AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 9: Liberalism Divided – Individual Rights

New Orleans v. Dukes, 427 U.S. 297 (1976)

In an effort to clean up the French Quarter, the city of New Orleans adopted an ordinance that prohibited vendors from selling food from pushcarts in that tourist area. The city made an exception for any vendor who had continuously operated in the Quarter for eight or more years. Lucky Dogs was the only pushcart business qualifying under the grandfather clause, creating an effective monopoly. Nancy Dukes operated a food cart in the French Quarter but had been in business for less than two years. She sued the city in federal district court, arguing that the grandfather clause was an arbitrary distinction that violated the equal protection clause of the Fourteenth Amendment. The trial court granted a summary judgment to the city, but the court of appeals reversed. The circuit court concluded that the special privilege granted to Lucky Dogs was not rationally related to the legislative goal of beautifying the French Quarter. On appeal, the U.S. Supreme Court unanimously reversed the appellate court, upholding the grandfather clause. In doing so, the Court reemphasized that distinctions in economic regulations needed only to be rationally related to a legitimate government interest and that regulations should very rarely fail such a standard. In the process, the Court overturned its earlier decision in Morey v. Doud *(1957), which struck down a special exception for American Express from state laws regulating money orders as unjustified discrimination.*

Are economic regulations ever vulnerable to equal protection challenge under the Court's standard? Would the city have acted constitutionally by adopting a regulation that barred only Dukes and no other vendors? Would the city be equally able to defend its grandfather clause if it drew the line at vendors that had been in operation for two years instead of eight? If a two-year grandfather clause also left only one vendor in business? What if the city had grandfathered Lucky Dogs by name? Would it matter if Lucky Dogs was owned by a white person and most of the other pushcart vendors were owned by African-Americans?

PER CURIAM

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The record makes abundantly clear that the amended ordinance, including the "grandfather provision," is solely an economic regulation aimed at enhancing the vital role of the French Quarter's tourist-oriented charm in the economy of New Orleans.

When local economic regulation is challenged solely as violating the Equal Protection Clause, this Court consistently defers to legislative determinations as to the desirability of particular statutory discriminations. . . . Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest. States are accorded wide latitude in the regulation of their local economies under their police powers, and rational distinctions may be made with substantially less than mathematical exactitude. Legislatures may implement their program step by step, . . . in such economic areas, adopting regulations that only partially ameliorate a perceived evil and deferring

complete elimination of the evil to future regulations. . . . In short, the judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines, . . . in the local economic sphere, it is only the invidious discrimination, the wholly arbitrary act, which cannot stand consistently with the Fourteenth Amendment.

The Court of Appeals held in this case, however, that the "grandfather provision" failed even the rationality test. We disagree. The city's classification rationally furthers the purpose which the Court of Appeals recognized the city had identified as its objective in enacting the provision, that is, as a means "to preserve the appearance and custom valued by the Quarter's residents and attractive to tourists." . . . The legitimacy of that objective is obvious. The City Council plainly could further that objective by making the reasoned judgment that street peddlers and hawkers tend to interfere with the charm and beauty of a historic area and disturb tourists and disrupt their enjoyment of that charm and beauty. . . .

It is suggested that the "grandfather provision," allowing the continued operation of some vendors was a totally arbitrary and irrational method of achieving the city's purpose. But rather than proceeding by the immediate and absolute abolition of all pushcart food vendors, the city could rationally choose initially to eliminate vendors of more recent vintage. . . .

. . . . *Morey v. Doud* (1957) was the only case in the last half century to invalidate a wholly economic regulation solely on equal protection grounds, and we are now satisfied that the decision was erroneous. *Morey* is, as appellee and the Court of Appeals properly recognized, essentially indistinguishable from this case, but the decision so far departs from proper equal protection analysis in cases of exclusively economic regulation that it should be, and it is, overruled.

The judgment of the Court of Appeals is *reversed* . . . .

JUSTICE MARSHALL concurs in the judgment.

JUSTICE STEVENS took no part in the consideration or decision of this case.