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Affronti v. Crosson

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EQUAL PROTECTION

United States Constitution Amendment XIV, Section 1:

[N]or shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.

New York Constitution Article I, Section 11:

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.

COURT OF APPEALS OF NEW YORK

Affronti v. Crosson[1]
(decided March 22, 2001)

Plaintiffs, current and former Monroe County Family Court Judges, challenged the constitutionality of Judiciary Law §§ 221-d[2] and 221-e,[3] claiming that the statutorily enacted pay disparities between the Monroe County Family Court Judges and Judges serving in the Family Courts of Sullivan, Putnam, and Suffolk Counties violated their equal protection rights under the Fourteenth Amendment of the Federal Constitution[4] and article I,

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[1] 95 N.Y.2d 713, 746 N.E.2d 1049, 723 N.Y.S.2d 757 (2001).
[2] N.Y. COMPENSATION OF JUDGES LAW § 221-d (1995).
[3] *Id.* § 221-e.
[4] U.S. CONST. amend XIV, § 1 provides in pertinent part:
[N]or shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.

§ 11 of the New York State Constitution. [5] The Trial Court declared that the salary disparities between plaintiffs and the judges sitting in Family Court in Sullivan, Suffolk, and Putnam Counties lacked a rational basis and violated plaintiffs' equal protection rights.[6] On appeal, the Appellate Division, Fourth Department, reversed as to the Putnam and Suffolk County salary differentials, but affirmed with respect to the pay disparities between plaintiffs and the Sullivan County Family Court judges.[7] On appeal to the New York Court of Appeals, the court stated that "because a rational basis exists for the salary disparities, ...the challenged provisions did not violate equal protection."[8]

In April 1992, plaintiffs commenced this action seeking declaratory, injunctive, and monetary relief. The action was brought against the Chief Administrator of the Courts of New York, Matthew T. Crosson, and the Comptroller of the State of New York, Edward Regan, and the State of New York.[9] Plaintiffs alleged that defendants violated their equal protection rights under the Federal and State Constitutions. Under Judiciary Law § 221-e,[10] the statutory salaries of Sullivan and Suffolk County Family Court Judges were higher than the plaintiffs'

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[5] *Affronti*, 95 N.Y.2d at 716, 746 N.E.2d at 1050, 723 N.Y.S.2d at 758; N.Y. CONST. art. I, § 11 states:

> 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.

[6] *Affronti*, 95 N.Y.2d at 717, 746 N.E.2d at 1051, 723 N.Y.S.2d at 759.

[7] *Id.* at 717-18, 746 N.E.2d at 1051, 723 N.Y.S.2d at 759.

[8] *Id.* at 717, 746 N.E.2d at 1050, 723 N.Y.S.2d at 758.

[9] *Id.*

[10] N.Y. COMPENSATION OF JUDGES LAW § 221-e (McKinney's 1983 & Supp. 2002) provides in pertinent part:

> Effective on the dates indicated, the annual salaries of judges of the civil court of the city of New York and the criminal court of the city of New York shall be as follows: Judge of the Civil Court: $51,000, Judge of the Criminal Court: $51,000.

salaries and, under Judiciary Law § 221-d,[11] the salaries of Putnam County Court Judges who serve in multi-bench capacity were also higher.[12]

At trial, plaintiffs proffered evidence seeking to demonstrate a similarity in the functions, duties and responsibilities performed between themselves and judges in other counties.[13] Plaintiffs also sought to establish that the average cost of single-family homes in Monroe County was greater than in Sullivan County.[14] Defendants countered with expert testimony and statistical data showing a cost of living differential between Monroe and Suffolk Counties.[15] On appeal, the defendants submitted U.S. Bureau of Census data from the New York State Statistical Yearbook setting forth higher median home values in Sullivan County than in Monroe County. However, the court refused to consider the data on the ground that it was "presented for first time in the brief of Defendants ... and, thus not properly before the court."[16]

The Court of Appeals agreed with the Appellate Division with respect to the constitutionality of the salary disparities between plaintiffs and their counterparts in Putnam and Suffolk Counties since the plaintiffs failed to meet their threshold burden of demonstrating that the parties were similarly situated for equal protection analysis.[17] However, in the case of Sullivan County the court disagreed with the Fourth Department.

The court began its analysis of the plaintiffs' equal protection claim by stating that "where a governmental

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[11] N.Y. COMPENSATION OF JUDGES LAW § 221-d (McKinney's 1983 & Supp. 2002) provides in pertinent part:

> Effective on the dates indicated, the annual salaries of each judge of the county court, the surrogate's court and the family court shall be as follows: Monroe County: $51,000, Putnam County: $55,000, Sullivan County: $52,000, Suffolk County: $54,000.

[12] *Affronti*, 95 N.Y.2d at 717, 746 N.E.2d at 1050, 723 N.Y.S.2d at 758.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.* at 718, 746 N.E.2d at 1051, 723 N.Y.S.2d at 759.

[17] *Affronti*, 95 N.Y.2d at 718, 746 N.E.2d at 1051, 723 N.Y.S.2d at 759.

classification is not based on an inherently suspect characteristic and does not impermissibly interfere with the exercise of a fundamental right, it need only rationally further a legitimate state interest to be upheld as constitutional."[18] Undisputedly, the disparate judicial salary schedules do not involve suspect classes or fundamental rights and are therefore only subject to rational basis review.[19]

In analyzing the issue of equal protection, the Court of Appeals used the rational basis test created by the federal courts. In *Kimel v. Florida Board of Regents*,[20] the United States Supreme Court stated that when utilizing rational basis review, "we will not overturn such government action unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the government's actions were irrational."[21] Essentially, the rational basis test under the equal

[18] *Id.* at 718-19, 746 N.E.2d at 1052, 723 N.Y.S.2d at 760. *See* Nordlinger v. Hahn, 505 U.S. 1, 10 (1992). In *Nordlinger*, the petitioner, who recently bought a home, filed suits against respondents, the county, and its tax assessor, claiming that Article XIIIA's reassessment scheme violates the Equal Protection Clause. *Id.* Article XIIIA embodies an "acquisition value" system of taxation, whereby property is reassessed up to current appraised value upon new construction or a change in ownership. *Id.* The court held that in permitting longer-term owners to pay less in taxes than newer owners of comparable property, this assessment scheme rationally furthers at least two state interests. *Id.* First, because the state has a legitimate interest in local neighborhood preservation, continuity, and stability, it legitimately can decide to structure its tax system to discourage rapid turnover. *Id.* Second, the state can legitimately conclude that a new owner, does not have the same reliance interest warranting protection against higher taxes as does an existing owner, who does not have the option of deciding not to buy his home if taxes become prohibitively high. *Id.*

[19] *Affronti*, 95 N.Y.2d at 719, 746 N.E.2d at 1052, 723 N.Y.S.2d at 760.

[20] 528 U.S. 62 (2000).

[21] *Id.* at 84. In *Kimel*, the plaintiffs alleged that the Florida Board of Regents refused to require the two state universities to allocate funds to provide previously agreed upon market adjustments to the salaries of eligible university employees. *Id.* The plaintiffs contended that this failure had a disparate impact on the base pay of employees with a longer record of service, most of who were older employees. *Id.* The US Supreme Court held that the substantive requirements the ADEA imposes on state and local governments are

protection clause will be satisfied so long as there is a plausible policy reason for the classification, and the legislative facts on which the classification is based rationally may have been considered to be true by the governmental decision maker.[22] Therefore, a state has no obligation to produce evidence to sustain the rationality of a statutory classification.[23] Since the statute in question is presumed to be constitutional, "the burden is on the one attacking the legislative arrangement to [make] negative every conceivable basis which might support it."[24]

New York State Courts have decided similar cases dealing with equal protection issues in the past by using the same rational basis test employed by the federal courts. The New York Court of Appeals has stated that to meet the test of rationality, it must appear that there is "some ground of difference having a fair and substantial relation to the object of the legislation."[25] In *Weissman v. Evans,*[26] the plaintiffs, District Court Judges of the Suffolk District Court, sought a judgment declaring the perpetuation of an unfavorable salary disparity between the plaintiffs and the judges of Nassau County violative of the equal

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disproportionate to any unconstitutional conduct that conceivably be targeted by the act. *See Id.* at 62.

[22] *Nordlinger,* 505 U.S. at 11.

[23] Heller v. Doe, 509 U.S. 312, 320 (1993).

[24] *Heller,* 509 U.S. at 320. In *Heller,* the respondents were a class of mentally retarded persons committed involuntarily to Kentucky institutions. *Id.* In Kentucky, involuntary civil commitments of those alleged to be mentally retarded and mentally ill are governed by separate statutory procedures. *Id.* The respondents argued that these distinctions were irrational and violated the equal protection clause of the Fourteenth Amendment. *Id.* The U.S. Supreme Court held that under rational basis review, Kentucky's statutory procedures did not violate the equal protection clause in view of the differences between the two conditions of mental retardation and mental illness or the prevailing methods of treatments for the two conditions. *Id.* Kentucky's statutory provision for party-status participation by immediate family members with respect to commitment based on mental retardation did not violate equal protection because Kentucky might have concluded that close relatives have valuable insights which ought to be considered during the commitment process. *Id.* at 320.

[25] Weissman v. Evans, 56 N.Y.2d 458, 465, 438 N.E.2d 397, 400 (1982).

[26] 56 N.Y.2d at 458, 438 N.E.2d at 397.

protection provision.[27] The jurisdiction, practice, and procedures of each of the District Courts, in addition to the functions, duties, and responsibilities of the District Court Judges were identical and their caseloads were the same.[28] The court stated, "[a] territorial distinction which has no rational basis will not support a state statute."[29] Therefore, the court held that since the disparate treatment of the District Courts in Nassau and Suffolk Counties is without rational foundation, there is no choice but to declare it offensive to the plaintiffs' constitutionality protected right to equal protection of the laws of this state.[30]

However, in the vast majority of cases the courts have held, where a statute is not based on an inherently suspect characteristic, the statute is constitutional. For example, in *Henry v. Milonas*,[31] the elected Surrogate and elected Ontario County Court Judge sought a declaration that the difference between their salaries and the salaries paid to judges of the County, Family, and Surrogate's Court in contiguous Monroe County violated their right to equal protection of the laws.[32] The Court of Appeals stated that the statewide differences in population, caseload and cost of living provided a rational basis for the legislature to adopt salary differentials for those serving in different areas of the state.[33] This case is indicative of the lower standard of review when the test is that of rational basis.

In *Barr v. Crosson*,[34] the court stated that plaintiffs alleging a violation of equal protection must satisfy the "heavy

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[27] *Id.* at 460-61, 438 N.E.2d at 397.

[28] *Id.*

[29] *Id.* at 465, 438 N.E.2d at 400.

[30] *Id.* at 466, 438 N.E.2d at 401.

[31] 91 N.Y.2d 264, 692 N.E.2d 554, 669 N.Y.S.2d 523 (1998).

[32] *Id.* at 267, 692 N.E.2d at 555.

[33] *Id.* at 268, 692 N.E.2d at 556. The state defendants submitted 1990 census data from the 1993 New York State Statistical Yearbook, which showed a 16% differential in the median value of homes in Monroe and Ontario Counties and a difference of 17% in per capita income between the two counties. *Id.* These economic differentials alone provide a rational basis for a salary disparity of approximately 4% - $103,800 for Monroe County-level Judges and $99,000 for Ontario County-level Judges. *Id.*

[34] 95 N.Y.2d 164, 733 N.E.2d 217, 711 N.Y.S.2d 145 (2000).

burden of proving that there is no reasonably conceivable state of facts which rationally supports the distinction."[35] In fact, economic differentials in median home values and per capita income can "alone provide a rational basis for a salary disparity."[36] These workload and economic differences provided a rational basis for the less that 5% pay differential challenged in the *Barr* case.[37]

In *Affronti*, the issue at trial was whether the salary disparities provided by state statute, between Sullivan and Monroe County, satisfied the rational basis standard of review so as to not violate plaintiffs' equal protection rights.[38] The court concluded that the Appellate Division erred in not discussing the census data brought before them on appeal. Since census data reflects a legislative fact, as opposed to an evidentiary fact, the data's absence from the record does not prevent its consideration for the first time on appeal.[39] The court found that the census data presented by the state on appeal, which illustrated the difference in median home values, provided a rational basis for the challenged provisions.[40] With the wealth of case law upholding the constitutionality when rational basis review is utilized, it should come as no surprise that the Court in *Affronti* upheld the statute.

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[35] *Id.* at 170, 733 N.E.2d at 220, 711 N.Y.S.2d at 148. In *Barr*, the plaintiffs, current and former Monroe County Court Judges, alleged that defendants violated their right to equal protection by causing them to be paid less that their counterpart judges in five other counties: Albany, Nassau, Putnam, Suffolk, and Westchester. *Id.* at 167, 733 N.E.2d at 217, 711 N.Y.S.2d at 145.

[36] *Id.* at 170, 733 N.E.2d at 220, 711 N.Y.S.2d at 148. (finding that the median home value was over 34% higher in Albany County than in Monroe County, and that the data established that Albany County Court handled 46% more filings and 45% more dispositions per judge than Monroe County).

[37] *Id.*

[38] *Affronti*, 95 N.Y.2d at 716, 746 N.E.2d at 1050, 723 N.Y.S.2d at 758.

[39] *Id.*

[40] *Id.* at 720, 746 N.E.2d at 1052, 723 N.Y.S.2d at 761. The state defendants submitted 1990 U.S. Census data from the 1996 New York State Statistical Yearbook demonstrating that median home values were approximately 3% higher in Sullivan County than in Monroe County - $93,400 to $90,700. *Id.* at 719.

In conclusion, both state and federal courts deal with the issue of equal protection in the same manner. First, the court decides if the governmental classification is based on an inherently suspect characteristic and if it impermissibly interferes with the exercise of a fundamental right.[41] If the court decides that the governmental classification is absent a suspect class, equal protection analysis requires the court to apply the rational basis standard of review. According to this standard, the challenged statute or governmental action is upheld if it bears a rational relation to a legitimate governmental interest.[42]

In essence, this standard, as applied on both the federal and state levels, is extremely hollow. Almost any statute can pass as constitutional under the rational basis standard of review. A statute will satisfy the rational basis test so long as there is a plausible policy reason for the classification. Therefore, it seems as if the rational basis standard used by both the federal and state courts to determine whether a statute violates a person's equal protection rights, provides broad discretion to the legislature in enacting laws.

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[41] *Id.* at 718, 746 N.E.2d at 1052, 723 N.Y.S.2d at 760.
[42] *Id.*