these schools educated 37% of the student population of the state.[12] They asserted that the state's financing system perpetuated unevenness that existed in educational opportunities available to students in city and non-city school districts.[13]

In addition, they maintained that city schools are often "beset with high operating costs and unique drains on school funds, suffering in blighted or antiquated facilities, with less qualified

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significantly more harshly on a minority racial group than on the majority-and, if so, whether the practice is nevertheless adequately justified." *Id.* at 323, 655 N.E.2d at 670, 631 N.Y.S.2d at 574 (quoting Groves v. Alabama State Bd. of Educ., 776 F. Supp. 1518, 1523 (M.D. Ala. 1991)).

6. *Id.* at 319, 655 N.E.2d at 667-68, 631 N.Y.S.2d at 571-72.

7. *Id.* at 316, 655 N.E.2d at 666, 631 N.Y.S.2d at 570.

8. *Id.* at 320-21, 655 N.E.2d at 668, 631 N.Y.S.2d at 572.

9. *Id.* at 319, 655 N.E.2d at 668, 631 N.Y.S.2d at 572.

10. *Id.* at 312, 655 N.E.2d at 663, 631 N.Y.S.2d at 567.

11. Campaign for Fiscal Equity, Inc. v. State of New York, 205 A.D.2d 272, 275, 619 N.Y.S.2d 699, 700 (1st Dep't 1994), *modified*, 86 N.Y.2d 307, 655 N.E.2d 661, 631 N.Y.S.2d 565 (1995).

12. *Id.*

13. *Id.*

teachers and overall inadequate resources," whereas non-city school districts, which have "ample local tax revenue, are able to offer modern and well-maintained facilities, better credentialed teachers, more favorable teacher-student ratios and a wider array of educational resources."[14] Prompted by this disparity, the plaintiffs sought a declaratory judgment alleging, *inter alia*, violations of the Education Article of the New York State Constitution and the Equal Protection Clauses of the Federal and New York State Constitutions.[15]

The plaintiffs' first legal assertion alleged that the educational funding system employed by the state violated the Education Article because it failed to "provide [city students] . . . an opportunity to obtain a sound basic education as required by the State Constitution."[16] The Appellate Division, First Department had granted defendants' motion to dismiss concerning this claim because that court found the plaintiffs' allegations were similar to those made in *Levittown Union Free School District v. Nyquist*.[17]

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14. *Id.*

15. *Campaign for Fiscal Equity*, 86 N.Y.2d at 312-13, 655 N.E.2d at 663-64, 631 N.Y.S.2d at 567-68. The plaintiffs also alleged that the financing scheme violated the Antidiscrimination Clause of the New York State Constitution, N.Y. CONST. art. I, § 11, and the 1964 Civil Rights Act, 21 U.S.C. § 2000d (1988), and its implementing provisions. *Id.* at 313, 655 N.E.2d at 664, 631 N.Y.S.2d at 568. The supreme court had dismissed all claims except for the Education Article claim, the Antidiscrimination Clause claim, and the claim concerning the implementing provisions of the Civil Rights Act. *Id.* at 313, 655 N.E.2d at 664, 631 N.Y.S.2d at 568. However, the appellate division subsequently dismissed these three claims based on the plaintiffs' failure to allege a cause of action. *Id.*

16. *Id.* at 314, 655 N.E.2d at 664, 631 N.Y.S.2d at 568.

17. *Id.* at 315-16, 655 N.E.2d at 665, 631 N.Y.S.2d at 569. *See* Levittown Union Free Sch. Dist. v. Nyquist, 57 N.Y.2d 27, 439 N.E.2d 359, 453 N.Y.S.2d 643 (1982). In *Levittown*, the plaintiffs argued that the state's educational funding system violated the Education Article because property-rich areas were able to raise the funding necessary to supplement the funds supplied by the state through tax revenues which allowed them to provide an adequate education, while the property-poor districts could not. *Id.* at 35-36, 439 N.E.2d at 361-62, 453 N.Y.S.2d at 646. The plaintiffs alleged that the system "result[ed] in grossly disparate financial support (and thus grossly disparate educational opportunities) in the school districts of the State." *Id.* The court of appeals rejected this claim and held that the Education Article

The court of appeals held that the appellate division erred by denying the plaintiffs' claim, since the *Levittown* decision "manifestly left room for a conclusion that a system which failed to provide for a sound basic education would violate the Education Article."[18]

The court of appeals stated that the Education Article requires that the state provide "all children [with an] opportunity of a sound basic education . . . [which] should consist of the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants capable of voting and serving on a jury."[19] In addition, the court determined that the state is obligated to provide certain essentials, such as "minimally adequate physical facilities,"[20] "minimally adequate instrumentalities of learning,"[21] and "minimally

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does not guarantee equality in educational services, but only required that those services be adequate to provide a "sound basic education." *Id.* at 47-48, 439 N.E.2d at 368-69, 453 N.Y.S.2d at 653 (stating that merely "assuring minimal acceptable facilities and services" was intended upon adoption of the Education Article).

18. *Campaign for Fiscal Equity*, 86 N.Y.2d at 316, 655 N.E.2d at 665, 631 N.Y.S.2d at 569. The plaintiffs were not claiming that educational services were not equal. Rather, they asserted that "minimally acceptable educational services and facilities [were] not being provided." *Id.*

19. *Id.* at 316, 655 N.E.2d at 666, 631 N.Y.S.2d at 570 (citation omitted). The court reiterated that:

> [t]he Legislature has made prescriptions (or in some instances provided means by which prescriptions may be made) with reference to the minimum number of days of school attendance, required courses, textbooks, qualifications of teachers and of certain nonteaching personnel, pupil transportation, and other matters. If what is made available by this system (which is what is to be maintained and supported) may properly be said to constitute an education, the constitutional mandate is satisfied.

Id. (quoting *Levittown*, 57 N.Y.2d at 48, 439 N.E.2d at 368-69, 453 N.Y.S.2d at 653).

20. *Id.* at 317, 655 N.E.2d at 666, 631 N.Y.S.2d at 570. ("Children are entitled to minimally adequate physical facilities and classrooms which provide enough light, space, heat, and air to permit children to learn.").

21. *Id.* ("Children should have access to minimally adequate instrumentalities of learning such as desks, chairs, pencils, and reasonably current textbooks.").

adequate teaching of reasonably up-to-date basic curricula."[22] The court established that it is up to the trier of fact to decide whether the state had fulfilled its constitutional obligation to provide a sound basic education to the children in this case.[23] Moreover, the court of appeals expressed that the "plaintiffs [would] have to establish a causal link between the present funding system and any proven failure to provide a sound basic education to New York City school children" to be successful in this case.[24]

The court concluded that since the plaintiffs' allegations were supported by factually based circumstantial evidence such as "inadequacies in physical facilities, curricula, numbers of qualified teachers, availability of textbooks, library books, etc.," their claim based on the Education Article survived the defendants' motion to dismiss.[25] Accordingly, the court reinstated the cause of action.[26]

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22. *Id.* ("Children are also entitled to minimally adequate teaching of reasonably up-to-date basic curricula such as reading, writing, mathematics, science, and social studies, by sufficient personnel adequately trained to teach those subject areas."). The court of appeals stated that the minimum statewide educational standards conceived by the Board of Regents and the Commissioner of Education "exceed notions of a minimally adequate or sound basic education," and thus, failure to comply with any of the standards does not on its own violate the Education Article. *Id.* Similarly, the court asserted that standardized competency tests, although helpful, should be used prudently in evaluating educational skills because test results depend upon many different factors. *Id.*

23. *Id.* at 317-18, 655 N.E.2d at 666-67, 631 N.Y.S.2d at 570-71. In his dissenting opinion, Judge Simons declared that the issue of what is required to ensure that "a sound basic education" is available to all public school children is a question for the other governmental branches, and is not properly within the domain of the courts. *Id.* at 333, 655 N.E.2d at 676, 631 N.Y.S.2d at 580. He explained that the Education Article's history merely evidences a constitutional duty upon the state to "create[] the *structure* for a State-wide system of schools in which children are given the opportunity to acquire an education and support[] it." *Id.* (Simons, J., dissenting) (emphasis added).

24. *Id.* at 318, 655 N.E.2d at 667, 631 N.Y.S.2d at 571.

25. *Id.* at 319, 655 N.E.2d at 667, 631 N.Y.S.2d at 571. The court also noted that considering the facts given by the plaintiffs, they would be entitled to relief, and thus, the plaintiffs' pleading was sufficient to satisfy section 3211(a)(7) of the New York Civil Practice Law and Rules. *Id.* at 318-19, 655

The second cause of action alleged that the state's educational funding system was unconstitutional pursuant to the Federal and New York State Equal Protection Clauses.[27] Following the reasoning of the United States Supreme Court in *San Antonio School District v. Rodriguez*,[28] the court used the rational basis test to analyze each equal protection claim, based on the fact that education is not recognized as a fundamental right under either

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N.E.2d at 667, 631 N.Y.S.2d at 571. *See* N.Y. CIV. PRAC. L. & R. 3211(a)(7) (McKinney 1992). This section provides in pertinent part: "A party may move for judgment dismissing one or more causes of action asserted against him on the ground that: . . . (7). the pleading fails to state a cause of action . . . ." *Id.* Judge Simons, in his dissent, criticized the majority's analysis and, reiterating the interpretation in *Levittown*, explained that in order to obtain judicial review concerning an objection to a state financing system based on the Education Article, there must be a finding of "'gross and glaring inadequacy' in State funding." *Campaign for Fiscal Equity*, 86 N.Y.2d at 340, 655 N.E.2d at 680, 631 N.Y.S.2d at 584 (quoting Levittown Union Free Sch. Dist. v. Nyquist, 57 N.Y.2d 27, 48, 439 N.E.2d 359, 369, 453 N.Y.S.2d 643, 653 (1982)). He concluded that since schools in New York City receive one third of the entire allowance appropriated to state public education, there is no gross inadequacy in state financing, and therefore the majority erred by finding a valid claim under the Education Article. *Id.* (Simons, J., dissenting).

26. *Id.* at 319, 655 N.E.2d at 667-68, 631 N.Y.S.2d at 571-72.

27. *Id.* at 319, 655 N.E.2d at 668, 631 N.Y.S.2d at 572.

28. 411 U.S. 1 (1973). In *Rodriguez*, the plaintiffs alleged that the state financing scheme for Texas public schools, which was partially based on the property wealth of a school district, violated their equal protection rights. *Id.* at 6, 9-14. The Supreme Court found that "substantial interdistrict disparities in school expenditures . . . still exist" in San Antonio. *Id.* at 15. The Court stated that strict scrutiny would only be applied if "the Texas system of financing public education operates to the disadvantage of some suspect class or impinges upon a fundamental right . . . [and] [i]f not, the Texas scheme must . . . be examined to determine whether it rationally furthers some legitimate, articulated state purpose." *Id.* at 17. In determining that wealth is not a suspect class and education is not a fundamental right, the Supreme Court determined that rational basis was the appropriate standard of review to be applied. *Id.* at 28-29, 37-39, 44. The Court held that "[t]he constitutional standard under the Equal Protection Clause is whether the challenged state action rationally furthers a legitimate state purpose or interest. . . . [and] [w]e hold that the Texas plan abundantly satisfies this standard." *Id.* at 55 (citing McGinnis v. Royster, 410 U.S. 263, 270 (1973)).

the Federal or New York State Constitutions.[29] As a result, the court held that "any disparities in educational funding among school districts in the State arising from the State's financing scheme were rationally based upon and reasonably related to a legitimate State interest, 'the preservation and promotion of local control of education.'"[30]

With respect to their equal protection claim, the plaintiffs, relying on the decision of the Supreme Court in *Plyler v. Doe*,[31] argued that the court should apply intermediate scrutiny because the funding system of the state "deprives New York City school

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29. *Campaign for Fiscal Equity*, 86 N.Y.2d at 319-20, 655 N.E.2d at 668, 631 N.Y.S.2d at 572. The New York Court of Appeals first adopted the reasoning of *Rodriguez* in its decision in Levittown Union Free School District v. Nyquist, 57 N.Y.2d 27, 41, 439 N.E.2d 359, 364-65, 453 N.Y.S.2d 643, 649 (1982). The court of appeals determined that rational basis was the appropriate standard of review under the Federal and New York State Constitutions for an equal protection challenge brought against a state public school funding scheme. *Id.* at 44, 439 N.E.2d at 366, 453 N.Y.S.2d at 651. Accordingly, the majority in *Campaign for Fiscal Equity* recognized that rational basis review should be used in evaluating equal protection claims pursuant to the Federal and New York State Constitutions. *Campaign for Fiscal Equity*, 86 N.Y.2d 307, 320, 655 N.E.2d 661, 668, 631 N.Y.S.2d 565, 572. However, in his dissenting opinion, Judge Smith quoted the following United States Supreme Court decision to contradict the majority: "As *Rodriguez* and *Plyler* indicate, *this Court has not yet definitively settled the questions whether a minimally adequate education is a fundamental right and whether a statute alleged to discriminatorily infringe that right should be accorded heightened equal protection review.*" *Id.* at 350, 655 N.E.2d at 686, 631 N.Y.S.2d at 590 ((quoting Papasan v. Allain, 478 U.S. 265, 285) (1986)). In addition, Judge Smith distinguished the present case from *Rodriguez* by asserting that *Rodriguez* did not involve an allegation that the children were receiving an inadequate education. *Id.* (Smith, J., dissenting). Moreover, Judge Smith emphasized that when deciding *Rodriguez*, the Supreme Court first inquired whether a suspect class was at issue, for if one was, strict scrutiny would have been applied. *Id.* at 351, 655 N.E.2d at 686, 631 N.Y.S.2d at 590 (Smith, J., dissenting).

30. *Id.* at 320, 655 N.E.2d at 668, 631 N.Y.S.2d at 572 (quoting *Levittown*, 57 N.Y.2d at 27, 44, 439 N.E.2d at 366, 453 N.Y.S.2d at 651).

31. 457 U.S. 202, 230 (1982) (applying a heightened level of scrutiny in reviewing an equal protection challenge to a Texas statute which intentionally denied children of illegal aliens a free public school education, and subsequently declaring the statute unconstitutional).

children of a 'minimum adequate education.'"[32] Thus, the burden should be shifted "to the State to show a substantial relationship of its educational funding scheme to a substantial State interest."[33] The court clarified that the *Plyler* holding does not raise the level of scrutiny for all equal protection challenges to state financing schemes.[34] Moreover, unlike the facts in *Plyler*, the plaintiffs' complaint did not allege that the rights of certain individuals or a distinct subclass were violated, but merely claimed "violations of the '*state-wide* minimum standard of educational quality and quantity.'"[35] Thus, the court held that the state's funding scheme did not violate the Equal Protection Clause of the Federal Constitution.[36]

The plaintiffs alternatively argued that the "State's educational funding methodology has a disparate impact upon African-American and other minority students," and therefore, heightened scrutiny should be utilized by the court in evaluating the equal protection claim under the New York State Constitution.[37] The court of appeals, however, again refused to apply heightened scrutiny.[38] This was based on the fact that "an equal protection cause of action based upon a disproportionate impact upon a suspect class requires establishment of intentional

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32. *Campaign for Fiscal Equity*, 86 N.Y.2d at 320, 655 N.E.2d at 668, 631 N.Y.S.2d at 572.

33. *Id.* In his dissenting opinion, Judge Smith agreed with the plaintiffs in that the facts warrant at least mid-level scrutiny. *Id.* at 349, 655 N.E.2d at 685, 631 N.Y.S.2d at 589. In that opinion, he stated that if it can be proven that the subject class is not receiving a:

> minimal basic education sufficient to prepare [students] for contemporary society . . . and it can further be shown that (1) the property tax funding of schools and or (2) the State allocation of its resources is discriminatory, plaintiffs may be entitled to a decision in their favor . . . on Federal equal protection grounds.

Id. at 349-50, 655 N.E.2d at 686, 631 N.Y.S.2d at 590 (Smith, J., dissenting).

34. *Id.* at 320, 655 N.E.2d at 668, 631 N.Y.S.2d at 572.

35. *Id.* (citation omitted).

36. *Id.* at 321, 655 N.E.2d at 668, 631 N.Y.S.2d at 572.

37. *Id.* at 321, 655 N.E.2d at 668-69, 631 N.Y.S.2d at 572-73.

38. *Id.* at 321, 655 N.E.2d at 669, 631 N.Y.S.2d at 573.

discrimination," and the plaintiffs did not even allege discriminatory intent in this case.[39] In sum, the New York Court of Appeals determined that the state funding scheme was rationally related to a legitimate governmental interest, and thus, did not violate either the Federal or New York State Constitutions.[40]

In conclusion, this case demonstrates that rational basis review shall be used in evaluating equal protection challenges made under the Federal and New York State Constitutions to school financing schemes that create disparities in funding among school

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39. *Id.* In reaching this conclusion, the court of appeals relied on case law handed down from the United States Supreme Court. *See* Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252, 264-65 (1977) (stating that "official action will not be held unconstitutional solely because it results in a racially disproportionate impact . . . [and] [p]roof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause"), *cert. denied*, 434 U.S. 1025 (1978), *aff'd*, 616 F.2d 1006 (7th Cir. 1980); Washington v. Davis, 426 U.S. 229, 242 (1976) (stating that "[d]isproportionate impact is not irrelevant, but it is not the sole touchstone of an invidious racial discrimination forbidden by the Constitution. Standing alone, it does not trigger the rule . . . that racial classifications are to be subjected to the strictest scrutiny") (citations omitted). In addition, the court relied on its own precedent. *See* People v. New York City Transit Auth., 59 N.Y.2d 343, 350, 452 N.E.2d 316, 319, 465 N.Y.S.2d 502, 505 (1983) (stating that in order to have a cause of action under the New York State Constitution for a violation of equal protection based on a disproportionate impact of a law that is facially neutral, a showing of "purposeful discrimination is a necessary element"). In his dissenting opinion, joined by Judge Cipatrick, Judge Smith deemed the disparity of educational opportunities unjustified under the New York State Constitution and stated that

> [i]t is this result-lesser educational opportunity which denies a sound, basic education, based on wealth discrimination-that allegedly transgresses the Equal Protection Clause of the State Constitution, and would require [the State] to demonstrate at trial that the current school funding scheme bears an important and substantial relationship to the State's interest in preserving the current funding scheme and its rationale, which interest cannot be achieved through a less intrusive alternative.

Campaign for Fiscal Equity, 86 N.Y.2d at 358, 655 N.E.2d at 691, 631 N.Y.S.2d at 595 (Smith, J., dissenting).

40. *Id.* at 319, 655 N.E.2d at 668, 631 N.Y.S.2d at 572.

districts.[41] The court recognized that a state has a legitimate interest in controlling education within its borders.[42] However, the court of appeals also determined that the plaintiffs had a cognizable cause of action under the Education Article of the New York State Constitution for the state's failure of the state to provide a "sound basic education."[43] Thus, because the United States Constitution does not contain a provision similar to the Education Article of the New York State Constitution assuring "maintenance and support of a system of free common schools, wherein all the children of [the] state may be educated,"[44] the New York State Constitution provides more protection than the Federal Constitution in the area of education.

Reform Educational Financing Inequities Today (R.E.F.I.T.) v. Cuomo[45]
(decided June 15, 1995)

The plaintiffs, consisting of the not-for-profit organization Reform Educational Financing Inequities Today [hereinafter R.E.F.I.T.], sued on behalf of school districts, boards of education, taxpayers, parents, and students enrolled in the public schools, challenged the New York State method of public school financing, claiming that it violated the Education Article of the New York State Constitution,[46] and the Equal Protection Clauses of the New York State[47] and Federal[48] Constitutions.[49] The

41. *See supra* notes 28-29 and accompanying text.

42. *See supra* note 30 and accompanying text.

43. *See supra* notes 25-26 and accompanying text.

44. N.Y. CONST. art. XI, § 1.

45. 86 N.Y.2d 279, 655 N.E.2d 647, 631 N.Y.S.2d 551 (1995).

46. N.Y. CONST. art. XI, § 1. Article XI, § 1 provides in pertinent part: "The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated." *Id.*

47. 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.*