

NEW YORK COURT OF APPEALS

Walsh v. Katz

17 N.Y.3d 336, 953 N.E.2d 753 (2011) · Decided June 2, 2011

SUMMARY

The New York Court of Appeals considered whether a statutory residency requirement for the Fishers Island town justice and town board member position in the Town of Southold violated equal protection. The court held that rational-basis review applied because the requirement imposed only an incidental and remote burden on voting rights, and concluded that the requirement was rationally related to ensuring meaningful representation for Fishers Island residents. The court affirmed the Appellate Division order upholding the requirement.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Jones, J.; Chief Judge Lippman; Judge Ciparick; Judge Graffeo; Judge Read; Judge Smith; Judge Pigott
JURISDICTION	New York
DECIDED	June 2, 2011
DISPOSITION	affirmed
PROCEDURAL POSTURE	Ross appealed as of right from the portion of an Appellate Division order upholding the constitutionality of a Fishers Island residency requirement for a combined town justice and town board member position and remitting the matter for entry of a declaratory judgment.
STANDARD OF REVIEW	The court applied rational-basis review, informed by the Anderson balancing approach, because the residency requirement imposed only an incidental and remote burden on voting and candidacy rights and did not directly or appreciably impair the right to vote or disenfranchise an identifiable class.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Daniel C. Ross v. Anita S. Katz, Cathy L. Richter Geier, Suffolk County Board of Elections, Arthur J. Walsh, Nina J. Schmid

TOPICS

[election law](#)[election contests](#)[equal protection](#)[voting rights](#)[rational basis review](#)

PRACTICE AREAS

election law

constitutional law

municipal law

civil rights

QUESTIONS PRESENTED

1. Whether the Fishers Island residency requirement for the elected town justice/town board member position violates the Equal Protection Clause of the Fourteenth Amendment or the New York Constitution.
2. Whether the residency requirement should be reviewed under strict scrutiny rather than rational-basis review because it affects the rights to vote and to run for public office.
3. Whether the residency requirement impermissibly dilutes the voting power of Southold residents by reserving one town board seat for a Fishers Island resident.

HOLDINGS

1. The Fishers Island residency requirement is subject to rational-basis review rather than strict scrutiny because its effect on voting rights is incidental and remote and it does not directly or appreciably impair the right to vote or disenfranchise an identifiable class.
2. The Fishers Island residency requirement does not violate equal protection because it is rationally related to legitimate governmental interests, including ensuring meaningful representation for Fishers Island residents.

KEY QUOTATIONS

“We hold that the residency requirement does not violate the Equal Protection Clause.” (339)

“In so holding, we conclude that the requirement is subject to a rational basis test, and that a rational basis exists to justify the requirement.” (339)

“Thus, a court considering an equal protection challenge to a state election law must weigh “the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate” against “the precise interests put forward by the State as justifications for the burden imposed by its rule,” taking into consideration “the extent to which those interests make it necessary to burden the plaintiffs rights”” (344)

“We further conclude, as did the Appellate Division, that the Fishers Island residency requirement satisfies the rational basis test.” (347)

FACTUAL BACKGROUND

Fishers Island is part of the Town of Southold but is geographically isolated from the mainland and has no direct ferry service to the mainland portion of the town. Fishers Island residents comprise approximately 1.5 percent of Southold's population. New York legislation has long required the fifth Southold town justice, who also serves on the town board, to reside on Fishers Island, in part to provide the island with meaningful representation. Daniel C. Ross, a Southold resident who did not live on Fishers Island, sought the Democratic nomination for the seat, prompting a constitutional challenge to the residency requirement.

PROCEDURAL HISTORY

Ross filed a designating petition for the Fishers Island town justice/town board member seat despite residing elsewhere in the Town of Southold. Walsh and Schmid objected, but the Suffolk County Board of Elections upheld the petition. Supreme Court denied the petition and dismissed the proceeding without prejudice, concluding that the residency requirement did not apply until 30 days after commencement of the term. The Appellate Division modified the order, upheld the statute against an equal protection challenge, and held that residency had to be established by January 1, 2010. The Court of Appeals affirmed the order insofar as appealed from.

DISPOSITION

affirmed

CASES CITED

- Hunter v. Erickson, 393 U.S. 385 (1969)
- Golden v. Clark, 76 N.Y.2d 618, 624 (1990)
- Illinois Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 184 (1979)
- Munro v. Socialist Workers Party, 479 U.S. 189, 193 (1986)
- Tashjian v. Republican Party of Conn., 479 U.S. 208, 213-214, 217 (1986)
- Storer v. Brown, 415 U.S. 724, 730 (1974)
- Anderson v. Celebrezze, 460 U.S. 780, 788-789 (1983)
- Bullock v. Carter, 405 U.S. 134, 143 (1972)
- Galbraith v. New York Conservative Party, 155 A.D.2d 183, 185-186 (3d Dep't 1990)
- Reynolds v. Sims, 377 U.S. 533 (1964)
- Hadley v. Junior College Dist. of Metro. Kan. City, 397 U.S. 50 (1970)
- Board of Estimate of City of New York v. Morris, 489 U.S. 688 (1989)
- Dusch v. Davis, 387 U.S. 112 (1967)
- Dallas County v. Reese, 421 U.S. 477 (1975)
- Fortson v. Dorsey, 379 U.S. 433, 438 (1965)