

**Taylor v State of New York**

2010 NY Slip Op 31125(U)

April 16, 2010

Sup Ct, NY County

Docket Number: 116370/08

Judge: Debra A. James

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\* 1] ANENED ON 4/29/2010

**SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY**

**PRESENT: DEBRA A. JAMES**  
*Justice*

**PART 59**

WARREN TAYLOR, IVAN COFFIN, JOSE TORRES,  
LUIS MORA, WILLIAM QUINONES, ANIBAL DIAZ,  
and BENNIE WALLACE, on behalf of themselves  
and all persons similarly situated,  
Plaintiffs,

Index No.: 116370/08

Motion Date: 07/07/09

Motion Seq. No.: 01

Motion Cal. No.: 107

- v -

DRAFT

STATE OF NEW YORK, DAVID A. PATERSON, in  
his official capacity as Governor of State  
of New York, NEW YORK STATE SENATE, Dean G.  
Skelos, in his official capacity as  
Majority Leader of the New York State  
Senate, and SHELDON SILVER, in his official  
capacity as Speaker of the New York State  
Assembly,

**UNFILED JUDGMENT**  
This judgment has not been entered by the County Clerk  
and notice of entry cannot be served based hereon. To  
obtain entry, counsel or authorized representative must  
appear in person at the Judgment Clerk's Desk (Room  
1418).

The following papers, numbered 1 to 7 were read on this motion to dismiss.

Notice of Motion/Order to Show Cause -Affidavits -Exhibits \_\_\_\_\_

Answering Affidavits - Exhibits \_\_\_\_\_

Replying Affidavits - Exhibits \_\_\_\_\_

**PAPERS NUMBERED**

1 - 3

4, 5

6, 7

**Cross-Motion:**       Yes       No.

Upon the foregoing papers,

Plaintiffs are seven recipients of New York State's basic  
public assistance grants, who in addition to bringing this action  
on their own behalf, seek class certification under Article 9 of  
the New York Civil Practice Law and Rules, on behalf of all  
present recipients of such grants. Defendants are the State of

**Check One:**       **FINAL DISPOSITION**       **NON-FINAL DISPOSITION**

**Check If appropriate:**       **DO NOT POST**       **REFERENCE**

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASONS(S):

[\* 2].  
New York as well its executive and legislative branches and the leaders of those branches.

Plaintiffs bring this action for declaratory and injunctive relief asserting that the defendants have violated New York Constitution, Article XVII, § 1, by failing to timely consider the basic grant for the needy and by failing to set and appropriate an amount that meets the constitutional standard of support.

Defendants move to dismiss the action on the grounds that the Legislature possesses the sole authority to set the amount of the basic grant and that such exercise of discretion is not subject to judicial review. Defendants also assert that the manner and means of carrying out the constitutional command are not subject to review under the doctrine of legislative and executive immunity.

Plaintiffs by separate motion seek to amend their complaint in light of the 2009-2010 New York State budget (L. 2009, § 57) that increased part of the public assistance grant. Plaintiffs' proposed amended complaint asserts the same causes of action as in the original complaint but includes prayers for additional declaratory relief. As the amended complaint is based upon the same legal theories as the original and as the defendants have requested to have the current motion to dismiss applied to the amended complaint, the court shall grant the separate motion to

amend the complaint and shall consider the motion to dismiss as applied to the amended pleading.

Having heard oral argument and for the reasons stated below, the court grants defendants' motion to dismiss the amended complaint. The language of N.Y. Const., art. XVII, § 1, upon which plaintiffs found their challenge to the acts of defendants, explicitly leaves it to the discretion of the Legislature to determine the amount of aid to people classified as needy. Such language is in marked contrast to the provisions of N.Y. Const., art. X, § 1 that confer upon children who reside in New York State a constitutional right to a "sound basic education" [as defined in Levittown Union Free School Dist. v Nyquist, 57 NY2d 27 (1982)], the violation of which was found to state a cognizable claim in Campaign for Fiscal Equity v State, 86 NY2d 307 (1995). Since plaintiffs neither dispute that the legislative enactments in connection with the basic grant allowance are "reasonably expected to be in furtherance of the optimum utilization of public assistance funds", nor claim that a group of needy persons has been impermissibly excluded from eligibility for such benefits, their complaint states no violation of the constitutional command of N.Y. Const., art. XVII, § 1. Brownley v Doar, 12 NY3d 33, 43-44 (2009).

## I

New York State Constitution, Article XVII

Article XVII, § 1 of the New York State Constitution

declares:

The 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.

## II

The Basic Grant

Section 131-a of the Social Services Law ("SSL") sets forth the amount of the maximum monthly basic public assistance grant (the "Basic Grant") in a specified dollar amount to all eligible needy persons to cover incidental living expenses (exclusive of shelter, home energy allowance, and supplemental home energy allowance). All persons receiving public assistance are also categorically eligible for the federal Food Stamps program and the joint federal-state medical assistance program.

Beyond the Basic Grant, other state laws provide additional assistance and care to public assistance recipients, including but not limited to shelter grant and fuel allowance, home delivered meal allowances for the disabled, and child care services. There are also federal and state coordinated anti-poverty programs, such as heat energy assistance; women, infants and children supplemental food programs; public housing and Section 8 Housing Assistance Program for lower-income families.

In 1989 the Basic Grant was set at \$112 per month for an individual. From 1989 to 2009, this amount was not increased despite the steep rise in the cost of living over that two decade period. On April 1, 2010, the Legislature enacted a budget that increased the Basic Grant by 30 percent over three years, commencing July 1, 2009.

Beginning in 1996, Congress substantially reformed federal welfare policy, enacting the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (codified in relevant part at 42 U.S.C. §§ 601-19), which was intended to "promot[e] the fundamental values of work, responsibility, and family" (Statement by President William J. Clinton Upon Signing HR 3734, 32 Wkly Compilation Presidential Docs 1487 [Aug. 26, 1996], reprinted in 1996 US Code Cong & Admin News, at 2891). The stated goal of these reforms was wherever appropriate, to assist families and individuals to move toward self-sufficiency, emphasizing the importance of work.

In 1997, in compliance with the congressional mandate, New York State enacted the Welfare Reform Act, L. 1997, ch. 436, Part B. This legislation provided incentives to raise work rates through various mechanisms, including the ability to earn and retain more income while receiving public assistance benefits, tax credits for even part-time work, and time limits on receipt of assistance. See, e.g., SSL § 131-a(8). New York law requires

public assistance recipients to engage in any of a wide range of "work activities", unless they are classified as "exempt". Such work requirements are imposed so that New York may avoid the fiscal penalties to which federal law subjects a state when an insufficient number of its recipients engage in federally defined work activities, including educational and training programs.

### III

An analysis of the claims raised by plaintiffs properly begins with the most recent statement by the Court of Appeals on the scope of New York Constitution, article XVII, § 1.

Article XVII, § 1 requires the State to provide for the aid, care and support of the needy. This provision was intended to serve two functions: First, it was felt to be necessary to sustain from constitutional attack the social welfare programs created by the State and, second, it was intended as an expression of the existence of a positive duty upon the State to aid the needy.

The provision for assistance to the needy is not a matter of legislative grace; rather, it is specifically mandated by our Constitution. Section 1 of Article XVII of the New York State Constitution declares: "The 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."

However, article XVII, § 1 of the State Constitution, which requires the State to provide for the aid, care and support of the needy, does not mandate that public assistance must be granted on an individual basis in every instance, nor does it command that the State must always meet in full measure all the legitimate needs of each public assistance recipient." . . . [T]his Court upheld the replacement of individual grants for shelter with a flat grant based upon fiscal constraints and the need to optimize available public assistance moneys. . . . [W]e reiterated that it is the prerogative of the Legislature to determine who is needy and to allocate public funds.

Khrapunskiy v Doar, 12 NY3d 478, 486-487, (2009) (internal citations and quotations omitted).

As previously stated by the Court-

In view of this legislative history, as well as the mandatory language of the provision itself, it is clear that section 1 of article XVII imposes upon the State an affirmative duty to aid the needy. Although our Constitution provides the Legislature with discretion in determining the means by which this objective is to be effectuated, in determining the amount of aid, and in classifying recipients and defining the term "needy", it unequivocally prevents the Legislature from simply refusing to aid those whom it has classified as needy. Such a definite constitutional mandate cannot be ignored or easily evaded in either its letter or its spirit.

Tucker v Toia, 43 NY2d 1, 8 (1977).

By the foregoing pronouncements, the Court of Appeals has made it clear that New York Constitution, article XVII, § 1 imposes upon the Legislature three requirements: (1) to define who is "needy;" (2) to determine the means by which those in need shall be aided, and (3) to determine the amount of aid.

Plaintiffs' argument that this court has the power under the Constitution to review whether the amount of aid allocated by the Legislature is sufficient to address the requirements of those defined as "needy" is contrary to the Court's precedents. The Legislature has the sole discretion to determine who is needy and the amount of aid. "New York is not required to meet every legitimate need of every needy person. Rather, the Legislature may determine who is 'needy' and allocate the public dollar accordingly." Aliessa ex rel. Fayad v Novello, 96 NY2d 418, 428 (2001). Thus what the Constitution prohibits is a complete

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legislative failure to aid the needy, not a failure to allocate unspecified additional amounts of aid to those so identified. Id.; see Tucker v Toia, supra 43 NY2d, at 8; see also Jiggetts v Grinker, 75 NY2d 411, 415 (1990) ("Broad policy choices, which involve the ordering of priorities and the allocation of finite resources, are matters for the executive and legislative branches of government and the place to question their wisdom lies not in the courts but elsewhere.").

Plaintiffs' further argument that the diminution of the basic grant due to inflation allows this court to review the Legislature's discretion is contrary to precedent binding upon this court. "In the face of these holdings, it cannot be concluded that the failure of the Legislature to increase the flat grant minimum subsistence grants 'to reflect changes in the cost of living' . . . constitutes a violation of the constitutional mandate, as contended by plaintiffs. The Constitution imposes the duty of determination upon and grants discretion to the Legislature, not the courts. The constitutional language must be given its ordinary, natural and plain meaning." Ram v Blum, 77 AD2d 278, 280 (1<sup>st</sup> Dept 1980, Fein, J. concurring).

Neither the Constitution nor the precedents interpreting it set forth any particular legislative process by which the Legislature must determine who is "needy" or the amount of the

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appropriation. The mere fact that the Legislature failed to increase the basic grant for nearly twenty years does not, by itself, constitute a failure to comply with its constitutional obligations. See e.g. Brownley v Doar, 12 NY3d 33, 43 (2009) ("there is no right to a constitutionally prescribed minimum shelter allowance since it is the prerogative of the Legislature to determine who is needy and allocate the public dollar accordingly").

Plaintiffs misplace reliance upon the Court of Appeals decisions in Campaign for Fiscal Equity, Inc. v State (86 NY2d 307 [1995] & 100 NY2d 893 [2003] "collectively CFE). In the CFE litigation the Court was concerned with the determination of the State's obligations under New York Constitution art XI, § 1. However that constitutional section is not analogous to New York Constitution, article XVII, § 1 because it does not contain the key language granting the Legislature the exclusive authority to determine the "manner and ... means" by which the State's obligation was to be fulfilled. Thus in CFE the Court was faced with determining the standard by which the State's compliance with the Constitution would be measured. Here, as recognized by the Court of Appeals, the Constitution explicitly rests the determination in the Legislature.

With respect to their petition, civic participation, including voting and the exercise of other first amendment

rights, aimed at influencing the priorities determined and approved by the legislative and executive branches, is the proper remedy for plaintiffs and other concerned citizens. Such process poses an extraordinary challenge given an ever tightening state budget.<sup>1</sup>

Accordingly, it is

ORDERED and ADJUDGED that the defendants' motion to dismiss is GRANTED and this action is hereby DISMISSED in its entirety and the Clerk is directed to enter judgment accordingly.

This is the decision and order of the court.

Dated: April 16, 2010

ENTER:

Debra A. James  
J.S.C.

**DEBRA A. JAMES**

<sup>1</sup>Concurring and dissenting in West v Bowen, 879 F2d 1122 (3<sup>rd</sup> Cir 1989) Judge Mansmann observed:

It is interesting to note in this regard that some have suggested that there is, in the American Constitutional system, a fundamental right to food for the destitute. It seems clear that without food, and its corollary, physical survival, all of the other rights embodied in the Constitution lose their meaning. See United Nations, *Universal Declaration of Human Rights in Basic Documents on Human Rights* 26... (Everyone has the right to a standard of living adequate for the health and well being of himself and his family, including food, clothing, housing and medical care and necessary social services") (citation omitted)

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("Empirical examination might well buttress an assumption that the ill-fed, ill-clothed, and ill-housed are among the most ineffective participants in the political process, and that they derive the least enjoyment from the benefits of the First Amendment. If so, appellees' thesis would cast serious doubt on the authority of Dandridge v Williams and Lindsey v Normet...")

**UNFILED JUDGMENT**  
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