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EQUAL PROTECTION CLAUSE OF FOURTEENTH AMENDMENT NO BAR TO TERRITORIAL CLASSIFICATION UNDER BOUSE ACT

Salsburg v. State of Maryland

Petitioner was convicted of a gambling offense in Anne Arundel County on evidence seized by police who broke into his premises without a search warrant. Petitioner seasonably but unsuccessfully moved to suppress such evidence and to dismiss the proceeding on the ground that this evidence was procured by illegal search and seizure. In pressing this motion petitioner argued (1) the applicability of the general provision of the Bouse Act making inadmissible in trials of misdemeanors any evidence obtained by illegal search and seizure and (2) the inapplicability of the 1951 Amendment to that Act, which excluded state gambling prosecutions in Anne Arundel County from the effect of the general provision, claiming this was a violation of the "equal protection" clause of the Fourteenth Amendment of the United States Constitution. In the face of petitioner's argument that the 1951 Amendment to the Bouse Act was an unreasonable and arbitrary discrimination between Anne Arundel County and other areas of Maryland as to the law of evidence applicable to state gambling prosecutions, the Court of Appeals of Maryland and the Supreme Court of the United States held, inter alia, that Fourteenth Amendment "equal protection" did not prevent territorial classification and that the 1951 Amendment to the Bouse Act was constitutional.

1 346 U. S. 545 (1954).
2 Md. Code (1951), Art. 35, Sec. 5, the applicable provisions of which are:
   "No evidence in the trial of misdemeanors shall be deemed admissible where the same shall have been procured by, through, or in consequence of any illegal search or seizure or of any search and seizure prohibited by the Declaration of Rights of this State: . . . . Provided, further, that nothing in this section shall prohibit the use of of such evidence in Anne Arundel, Wicomico and Prince George's Counties in the prosecution of any person for a violation of the gambling laws as contained in Sections 303-329, Inclusive, of Article 27, sub-title 'Gaming', or in any laws amending or supplementing said sub-title."
3 Md. Laws 1951, Ch. 704.
5 In a 7-1 decision, opinion by Justice Burton, Justice Douglas dissenting on the ground that the Fourteenth and Fourth Amendments preclude the use of all illegally obtained evidence.
6 It was also held by the Supreme Court in this decision that the 1951 Amendment did not offend the Fourteenth Amendment "due process" requirements.
Referring to the "liberal legislative license" accorded state legislatures in prescribing the practice and procedure relating to the exercise of state police power as compared with the narrow scope granted in the enactment of substantive laws in furtherance of such police power, and reaffirming that the Supreme Court is not to act as a "super-legislature or censor" to determine which legislation seems unjust and oppressive,7 the Court approved the principle that "equal protection" against state action was not concerned with discrimination between areas or jurisdictions, but only with personal or class discrimination in a certain area or jurisdiction.8 From this decision it would seem that by jurisdiction or area was meant any political subdivision. For authority, the Court relied on Missouri v. Lewis,9 wherein Justice Bradley interpreted Fourteenth Amendment "equal protection" as follows:10

"It means that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and under like circumstances. . . . If diversities of laws and judicial proceedings may exist in the several States without violating the equality clause in the Fourteenth Amendment, there is no solid reason why there may not be such diversities in different parts of the same State."

Petitioner strenuously argued that such a classification, in discriminating by area, must bear a reasonable relation to the object of the legislation so as to be valid against Fourteenth Amendment "equal protection" attack, citing numerous cases in which the Supreme Court had required a "rational basis" to validate legislative classification, and that there was no reasonable relation in the instant case between the classification made by the 1951 Amendment and its purpose or object, whatever that might be.11 Finding that these cases relied on by petitioner related to discriminations as to persons but not as to areas, the Court saw no necessity for applying the "rational basis" test, since

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7 Supra, n. 1, 549-550.
8 Ibid, 551.
9 101 U. S. 22 (1880).
11 See 33 Boston U. Law Review 410, for a casenote criticizing the holding of the Maryland Court of Appeals in this case that Fourteenth Amendment "equal protection" was not applicable to discrimination by area, and arguing that there was no finding of reasonable relation between the classification and the purpose of the 1951 Amendment.
it reaffirmed that "equal protection" under the Fourteenth Amendment would not support a constitutional attack on a statute discriminating by area.\^{12} Territorial uniformity is not a constitutional requisite."\^{13} "The Equal Protection Clause relates to equality between persons as such rather than between areas."\^{14}

The significance of this decision appears to be twofold. The Supreme Court has reaffirmed over a period of more than 70 years the limitation on the applicability of Fourteenth Amendment "equal protection" to discrimination as to persons within a certain area, rather than to discrimination between different areas. Also the recent trend\^{15} of the Maryland Legislature to exempt trials of various offenses in specific counties from the general House Act prohibition against illegally procured evidence has been upheld, at least as to "equal protection" attack.


\^{13} Ibid, 552.

\^{14} Ibid, 551.

\^{15} Same exemption as to trials to state gambling offenses in Prince George's and Wicomico Counties under the 1951 Amendment, Md. Laws 1951, Ch. 710, and in Worcester, Howard and Cecil Counties, Md. Laws 1953, Chs. 84, 419, and as to prosecutions under certain alcoholic beverage laws in Wicomico County, Md. Laws 1958, Ch. 581.