Touro Law Review

Volume 12
Number 3 *New York State constitutional Decisions: 1995 Compilation*

Article 19

1996

Equal Protection

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

FIRST DEPARTMENT

Weinbaum v. Cuomo[1]
(decided September 28, 1995)

Defendants appealed an order of the New York County Supreme Court denying their motion to dismiss the plaintiff's complaint for failing to set forth a cause of action.[2] The constitutional issue before the court was whether the plaintiffs' complaint stated a cause of action under the Equal Protection Clause of the New York State Constitution[3] based on their allegation that the defendants furnished the State University of New York [hereinafter SUNY] school system with more state funds than the City University of New York [hereinafter CUNY] school system because of the different racial compositions of each

1. 631 N.Y.S.2d 825 (App. Div. 1st Dep't 1995).

2. *Id.* at 826. Additionally, defendants asserted non-justiciability and lack of standing as grounds for their dismissal motion. *Id.*

3. N.Y. CONST. art. I, § 11. This section provides:

> No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.

Id.

system.[4] In light of *Campaign for Fiscal Equity, Inc. v. State of New York*,[5] where the court of appeals held that a plaintiff alleging equal protection violations based on a "disproportionate impact upon a suspect class" must establish intentional discrimination,[6] the Appellate Division, First Department, in *Weinbaum*, granted the defendants' motion to dismiss.[7] The court found that the complaint failed to "set forth any facts tending to show that in making their decisions regarding funding of the two systems, the defendants acted with a discriminatory purpose . . . ."[8]

Funding for the SUNY and CUNY systems is made by a "'lump sum appropriation' for each college of both systems."[9] Although the student populations of each system are approximately the same size, it is uncontested that the SUNY system receives a greater share of the state funding.[10] The systems vary in racial and ethnic composition based on the fact that "SUNY's student body is predominantly composed of anglo-caucasian students, [whereas] CUNY's student body is predominantly composed of non-anglo-caucasian students."[11] The plaintiffs, using an "'appropriation per full-time enrolled student' formula" to calculate funding, charged that the disparity in funding of the two systems was "impermissibly based on . . . race."[12]

The *Weinbaum* court declined to recognize what it considered a mere allegation of "disparate impact in funding, and not an

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4. *Weinbaum*, 631 N.Y.S.2d at 827.

5. 86 N.Y.2d 307, 321, 655 N.E.2d 661, 669, 631 N.Y.S.2d 565, 573 (1995).

6. *Id.*

7. *Weinbaum*, 631 N.Y.S.2d at 827.

8. *Id.* Plaintiffs' causes of action under N.Y. Civil Rights Law §§ 40 and 40-c and N.Y. Education Law §§ 6201 and 6221 were also rejected. *Id.* at 828.

9. *Id.* at 827.

10. *Id.* at 826.

11. *Id.* The court noted that the plaintiffs have not, however, alleged that this difference "is due to any kind of purposeful or intentional state action." *Id.*

12. *Id.* at 827.

illegal discriminatory purpose"[13] as sufficient to state a cause of action under the Equal Protection Clause.[14] Citing the court of appeals ruling in *Campaign for Fiscal Equity, Inc.*,[15] the court held that plaintiffs could move forward only if they alleged intentional discrimination on the part of the state in its funding of the SUNY and CUNY systems.[16] In *Campaign for Fiscal Equity Inc.*, the plaintiffs raised an equal protection challenge against the state scheme, which provided funding for the New York City public schools.[17] The court of appeals dismissed that cause of action, "rel[ying] on the case law from [the Court of Appeals] and the [United States] Supreme Court holding that an equal protection cause of action based upon a disproportionate impact upon a suspect class requires establishment of intentional discrimination."[18]

In *Village of Arlington Heights v. Metropolitan Housing Development Corp.*,[19] the United States Supreme Court rejected the respondent's claim that the Village of Arlington Height's refusal of its application for the re-zoning of a parcel of land, which would have permitted construction of "low- and moderate-

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13. *Id.*

14. *Id.*

15. 86 N.Y.2d 307, 321, 655 N.E.2d 661, 669, 631 N.Y.S.2d 565, 573 (1995).

16. *Weinbaum*, 631 N.Y.S.2d at 827. The court stated that:

> While we agree . . . that if the Executive or Legislative branches of government were to maintain a policy or practice of disparate funding of State financed higher education institutions motivated by racial bias such policy or practice would be prohibited by the State Constitution's equal protection clause, we do not agree . . . that such a claim has been adequately set forth in this complaint.

Id.

17. *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.

18. *Id.* at 321, 655 N.E.2d at 669, 631 N.Y.S.2d at 573 (citing Village of Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252, 264-65 (1977); Washington v. Davis, 426 U.S. 229, 240 (1976); People v. New York City Tr. Auth., 59 N.Y.2d 343, 350, 452 N.E.2d 316, 319, 465 N.Y.S.2d 502, 505 (1983); Board of Educ. v. Nyquist, 57 N.Y.2d 27, 43-44, 439 N.E.2d 359, 366, 453 N.Y.S.2d 643, 650-51 (1982)).

19. 429 U.S. 252 (1977).

income" housing, violated the Equal Protection Clause.[20] One of the respondents, an African-American who worked in Arlington Heights but lived roughly twenty miles away, alleged that if the development project had been approved, he would have moved there with his son and mother.[21] He claimed that the refusal of the re-zoning application deprived him of the opportunity to live closer to his place of employment and that the denial was racially discriminatory.[22] While holding that "racially disproportionate impact" in itself was insufficient to establish a claim under the Equal Protection Clause,[23] the Court also noted that "[t]he impact of the official action . . . may provide an important starting point" in an inquiry as to whether the state had an invidious discriminatory intent.[24] Nevertheless, Justice Powell unambiguously stated that "official action will not be held unconstitutional solely because it results in a racially disproportionate impact."[25]

New York has followed federal law by requiring a showing of discriminatory intent to establish a cognizable cause of action against the state for a violation of equal protection based on disproportionate impact of official action upon a suspect class.[26] Although, as Justice Stevens noted in his concurrence in *Washington v. Davis*,[27] "the line between discriminatory purpose and discriminatory impact" is not always bright,[28] the discrimination alleged in *Weinbaum* was not nearly as stark as

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20. *Id.* at 254-55.
21. *Id.* at 264.
22. *Id.*
23. *Id.* at 265.
24. *Id.* at 266.
25. *Id.* at 264-65.
26. *Weinbaum*, 631 N.Y.S.2d at 827 (stating that "under New York law, 'an equal protection cause of action based upon a disproportionate impact upon a suspect class requires establishment of intentional discrimination'") (quoting Campaign for Fiscal Equity v. State of New York, 86 N.Y.2d 307, 321, 655 N.E.2d 661, 669, 631 N.Y.S.2d 565, 573 (1995)).
27. 426 U.S. 229 (1976).
28. *Id.* at 254 (Stevens, J., concurring).

that alleged in *Gomillion v. Lightfoot*[29] or *Yick Wo v. Hopkins*.[30] In *Gomillion* and *Yick Wo*, violations of the Equal Protection Clause of the Federal Constitution[31] were found as a result of racially disproportionate impact on a suspect class, even without an allegation of intentional discrimination, based on the inexplicable and severe nature of the discrimination. The nature of the discrimination in *Weinbaum* was not so severe or inexplicable. Allocation of state resources for education is solidly within the province of the legislature. Given that the plaintiffs in *Weinbaum* did not allege, "even in a conclusory fashion, that the State maintains two different higher education systems with access, opportunity and admission being restricted based on race or ethnicity,"[32] the court concluded that the Equal Protection Clause does not "require the State to equalize the two systems which, for demographic reasons not attributed to defendants,

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29. 364 U.S. 339, 340-41, 347-48 (1960) (finding a potential violation of the Equal Protection Clause where an act by the legislature that changed the shape of the City of Tuskegee from a square to a figure with twenty eight sides had the effect of removing from the city limits all but four or five of the four hundred black voters, without removing one white resident or voter).

30. 118 U.S. 356, 357-59, 374 (1886) (finding violation of the Equal Protection Clause where a local ordinance prohibiting operation of a laundry not located in a brick or stone building without the consent of a board of supervisors precluded two hundred Chinese nationals from operating laundries, but only precluded one non-Chinese applicant). Justice Matthews explained that:

> Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an *evil eye* and an *unequal hand*, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution.

Id. at 373-74 (emphasis added). Thus, laws applied with an "unequal hand" (treating similarly situated people differently) and an "evil eye" (having an impermissible purpose), will violate equal protection.

31. 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.*

32. *Weinbaum*, 631 N.Y.S.2d at 827.

have developed student bodies unequal in their racial and ethnic composition."[33]

SECOND DEPARTMENT

Abberbock v. County of Nassau[34]
(decided March 29, 1995)

The plaintiffs sought an order pronouncing three ordinances passed by Nassau County, freezing and cutting salaries of management/confidential nonunion workers and increasing salaries of non-management/confidential union workers, unconstitutional[35] on the grounds that the ordinances violated the Equal Protection Clauses of the Federal[36] and New York State Constitutions.[37] The court held that the ordinances did not violate the Equal Protection Clauses of either the Federal or New York State Constitutions because, under the rational basis test, the economic classification made between nonunion and union employees was presumed to be rationally related to the furtherance of a legitimate goal of the County of Nassau and as such, the ordinances represented a valid exercise of Nassau County's legislative authority.[38]

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33. *Id.*

34. 213 A.D.2d 691, 624 N.Y.S.2d 446 (2d Dep't 1995).

35. *Id.* at 691, 624 N.Y.S.2d at 447.

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

37. 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.*

38. *Abberbock*, 213 A.D.2d at 691-92, 624 N.Y.S.2d at 447. In addition, the plaintiffs claimed that the ordinances violated section 1307 of the Nassau County Charter, which requires "salaries to be standardized 'so that, *as near as may be*, equal pay may be given for equal work . . . .'" *Id.* at 692, 624 N.Y.S.2d at 448 (emphasis in original) (citation omitted). The appellate division determined that the charter had not been violated because "[t]he general principal of 'equal pay for equal work' need not be applied in all circumstances." *Id.*