

AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES

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Supplementary Material

Chapter 8: The New Deal/Great Society Era—Individual Rights/Due Process

Grossman v. Baumgartner, 17 N.Y. 2d 345 (NY, 1966)

In 1961, New York City adopted an ordinance making it unlawful to tattoo a human being, excepting only when given for medical purposes by licensed medical doctors and osteopaths. The measure had the effect of shutting down the various tattoo parlors operating in the city. Fred Grossman, a Coney Island tattoo artist, filed suit in state court seeking to enjoin the city health commissioner from enforcing the law and arguing that the ordinance banning his vocation exceeded the city's constitutional authority. He won in the trial court but lost before a divided intermediate appellate court, which dismissed tattooing as a "barbaric survival, often associated with a morbid or abnormal personality" and its prohibition well within the police powers of the state. On appeal to the state high court, Grossman lost in a 6–1 decision that emphasized the broad discretion of the state to regulate for the sake of public health so long as they did not do so irrationally or arbitrarily.

CHIEF JUDGE FULD,

Whether the prohibition against tattooing, provided by New York City's Health Code, constitutes an impairment of constitutional right, is the question we are here called upon to resolve.

The evidence offered on behalf of the defendants strongly supported the conclusion that there was a connection between tattooing and serum hepatitis, that those tattooed, despite all precautions taken by the tattooer, were subjected to a far greater risk of contracting hepatitis than those not tattooed. . . . Although the health authorities initially believed that it would be possible to adopt stringent regulations which would permit tattooing without danger to the public, supervision of the tattoo parlors to assure proper sterilization was found to be a practical impossibility and dangerous and unsanitary conditions continued to prevail. . . .

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A statute—or an administrative regulation which is legislative in nature—will be upheld as valid if it has a rational basis, that is, if it is not unreasonable, arbitrary or capricious. *United States v. Carolene Products Co.* (1938); *Nebbia v. New York* (1934). In the case before us, there is no warrant for the charge that the Board of Health acted arbitrarily or capriciously or that the regulation under attack was unreasonable. . . . The police power is exceedingly broad, and the courts will not substitute their judgment of a public health problem for that of eminently qualified physicians in the field of public health. As the Supreme Court has expressed it, "The judicial function is exhausted with the discovery that the relation between means and end is not wholly vain and fanciful, an illusory pretense." *Williams v. Mayor* (1933). In its wisdom, the board in the case before us decided that the prohibition of lay tattooing was essential for the protection of the public health, and, as stated above, it may not be said that that determination was unreasonable or without justification. It follows, therefore, that the legislation is valid, and this is so notwithstanding that it will occasion the discontinuance of an existing business. *Ferguson v. Skrupa* (1963).

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Affirmed.