



**TOURO UNIVERSITY**  
JACOB D. FUCHSBERG LAW CENTER  
*Where Knowledge and Values Meet*

## Touro Law Review

---

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

---

Article 21

1996

### Equal Protection

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/lawreview>



Part of the [Constitutional Law Commons](#), and the [Judges Commons](#)

---

#### Recommended Citation

(1996) "Equal Protection," *Touro Law Review*. Vol. 12: No. 3, Article 21.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol12/iss3/21>

This New York State Constitutional Decisions is brought to you for free and open access by Digital Commons @ Touro Law Center. It has been accepted for inclusion in Touro Law Review by an authorized editor of Digital Commons @ Touro Law Center. For more information, please contact [lross@tourolaw.edu](mailto:lross@tourolaw.edu).

classifications may nonetheless be legitimate.<sup>56</sup> In addition, the court adopted the federal standard indicating that under rational basis review, any conceivable set of facts will be acceptable to warrant the classification.<sup>57</sup> Thus, it determined that where a plaintiff fails to overcome the nearly insurmountable burden of showing the classification was wholly irrational, the equal protection claim will fail.<sup>58</sup> The court concluded that the plaintiffs did not meet that burden in the case at hand, and therefore the ordinances were constitutional under both the Federal and the New York State Constitution.<sup>59</sup>

#### FOURTH DEPARTMENT

Burke v. Crosson<sup>60</sup>  
(decided March 17, 1995)

The plaintiffs, county court judges in Onondaga County, claimed that the salary structure of the Judiciary Law section 221-d<sup>61</sup> violated their equal protection rights under the New York State<sup>62</sup> and Federal<sup>63</sup> Constitutions by creating an inequality between their compensation and the compensation received by county court judges serving in thirteen other counties.<sup>64</sup> The Appellate Division, Fourth Department held that the plaintiffs' equal protection rights had been violated because

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.* at 691-92, 624 N.Y.S.2d at 447.

60. 213 A.D.2d 963, 623 N.Y.S.2d 969 (4th Dep't 1995).

61. N.Y. JUD. LAW § 221-d (McKinney Supp. 1995). Judiciary Law § 221-d lists the annual salaries of county court judges of New York State by county. *Id.*

62. 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.*

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

64. *Burke*, 213 A.D.2d at 963, 623 N.Y.S.2d at 969-70.

there was no rational basis for the disparity in compensation between the plaintiffs' salaries and the salaries of the county court judges in Monroe and Erie Counties.<sup>65</sup> This was due to the fact that their responsibilities and duties were similar and the cost of living in each of the three counties was nearly identical.<sup>66</sup> The appellate division also determined, however, that the plaintiffs' equal protection rights were not violated by the difference in salary between the plaintiffs and the county court judges from the other named counties because a significant difference in the cost of living provided a rational basis for the difference in compensation.<sup>67</sup>

The plaintiffs sought a judgment determining that the lower salaries paid to county court judges in Onondaga County, as compared to the higher salaries paid to county court judges in thirteen other counties<sup>68</sup> pursuant to section 221-d of the Judiciary Law,<sup>69</sup> violated their equal protection rights.<sup>70</sup> In addition, plaintiffs sought back pay with interest,<sup>71</sup> increases in salary to the level of the higher paid judges, and payments to pension plans as well as contribution to any other benefits which would reflect the salary adjustment.<sup>72</sup>

The *Burke* court, relying on the reasoning of four recent appellate division decisions,<sup>73</sup> concluded that because the cost of

65. *Id.* at 964-65, 623 N.Y.S.2d at 970.

66. *Id.*

67. *Id.* at 964, 623 N.Y.S.2d at 970.

68. The 13 other counties are: Albany, Clinton, Dutchess, Erie, Monroe, Nassau, Orange, Putnam, Rockland, Suffolk, Tom Sullivan, Tompkins, and Westchester. *Id.* at 964-65, 623 N.Y.S.2d at 970-71.

69. N.Y. JUD. LAW § 221-d (McKinney Supp. 1995).

70. *Burke*, 213 A.D.2d at 963, 623 N.Y.S.2d at 969-70. In addition, the plaintiffs challenged the higher salary paid to a judge of the court of claims who was assigned to Onondaga County to act as a supreme court justice. *Id.* at 963-64, 623 N.Y.S.2d at 970. The court held that the "distinctions in jurisdiction and authority" justified the higher salary paid to the judge from the court of claims. *Id.* at 964, 623 N.Y.S.2d at 970.

71. See N.Y. CIV. PRAC. L. & R. 5004 (McKinney 1992) (stating that "[i]nterest shall be at the rate of nine per centum per annum").

72. *Burke*, 213 A.D.2d at 965, 623 N.Y.S.2d at 971.

73. See *Buckley v. Crosson*, 202 A.D.2d 972, 973, 609 N.Y.S.2d 493, 494 (4th Dep't 1994) (holding that the difference in salary between county

living in Nassau, Suffolk, and Westchester Counties, as well as the remaining Second Department Counties, was notably higher than that of Onondaga County, there was a “rational basis for the geographically disparate salaries between those counties and Onondaga County.”<sup>74</sup> In addition, with respect to Albany County, the court determined that “[t]he higher cost of living . . . including substantially higher housing costs, provide[d] a rational basis for the geographically disparate salaries.”<sup>75</sup> Furthermore, the court decided that a rational basis existed for the higher salaries paid to the judges of the county courts in the other counties located in the Third Department.<sup>76</sup> Thus, equal protection rights were not violated even though judges from different counties are paid different salaries to perform identical jobs, as long as there is a significant difference in the cost of living between the counties. The difference in the cost of living “provide[s] a rational basis for the geographically disparate salaries.”<sup>77</sup>

---

court judges in Oneida County and judges of the county courts serving in eleven other counties in the Second Department and the Third Department had a rational basis because the cost of living was significantly higher in the eleven other counties as compared to Oneida County); *Barth v. Crosson*, 199 A.D.2d 1050, 1050-51, 607 N.Y.S.2d 200, 201-02 (4th Dep’t 1993) (holding that the difference in salary between judges of the family court in Oneida and Onondaga Counties and family court judges in certain counties within the First and Second Departments had a rational basis because the cost of living was significantly higher in those counties as compared to Onondaga and Oneida Counties); *Edelstein v. Crosson*, 187 A.D.2d 694, 696, 590 N.Y.S.2d 277, 278 (2d Dep’t 1992) (holding that the defendants had established a rational basis for the difference in salary between county court judges in Dutchess, Rockland, and Orange Counties and county court judges in Westchester County because the defendants had proven that it is much more expensive to live in Westchester County); *Davis v. Rosenblatt*, 159 A.D.2d 163, 172, 559 N.Y.S.2d 401, 406 (3d Dep’t 1990) (holding that a rational basis for the difference in salaries between judges of the city court serving in the cities of Niagara Falls, Buffalo, Rochester, and Syracuse and city court judges in Yonkers had been established because the state demonstrated that the cost of living in the City of Yonkers was higher than that of the other counties).

74. *Burke*, 213 A.D.2d at 964, 623 N.Y.S.2d at 970.

75. *Id.*

76. *Id.*

77. *Id.*

However, the appellate division held that defendants did not show the existence of a rational basis for the higher salaries paid to the county court judges serving in Monroe and Erie Counties.<sup>78</sup> In reaching its decision, the court applied the rational basis test set out by the New York Court of Appeals in *Weissman v. Evans*.<sup>79</sup> This was the seminal case challenging judicial salary disparity which arose out of the enactment of the Unified Court Budget Act.<sup>80</sup> In *Weissman*, the plaintiffs, Suffolk County district court judges, were paid less than the district court judges serving in Nassau, the adjoining county.<sup>81</sup> The plaintiffs claimed that the difference in salary violated their state and federal equal protection guarantees.<sup>82</sup> In evaluating the plaintiffs' equal protection claim, Judge Fuchsberg stated "the rule is that, while equal protection does not necessarily require territorial uniformity . . . 'territorial distinction which has no rational basis will not support a state statute.'" <sup>83</sup> The court determined that in order to satisfy the rational basis test, there must be "some ground of difference having a fair and substantial relation to the object of the legislation."<sup>84</sup> After finding that there was a "true

---

78. *Id.* at 964-65, 623 N.Y.S.2d at 970.

79. 56 N.Y.2d 458, 438 N.E.2d 397, 452 N.Y.S.2d 864 (1982).

80. *Id.* at 462, 438 N.E.2d at 398, 452 N.Y.S.2d at 865. See N.Y. JUD. LAW § 39(6) (McKinney 1983). Under the Unified Court Budget Act, judicial personnel became New York State employees on April 1, 1977 and the prior system whereby judicial salaries were determined locally was abolished. *Id.*

81. *Id.* at 460-61, 438 N.E.2d at 397, 452 N.Y.S.2d at 864.

82. *Id.*

83. *Id.* at 464-65, 438 N.E.2d at 400, 452 N.Y.S.2d at 867 (alteration in original) (quoting *Manes v. Goldin*, 400 F. Supp. 23, 29 (E.D.N.Y. 1975), *aff'd*, 423 U.S. 1068 (1976) (citations omitted)).

84. *Id.* at 465, 438 N.E.2d at 400, 452 N.Y.S.2d at 867 (quoting *Manes v. Goldin*, 400 F. Supp. 23, 29 (E.D.N.Y. 1975), *aff'd*, 423 U.S. 1068 (1976)). See *Levy v. Parker*, 346 F. Supp. 897, 902 (E.D. La. 1972) (stating that geographical distinctions "are not, in and of themselves, violative of the Fourteenth Amendment" when the classification "rests upon some reasonable consideration of difference or policy") (quoting *Weissinger v. Boswell*, 330 F. Supp. 615 (M.D. Ala. 1971)), *aff'd*, 411 U.S. 978 (1973)); *Reed v. Reed*, 404 U.S. 71, 76 (1971) (stating that "[a] classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly

unity of . . . judicial interest . . . indistinguishable by separate geographic considerations,”<sup>85</sup> and that “no rational basis for the geographic classification”<sup>86</sup> existed, the *Weissman* court held that the difference in salary violated the plaintiffs’ equal protection rights.<sup>87</sup>

Following the holding in *Weissman*, the Third Department in *Davis v. Rosenblatt*<sup>88</sup> stated that legislation violates equal protection if it provides for different salaries to be paid to judges serving in the same county or in adjoining counties where no significant differences exist in the cost of living and population, and when the judges have similar functions, duties, caseloads and responsibilities.<sup>89</sup> Thus, differences in the costs of living should be considered as a factor in finding that salary variances are unconstitutional when there is a “true unity of . . . judicial interest . . . indistinguishable by separate geographic considerations.”<sup>90</sup>

---

circumstanced shall be treated alike’”) (quoting *F.S. Royster Guano Co. v. Virginia*, 253 U.S. 412, 415 (1920)). By adopting the *Reed* test, it could be inferred that the *Weissman* court utilized a more potent rational basis test than is traditionally applied.

85. *Weissman*, 56 N.Y.2d at 463, 438 N.E.2d at 399, 452 N.Y.S.2d at 866 (alteration in original) (citation omitted). In addition, the court found that the “functions, duties and responsibilities of [the judges were] identical . . . [and] their caseloads [were] substantially the same.” *Id.*

86. *Id.* at 466, 438 N.E.2d at 400, 452 N.Y.S.2d at 867.

87. *Id.* at 466, 438 N.E.2d at 401, 452 N.Y.S.2d at 868.

88. 159 A.D.2d 163, 559 N.Y.S.2d 401 (3d Dep’t 1990).

89. *Id.* at 170, 559 N.Y.S.2d at 405. In *Davis*, the court found that no rational basis existed for the difference in salary between judges of the Utica city courts and the plaintiffs, who were city court judges from Niagara Falls, Syracuse, Buffalo and Rochester, because their responsibilities and duties were identical and the average caseloads of the plaintiff judges were roughly comparable or possibly even greater than their counterparts. *Id.* at 171, 559 N.Y.S.2d at 405. In addition, the court determined that the difference in the cost of living between Niagara Falls and Utica was not significant and the cost of living in Rochester, Buffalo, and Syracuse was actually greater than the cost of living in Utica. *Id.* Moreover, all of the counties in question were located within the Fourth Department. *Id.*

90. *Id.* at 171, 559 N.Y.S.2d at 405-06 (alteration in original) (quoting *Weissman v. Evans*, 56 N.Y.2d 458, 463, 438 N.E.2d 397, 399, 452 N.Y.S.2d 864, 866) (1982)).

The *Burke* court, relying on the analysis and reasoning in *Davis*, found that the “[d]ifferences in the costs of living [in Onondaga, Erie, and Monroe Counties were] insignificant.”<sup>91</sup> In addition, the appellate division determined that the responsibilities and duties of the judges in the three counties were equivalent and the caseloads were comparable.<sup>92</sup> Moreover, the “true unity of . . . judicial interest[s] . . . indistinguishable by separate geographic considerations” existed, because the three counties were all encompassed by the Fourth Department.<sup>93</sup> Thus, because the defendant did not establish a rational basis for the higher salaries paid to the judges in Erie and Monroe Counties, the plaintiffs’ equal protection rights had been violated.<sup>94</sup>

In conclusion, in order for a plaintiff to prevail on an equal protection claim challenging legislatively enacted judicial salaries that vary by geographic region or county, it must be shown that the discrepancy has no rational basis.<sup>95</sup> The court will determine whether there is a rational basis for the discrepancy by examining differences in the costs of living and populations of the counties, and differences in the caseloads, duties, and responsibilities of the judges.<sup>96</sup> Therefore, when significant differences in those factors exist and the counties are geographically related or within the same judicial department, an equal protection violation of both the New York State and Federal Constitutions will most likely be found. Finally, by applying a rational basis test to this economic classification which does not involve a suspect class nor impinge a fundamental right, the *Burke* court makes the point that an analysis under both the New York and Federal Constitutions are substantially similar.

---

91. *Burke*, 213 A.D.2d at 964, 623 N.Y.S.2d at 970.

92. *Id.*

93. *Id.* at 964-65, 623 N.Y.S.2d at 970.

94. *Id.* at 965, 623 N.Y.S.2d at 970.

95. See *supra* notes 80-82 and accompanying text.

96. See *supra* notes 86-88 and accompanying text.