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December 2, 2024

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**Re: *UAW et al. v. Murphy et al.*
Appellate Division Docket No. A-000057-24**

Honorable Judges of the Appellate Division:

Pursuant to *Rule 2:6-2(b)*, kindly accept this letter brief on behalf of amicus curiae the American Civil Liberties Union of New Jersey (“ACLU-NJ”) in the above-captioned matter.

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PRELIMINARY STATEMENT

This appeal raises an issue of immense public importance: the preservation and proper interpretation of New Jersey’s 1947 Constitution. Specifically, at stake is the state constitutional guarantee of equal protection under Article 1, Paragraph 1, of the New Jersey Constitution, which New Jersey courts have long emphasized is neither derivative of, nor cabined, by federal equal protection doctrine. Despite the clear state constitutional doctrine, the trial court wrongly dismissed the Complaint based upon federal equal protection standards. Proposed amicus ACLU-NJ writes to explain how proper application of New Jersey’s equal protection doctrine mandated denial of the Motion to Dismiss, and the importance of applying the State’s distinct and well-settled constitutional standards.

Over the past 180 years, the New Jersey Supreme Court has been clear: our state equal protection doctrine is both more flexible and more expansive than parallel federal law. That difference is outcome-determinative of this appeal. First, contrary to the trial court’s reasoning, whether the right denied to the challengers through unequal treatment is deemed “fundamental” does not drive the balancing test used for state equal protection analysis. Rather, New Jersey rejects rigid tiers of scrutiny in favor of a more functional approach to ensuring equal treatment with respect to important individual interests. Thus,

when analyzing whether government unconstitutionally classifies, courts are not limited to assessing only those constitutional rights deemed fundamental and should also look to statutory and common law as sources of evolving state rights and interests. Here, for example, the trial court should have considered evolving state norms regarding workplace safety when assessing whether the State may constitutionally deny these rights to a subset of workers. Indeed, the trial court erred by failing to treat the equal protection violation in this case as a distinct constitutional claim. The Plaintiffs’ right to equal protection does not hinge upon whether the Court separately vindicates a constitutional right to “obtaining safety” also enshrined in our State Constitution.

Finally, the Court must reject the lower court’s approach to “rational basis” review, echoed in the State’s brief. This approach impermissibly imported federal standards in place of settled state constitutional analysis. Failing to rectify this error would impermissibly accord New Jerseyans a lower level of protection than required by the State Constitution, in contravention of decades of state constitutional precedent.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Amicus relies on the procedural history and statement of facts contained in Appellants’ Appellate Division brief.

ARGUMENT

The court below erred in granting the Motions to Dismiss filed by Appellees and Intervenors. Amicus supports Appellants' position on all three claims in the Complaint, but this brief focuses solely on the Equal Protection analysis.

I. The New Jersey Constitution Created Affirmative Rights that are Often More Expansive than their Federal Counterparts.

New Jersey's Constitution is more than a repository of negative restraints upon the government; it is source of affirmative rights and liberties that courts must effectuate to the fullest. When New Jersey's framers convened to redraft the State Constitution in 1844, they made this intent absolutely clear by protecting individual rights and liberties in the very first clause: "All persons are by nature free and independent, and have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness."¹ *N.J. Const. of 1844*, art. I, cl. 1; see Robert F. Williams & Ronald K. Chen, *New Jersey State Constitution* 15 (3d ed. 2022) (noting placement of the declaration of rights at the beginning of the Constitution "is intended to announce that the protection of rights is the first

¹ This clause was subsequently amended to clarify it applies to all "persons," not only "men." Williams & Chen at 52.

task of government, indeed, its *raison d'être*") (quoting Daniel Elazar, *The Principles and Traditions Underlying State Constitutions*, 12 *Publius: The J. Federalism* 11, 15 (1982)). It is now well-settled that the "expansive language" of Article 1, Clause 1 gives rise to a "fundamental guarantee" of Equal Protection. *Lewis v. Harris*, 188 N.J. 415, 442 (2006); *see also* Williams & Chen, *supra*, at 59-63.

New Jersey's 1844 Constitution contained a declaration of rights, which, similar to those of Virginia and Massachusetts, created affirmative rights that are not limited by the scope of the federal Bill of Rights. Robert F. Williams, *Equality Guarantees in State Constitutional Law*, 63 *Tex. L. Rev.* 1195, 1204 (1985). New Jersey jurists have long recognized New Jersey's Constitution as "a source of fundamental rights independent of the United States Constitution." *State v. Melvin*, 248 N.J. 321, 347 (2021). New Jersey's "history and traditions," among other factors, provide a basis for "the independent application of its constitution." *State v. Hunt*, 91 N.J. 338, 366 (1982) (Handler, J., concurring).

Individual rights created by the New Jersey Constitution are often more protective than their federal counterparts even when the underlying constitutional language is "identical" or "analogous." *State v. Novembrino*, 105 N.J. 95, 145 (1987) (citing *State v. Williams*, 93 N.J. 39 (1983); *Right to*

Choose v. Byrne, 91 N.J. 287, 300 (1982); *Hunt*, 91 N.J. at 345; *State v. Alston*, 88 N.J. 211 (1981); *State v. Schmid*, 84 N.J. 535 (1980), *appeal dismissed sub nom. Princeton Univ. v. Schmid*, 455 U.S. 100 (1982); *State v. Johnson*, 68 N.J. 349 (1975)). Properly construed, the “Federal Constitution provides the floor for constitutional protections, and our own Constitution affords greater protection for individual rights than its federal counterpart.” *Melvin*, 248 N.J. at 347; *see Right to Choose*, 91 N.J. at 300 (“[T]his Court has recognized that our State Constitution may provide greater protection than the federal Constitution.”).

Accordingly, when the New Jersey Supreme Court sets out to define the contours of individual rights, it regularly finds that the State Constitution affords litigants greater protection than they would receive under the U.S. Constitution. For example, the Court has recognized state constitutional protections to be more robust than parallel federal protections with respect to unreasonable searches and seizures. *See State v. Pierce*, 136 N.J. 184, 209-10 (1994) (collecting cases and declining to apply federal rule permitting “vehicular searches indiscriminately based only on contemporaneous arrests for motor-vehicle violations”); *Novembrino*, 105 N.J. at 146 (holding that New Jersey Constitution, unlike the United States Constitution, permits no “good faith” exception to the exclusionary rule). It has reached a similar conclusion

with regard to cruel and unusual punishment, *State v. Comer*, 249 N.J. 359, 383-84 (2022) (holding state right to be more protective despite use of the same legal standard as federal right) (citing *State v. Zuber*, 229 N.J. 422, 438 (2017)), due process and fundamental fairness, *Melvin*, 248 N.J. at 346-52 (holding that sentencing may not be based on acquitted conduct), and freedom of speech, *Usachenok v. Dep't of the Treasury*, 257 N.J. 184, 195-96 (2024) (explaining that “[t]he State Constitution provides broader protection for free expression than the Federal Constitution does” and collecting citations).

New Jersey’s Equal Protection guarantee similarly provides protections significantly broader than those of its federal counterpart. *See, e.g., Right to Choose*, 91 N.J. at 300, 303; *see also State v. Gilmore*, 103 N.J. 508, 522-23 (1986) (construing our “state constitution as providing greater protection to our citizens’ individual rights than accorded them under the federal constitution” and relying on state Due Process and Equal Protection guarantees to invalidate peremptory challenge of all Black potential jurors). In fact, the New Jersey Supreme Court has found violations of our state Equal Protection guarantee even where the U.S. Supreme Court found no federal equal protection violation for the equivalent government action. In *Right to Choose v. Byrne*, the Court rejected the U.S. Supreme Court’s reasoning in *Harris v. McRae*, 448 U.S. 297 (1980), and held that terminating funding for medically

necessary abortions violated state Equal Protection guarantee. 91 N.J. at 292-93. And in *Planned Parenthood of Central New Jersey v. Farmer*, the New Jersey Supreme Court struck down a law requiring parental notification for minors to access abortions, even though the U.S. Supreme Court had upheld similar laws based upon their judicial bypass provisions. 165 N.J. 609, 643 (2000).

This settled New Jersey law makes clear that New Jersey's Constitution is neither derivative of, nor cabined, by federal equal protection doctrine. Courts must thus effectuate the guarantees of state Equal Protection independently of the Federal Constitution, which as explained below, the trial court failed to do.

II. To Properly Assess State Equal Protection Guarantees, the Court Must Weigh the Nature of the Burdened Right Against the Government Interest Asserted by the State, Regardless of Whether the Right is Fundamental.

A. The First Prong of the Balancing Test Requires Consideration of All Relevant Rights, Not Only Fundamental Rights.

State Equal Protection claims require applying a functional balancing test, rather than the tiers of scrutiny analysis used for federal Equal Protection claims. *Planned Parenthood of Cent. N.J.*, 165 N.J. at 630 (2000) (citing *Right to Choose*, 91 N.J. at 305-06). New Jersey’s balancing test, in contrast to the federal analysis, does not require a finding of a fundamental right or suspect classification in order to conduct a meaningful analysis of the stated justification for a government action. Indeed, the New Jersey Supreme Court has rejected the “rigid, three-tiered federal equal protection methodology” in favor of a flexible, multi-factored standard that allows for consideration of our state’s evolving constitutional norms. *Lewis*, 188 N.J. at 443 n.13 (applying the state’s flexible balancing test to find that denying the benefits of marriage to same-sex couples violated state Equal Protection even without finding a fundamental right to same-sex marriage).

Under New Jersey’s balancing test, a court must consider “the nature of the affected right, the extent to which the governmental restriction intrudes upon it, and the public need for the restriction.” *Greenberg v. Kimmelman*, 99

N.J. 552, 567 (1985). A court first weighs the nature of the affected right against the importance of the governmental restriction at issue. *See Lewis*, 188 N.J. at 443 (explaining that courts examine each claim “on a continuum that reflects the nature of the burdened right and the importance of the governmental restriction”). “[T]he more personal the right, the greater the public need must be to justify governmental interference with the exercise of that right.” *Id.* (quoting *George Harms Constr. Co. v. N.J. Tpk. Auth.*, 137 N.J. 8, 29 (1994)). A court must then ask whether “the public need justifies statutorily limiting the exercise of a claimed right.” *Id.* at 444. In analyzing the nature of the rights at stake, the Court has “not hesitated, in an appropriate case, to read the broad language of Article I, paragraph 1, to provide greater rights than its federal counterpart.” *Planned Parenthood of Cent. N.J.*, 165 N.J. at 632.

Regardless of whether a right is deemed fundamental in nature, or whether the class of people burdened by the state action is deemed “suspect,” New Jersey courts must fully analyze the importance and personal nature of the right as part of the first factor in the balancing test. Indeed, the New Jersey Supreme Court has long rejected the idea of requiring a fundamental right or suspect class to access a robust review of state Equal Protection claims. *Williams & Chen, supra*, at 58 (explaining that “a right need not be labeled

‘fundamental’ or a classification deemed ‘suspect’ or ‘protected’ to trigger searching judicial review”). As the Court first explained in *Robinson v. Cahill*, it has “not found helpful the concept of a ‘fundamental’ right” and “[n]o one has successfully defined the term for this purpose.” 62 N.J. 473, 491, *on reargument*, 63 N.J. 196 (1973), *and on reh’g*, 69 N.J. 133 (1975). This is because “[m]echanical approaches to the delicate problem of judicial intervention under either the equal protection or the due process clauses may only divert a court from the meritorious issue or delay consideration of it.” *Id.* at 491-92; *see also Taxpayers Ass’n of Weymouth Twp., Inc. v. Weymouth Twp.*, 80 N.J. 6, 42-43 (1976).

These bedrock principles are evident in *Lewis v. Harris*, the 2006 decision from the New Jersey Supreme Court that found no fundamental right to same-sex marriage enshrined in the New Jersey Constitution but nevertheless declared the State’s exclusion of same-sex couples from the equivalent benefits of marriage to violate the State Equal Protection guarantees. 188 N.J. at 423. Even without deeming access to same-sex marriage fundamental, the Court recognized the importance and personal nature of this right. Citing the evolution of societal norms demanding equal treatment, benefits, and dignity for same-sex couples, the Court deemed the right at issue to be weighty and ultimately held that a statutory scheme that

made the benefits of marriage available only to opposite-sex couples violated state Equal Protection guarantees. *Id.* at 462-63. To define the rights at issue, the Court looked not only to judicial decisions but also to state statutes. *Id.* at 444 (citing N.J.S.A. 10:5-4), 445-46 (discussing amendment to the Law Against Discrimination), 448 (“Aside from federal decisions such as *Romer* and *Lawrence*, this State's decisional law and sweeping legislative enactments, which protect gays and lesbians from sexual orientation discrimination in all its virulent forms, provide committed same-sex couples with a strong interest in equality of treatment relative to comparable heterosexual couples.”).

In the instant matter, the court below ignored this precedent and wholly deviated from this accepted methodology. It erroneously restricted its Equal Protection analysis to a right it deemed potentially fundamental. Instead, for the first prong of the balancing test, it should have considered all relevant sources of rights and societal norms. In its *de novo* review of the trial court's dismissal of the action, *see Wreden v. Twp. of Lafayette*, 436 N.J. Super. 117, 124 (App. Div. 2014), this Court must consider these sources.

B. The Court Below Should Have Considered Societal Norms Requiring a Safe Workplace.

Separate and apart from the contours of the state constitutional right to safety, New Jersey's public policy of ensuring a safe workplace for workers, as

evinced in its statutory law and construed by its courts, shows that New Jersey workers have more than a “strong interest” in safe working conditions, which the court should have considered in the equal protection balancing test. *Lewis*, 188 N.J. at 448. They have the right “to work in a safe environment,” including a workplace free from secondhand smoke. *Shimp v. N.J. Bell Tel. Co.*, 145 N.J. Super. 516, 521 (Ch. Div. 1976). *See also Cerracchio v. Alden Leeds, Inc.*, 223 N.J. Super. 435, 445 (App. Div. 1988) (recognizing “a strong public policy in New Jersey favoring safety in the workplace”). To that end, New Jersey statutes require employers to provide a safe workplace. *See, e.g.*, N.J.S.A. 34:6A-3.² At their core, *Cerracchio*, *Shimp*, and various state statutes evince a common understanding – one that might reasonably be shared by any New Jerseyan heading in for a day of work – that an employee has the right to expect a safe workplace.³

² “Every employer shall furnish a place of employment which shall be reasonably safe and healthful for employees. Every employer shall install, maintain and use such employee protective devices and safeguards including methods of sanitation and hygiene and where a substantial risk of physical injury is inherent in the nature of a specific work operation shall also with respect to such work operation establish and enforce such work methods, as are reasonably necessary to protect the life, health and safety of employees, with due regard for the nature of the work required.”

³ Appellants advance this public policy argument in their appellate brief in the context of the constitutional right to safety, but it applies with full force to the state Equal Protection claim, which Appellants have always argued as broader than its federal counterpart.

III. The Court Below Erred by Finding No Interference with the Right to Pursue Safety, and By Treating this Finding as Dispositive of the Equal Protection Claim.

The decision below also erred by cutting short the Equal Protection balancing analysis based upon the erroneous conclusion that exempting casino floors from the New Jersey Smoke-Free Air Act does not interfere with casino workers' right to pursue safety. This conclusion rested on the erroneous theory that all but a few workplaces in New Jersey have smoking bans, and that the Act does not restrict casino workers from pursuing work elsewhere. Tr. Ct. Order at 18.⁴ This reasoning raises serious concerns. The unsupported assumption that workers can reasonably seek new jobs in workplaces covered by the state's smoking ban creates inferences in favor of the proponent of the motion to dismiss, inverting the rule that on a *Rule* 4:6–2(e) motion to dismiss, a court must afford plaintiffs "every reasonable inference of fact." *Major v. Maguire*, 224 N.J. 1, 26 (2016) (holding that a reviewing court "searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary.") (citation omitted).

⁴ Tr. Ct. Order refers to the Order signed by Hon. Patrick J. Bartels, P.J. Ch., on August 30, 2024.

Constitutional claims focusing on workplace conditions should not hinge on a trial court's speculation that the worker can find a job elsewhere.

Moreover, in denying the Equal Protection claim on the faulty theory above, the lower court echoed an approach already rejected by the New Jersey Supreme Court in *Planned Parenthood of Central New Jersey v. Farmer*.

There, Justice O'Hern argued in dissent that New Jersey's parental notification law for abortions should be subject to rational basis review because it did not burden minors' rights, since the law included an option to seek a court order to bypass parental notification. 165 N.J. at 651-52. The majority decisively rejected this rational basis approach in favor of the more flexible balancing test described above. *Id.* at 631. The Court noted that their dissenting colleague erroneously applied rational basis review

because he believes the "essence of the right to choose" is not "substantially interfered with." In our view, Justice O'Hern improperly uses the degree of interference with the right as the basis for choosing the level of scrutiny to apply. Under New Jersey law, we apply the *Right to Choose* balancing test, wherein we weigh the degree of interference against the state's asserted need for the interference. Indeed, where an important personal right is affected by government action, our Court often requires the public authority to demonstrate a greater public need than is traditionally required in construing the federal constitution.

[*Id.* at 631 n.6 (citations and alterations omitted).]

Similarly, here the lower court misapplied New Jersey’s equal protection balancing test by misconstruing the nature of the infringement on Plaintiffs’ right to safety while not requiring the State to “demonstrate a greater public need than is traditionally required in construing the federal constitution.” *Id.*

IV. The Court Should Reject the State’s Baseless Rational Basis Analysis, Which Repeats and Expands the Errors Below.

Just like the flawed decision below, the State’s argument that the law is subject to rational basis review ignores New Jersey’s settled equal protection doctrine. *See Lewis*, 188 N.J. at 443 (describing New Jersey’s functional analysis that rejects tiers of scrutiny). Indeed, the State’s reliance on the unpublished federal court decision *Amiriantz v. New Jersey*, 251 F. App’x 787, 788 (3d Cir. 2007)⁵, exposes its misguided attempt to import federal Equal Protection standards to this New Jersey case arising under the New Jersey Constitution. While in a federal tiers of scrutiny analysis, courts must identify a suspect class or fundamental right in order to apply a more searching review than “rational basis,” that is not the case in New Jersey. *See Lewis*, 188 N.J. at 443.

⁵ *Amiriantz v. New Jersey*, an unpublished case, is included in an Appendix to this brief at Aa1. R. 1:36-3.

Critically, even where it has declined to deem a right “fundamental,”⁶ New Jersey’s analysis does not employ the type of rational basis review employed in federal equal protection cases. In *Lewis*, the Court explained that in asking whether a challenged government action is “arbitrary,” it must ask whether “the public need justifies statutorily limiting the exercise of a claimed right.” 188 N.J. at 444. And in *Caviglia v. Royal Tours of Am.*, the court explained, “We require that the means selected by the Legislature ‘bear a real

⁶ Intervenors UNITE HERE and others make an even more sweeping claim by distorting inapposite language in *Greenberg v. Kimmelman*, 99 N.J. 552, 580 (1985), to erroneously argue that an Equal Protection claim must fail unless the challengers shows that the Legislature intended to invidiously discriminate against a protected class. But the cited passage in *Greenberg* was referring to the showing of discriminatory intent that courts have required when facially neutral laws that treat similarly situated groups equally are alleged to have a discriminatory impact upon a suspect or quasi-suspect class. *Id.* (citing, e.g., *Massachusetts v. Feeney*, 442 U.S. 256, 274-75 (1979); *Washington v. Davis*, 426 U.S. 229, 241-42 (1976)). That body of law has no bearing upon the law at issue here. This case involves a challenge to a law that facially classifies; it singles out and excludes one group of workers from the protection of the law while extending those rights to other similarly situated workers. The New Jersey Supreme Court has regularly applied its equal protection balancing test in circumstances like these, even when the law does not burden a fundamental right and there is no allegation of invidious discrimination against a protected class. See *Caviglia v. Royal Tours of Am.*, 178 N.J. 460, 479 (2004) (“Under the Federal Constitution, if a statute does not burden a ‘fundamental right’ or differentiate between a ‘suspect’ or ‘semi-suspect’ class, it is evaluated under the less stringent rational basis review. . . . As we previously stated, under our State Constitution, we apply a flexible balancing test that weighs the nature of the right, the extent of the governmental restriction on the right, and whether the restriction is in the public interest.”) (citations omitted).

and substantial relationship to a permissible legislative purpose.” 178 N.J. 460, 473 (2004).

While our courts have sometimes used the term “rational basis” – as the Court did in *Lewis* – the balancing test functions differently than federal rational basis review: when important interest are at stake, courts do not defer to the State even when a suspect class or fundamental right is not at issue. In *Lewis*, even though the Court did not question the factual accuracy of the State’s proffered rationale – that the discriminatory law being challenged kept New Jersey’s laws in conformity with those of most other states – the Court nevertheless rejected this rationale as insufficient to override the personal rights the law burdened. 188 N.J. at 456-57 (reasoning that the “majority approach [of other states] is incompatible with the unique interests, values, customs, and concerns of our people”).

Right to Choose v. Byrne further illustrates how analysis of equal protection under the New Jersey Constitution contrasts with federal rational basis review. In *Harris v. McRae*, the U.S. Supreme Court applied rational basis review to hold that the Hyde Amendment, which severely limited use of federal Medicaid funds for abortion care, was “rationally related to the legitimate governmental objective of protecting potential life” since it would “encourage[e] childbirth except in the most urgent circumstances.” 448 U.S.

297, 325 (1980). The New Jersey Supreme Court rejected this reasoning for purposes of the state constitutional analysis, reasoning that “the funding restriction gives priority to potential life at the expense of maternal health.” *Right to Choose*, 91 N.J. at 306.

While a few New Jersey Supreme Court cases have referenced federal standards, since the 1980s, New Jersey courts have repeatedly disavowed applying the federal tiers of scrutiny to state Equal Protection claims. *See, e.g., Right to Choose*, 91 N.J. at 308-09 (“Although [it has] employed the conventional two-tiered equal protection analysis” in the past, the Court has since “rejected a rigid equal protection test based either on mere rationality or strict scrutiny” in favor of “a balancing test [when] analyzing Equal Protection claims under the state Constitution.”). For these reasons, New Jersey does not apply the equivalent of federal rational basis review. Instead, the Court must consider all factors in the balancing test together, and determine whether the public need for the law in question justifies the restriction of Appellants’ rights to safety in the workplace.

CONCLUSION

Considering the arguments above along with those set forth by the Appellants, the Court should reverse the dismissal of the Equal Protection claim. The Court must weigh the right to workplace safety against the exceptionally heavy burden of increased risk of death caused by second-hand smoke exposure, along with the lack of any legitimate justification for this exception.⁷ Affirming the decision below despite the errors would contravene well-settled New Jersey Supreme Court precedent and deprive casino workers of the full protection of our State Constitution.

Respectfully submitted,



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⁷ The Appellees and Intervenors argue that economic factors justify exempting casinos from the Smoke-Free Air Act. Not only do these arguments rest on factual allegations outside the Complaint, but economic factors would not outweigh the increased mortality risk caused by second-hand smoke exposure.

Amicus Appendix

251 Fed.Appx. 787

This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Third Circuit LAR, App. I, IOP 5.7. (Find CTA3 App. I, IOP 5.7)

United States Court of Appeals,
Third Circuit.

V. George AMIRIANTZ, Appellant

v.

State of NEW JERSEY.

No. 07-1274.

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Submitted Pursuant to Third Circuit

LAR 34.1(a) Oct. 17, 2007.

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Filed: Oct. 25, 2007.

Synopsis

Background: Transportation company owner brought suit against State of New Jersey, alleging that New Jersey Smoke-Free Air Act violated equal protection by granting exemption to casinos. The United States District Court for the District of New Jersey, [Freda L. Wolfson](#), J., dismissed complaint for failure to state claim, [2006 WL 3486814](#), and owner appealed.

Holding: The Court of Appeals held that owner failed to state claim for equal protection violation.

Affirmed.

*787 On Appeal from the United States District Court for the District of New Jersey, D.C. Civil Action No. 06-cv-1743 (Honorable Freda L. Wolfson).

Attorneys and Law Firms

V. George Amiriantz, Atlantic City, NJ, pro se.

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Before: [SCIRICA](#), Chief Judge, [HARDIMAN](#) and [ALDISERT](#), Circuit Judges.

OPINION OF THE COURT

PER CURIAM.

**1 George Amiriantz appeals from the district court's dismissal of his complaint for failure to state a claim. For the following reasons, we will affirm the district court's judgment.

I.

On April 13, 2006, Amiriantz filed a complaint against the State of New Jersey challenging the state's newly enacted “New Jersey Smoke-Free Air Act” (the *788 “Act”) as a violation of the Equal Protection Clause of the United States Constitution. See [N.J. Stat. Ann. § 26:3D-55, et seq.](#) The Act itself prohibits smoking in virtually all enclosed indoor places of public access, workplaces, and in any area of a public or nonpublic elementary or secondary school. See *id.* at § 26:3D-58. The Act also provides for certain exemptions, one of which exempts the areas within the perimeters of casinos and casino simulcasting facilities (the “casino exemption”).¹ See *id.* at § 26:3D-59(e). Amiriantz, an owner/operator of a transportation company in New Jersey, challenged this casino exemption claiming that it unconstitutionally subjects his business to an onerous regulation that the casino businesses were freed from. The State of New Jersey moved to dismiss the complaint.

On November 30, 2006, [2006 WL 3486814](#), the district court issued an opinion and order dismissing the complaint for failure to state a claim. See [Fed. R. Civ. P. 12\(b\)\(6\)](#). First, the court determined that because Amiriantz had named the State of New Jersey in his complaint, rather than the state officials responsible for enforcing the Act, it was subject to dismissal under the Eleventh Amendment. See [MCI Telecomm. Corp. v. Bell Atlantic-Pa.](#), 271 F.3d 491, 503-08 (3d Cir.2001); see also [Penn. Fed'n of Sportsmen's Clubs, Inc. v. Hess](#), 297 F.3d 310, 323 (3d Cir.2002). Nevertheless, permitting him the benefit of the doubt, and allowing for the possibility that Amiriantz could have amended his complaint to name state officials with the court's permission, the court went further and discussed the merits of the equal protection claim. Citing [Schumacher v. Nix](#), 965 F.2d 1262, 1269 (3d Cir.1992), the court determined that the casino exemption was entitled to rational basis review because Amiriantz failed to allege that the New Jersey Legislature's classification affected any fundamental rights. Under this standard, the court concluded, the same economic policy considerations underlying the creation of gaming areas in New Jersey also provided support for the exemption of the casinos from the Act. See [N.J. Stat. Ann. § 5:12-1 et seq.](#)

II.

We have jurisdiction pursuant to [28 U.S.C. § 1291](#). This court's review of a district court's dismissal under [Rule 12\(b\)\(6\)](#) is plenary. See [Kost v. Kozakiewicz](#), 1 F.3d 176, 183 (3d Cir.1993). A motion to dismiss under [Rule 12\(b\)\(6\)](#) “tests the sufficiency of the allegations contained in the complaint.” *Id.* When reviewing a [Rule 12\(b\)\(6\)](#) dismissal, we view the allegations of the complaint in the light most favorable to the plaintiff. See [Pinker v. Roche Holdings, Ltd.](#), 292 F.3d 361, 374 n. 7 (3d Cir.2002).

III.

**2 Having reviewed the parties' submissions and relevant portions of the district *789 court record, we conclude that the district court's thorough opinion properly disposed of the constitutional argument in this case. The Equal Protection Clause requires that similarly situated persons be treated alike. See [City of Cleburne v. Cleburne Living Ctr.](#), 473 U.S. 432, 439, 105 S.Ct. 3249, 87 L.Ed.2d 313 (1985) (citing [Plyler v. Doe](#), 457 U.S. 202, 216, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982)). If a distinction between persons does not implicate a suspect or quasi-suspect class, however, state action will be upheld if it is rationally related to a legitimate state interest. See [Tillman v. Lebanon County Corr. Facility](#), 221 F.3d 410, 423 (3d Cir.2000). Under this standard, an equal protection claim can be brought by a “class of one,” a plaintiff alleging that he has been “intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.” [Village of Willowbrook v. Olech](#), 528 U.S. 562, 120 S.Ct. 1073, 145 L.Ed.2d 1060 (2000).

As the district court determined, because the casino exemption does not infringe on a fundamental right, it need only have a rational basis; we agree that it does.² “The Supreme Court has acknowledged the existence of a presumption in favor of the

state's action in cases involving 'social or economic legislation.' ... This presumption imposes upon plaintiffs the heavy burden of making a 'clear showing of arbitrariness and irrationality' in order to upset the legislation." *Phila. Police and Fire Ass'n for Handicapped Children, Inc. v. City of Phila.*, 874 F.2d 156, 163 (3d Cir.1989) (internal citations omitted). Such legislation "is valid unless 'the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that [a court] can only conclude that the legislature's actions were irrational.'" *Hodel v. Indiana*, 452 U.S. 314, 332, 101 S.Ct. 2376, 69 L.Ed.2d 40 (1981) (citing *Vance v. Bradley*, 440 U.S. 93, 97, 99 S.Ct. 939, 59 L.Ed.2d 171 (1979)). For the reasons given by the district court, appellant failed to state a claim that the inclusion of the casino exemption within the Act was not rationally related to the achievement of a legitimate legislative purpose. Thus, we will affirm the court's judgment.

All Citations

251 Fed.Appx. 787, 2007 WL 3120333

Footnotes

1 [New Jersey Statutes Annotated § 26:3D-59\(e\)](#) exempts the area within the perimeter of:

(1) any casino as defined in section 6 of P.L.1977, c. 110 (C.5:12-6) approved by the Casino Control Commission that contains at least 150 stand-alone slot machines, 10 table games, or some combination thereof approved by the commission, which machines and games are available to the public for wagering; and

(2) any casino simulcasting facility approved by the Casino Control Commission pursuant to section 4 of P.L.1992, c. 19 (C.5:12-194) that contains a simulcast counter and dedicated seating for at least 50 simulcast patrons or a simulcast operation and at least 10 table games, which simulcast facilities and games are available to the public for wagering.

2 We agree also with the district court's conclusion that Amiriantz, as the owner/operator of a transportation company, was not similarly situated to the casinos and casino simulcasting facilities addressed under the exemption.