Constitutional Law Professor Jared Goldstein

Equal Protection and Discrimination Against Methadone Users

The Equal Protection Clause of the 14th Amendment provides that no state "shall deny to any person within its jurisdiction the equal protection of the laws." It prohibits state and local governments from imposing unfair discrimination against any class of persons. Not all forms of unequal treatment, however, violate the Equal Protection Clause. As the Supreme Court has held, the government often has a legitimate reason to treat some people differently than others. For instance, when a fire department is hiring firefighters, it may choose to hire only those with sufficient physical strength to do the job. When the Air Force selects pilots, it can exclude those with poor eyesight. When a school board appoints teachers, it can require a certain level of educational success. In these contexts, treating people differently because of physical strength, eyesight, or educational achievement does not violate Equal Protection because such different treatment serves legitimate government purposes. In contrast, certain forms of discrimination, such as discrimination based on race and national origin, are rarely constitutional. Different treatment based on race or national origin can be upheld only if the government demonstrates a compelling justification.

Outside of these contexts where a compelling justification is required, the government can treat some people differently than others as long as it has a legitimate reason to do so and the different treatment is rationally related to that reason. The following case applies that principle to a policy under which the New York Transit Authority ("TA") refused to employ applicants who use methadone, a treatment for heroin addiction. In reading this case, consider the reasons TA offered to justify its policy. What goals did that policy serve? How did the refusal to hire methadone users advance TA's goals? Are methadone users sufficiently different from other job applicants to justify TA's blanket refusal to hire them? Is it fair that TA refused to hire all methadone even though only some of them might become problem employees? Did TA have other ways to accomplish its goals other than the policy it adopted?

99 S.Ct. 1355
Supreme Court of the United States

NEW YORK CITY TRANSIT AUTHORITY et al., Petitioners,
v.
Carl A. BEAZER et al.

Decided March 21, 1979.

Mr. Justice STEVENS delivered the opinion of the Court.

The New York City Transit Authority ("TA") refuses to employ persons who use methadone. The District Court found that this policy violates the Equal Protection Clause of the Fourteenth Amendment. We now reverse.

I

About 40,000 persons receive methadone maintenance treatment in New York City, of whom about 26,000 participate in the five major public or semipublic programs, and 14,000 are involved in about 25 private programs. The sole purpose of all these programs is to treat the addiction of persons who have been using heroin for at least two years.

The evidence indicates that methadone is an effective cure for the physical aspects of heroin addiction. The crucial indicator of successful methadone maintenance is the patient's abstinence from the illegal or excessive use of drugs and alcohol. The District Court found that the risk of reversion to drug or alcohol abuse declines dramatically after the first few months of treatment. Indeed, "the strong majority" of patients who have been on methadone maintenance for at least a year are free from illicit drug use. But a significant number are not. On this critical point, the evidence relied upon by the District Court reveals that even among participants with more than 12 months' tenure in methadone maintenance programs, the incidence of drug and alcohol abuse may often approach and even exceed 25%.

This litigation was brought by the four respondents as a class action on behalf of all persons who have been, or would in the future be, subject to discharge or rejection as employees of TA by reason of participation in a methadone maintenance program.

II

Respondents have never questioned TA's refusal to hire users of narcotics. Rather, they argue that this rule cannot constitutionally be applied to exclude from employment methadone users who have been undergoing treatment for at least a year.

But any special rule short of total exclusion that TA might adopt is likely to be less precise—and will assuredly be more costly—than the one that it currently enforces. If eligibility is marked at any intermediate point—whether after one year of treatment or later—the classification will inevitably discriminate between employees or applicants equally or almost equally apt to achieve full recovery. Completion of one year of methadone treatment does not guaranty full recovery from drug addiction. The uncertainties associated with the rehabilitation of heroin addicts preclude identifying any bright line marking the point at which the risk of regression ends. By contrast, the "no drugs" policy now enforced by TA is supported by the legitimate inference that as long as a treatment program (or other drug use) continues, a degree of uncertainty persists. Accordingly, an employment policy that postpones eligibility until the treatment program has been completed, rather than accepting an intermediate point on an uncertain line, is rational.

The dissent is therefore repeatedly mistaken in attributing to the District Court a finding that TA's "normal screening process without additional effort" would suffice in the absence of the "no drugs" rule. Aggravating this erroneous factual assumption is a mistaken legal proposition advanced by the dissent—that TA can be faulted for failing to prove the unemployability of "successfully maintained methadone users." It is important to note, that TA did prove that 20% to 30% of those who have been in methadone treatment for one year are not "successfully maintained," and hence are assuredly not employable. Respondents failed to prove that the offending 20% to 30% could be excluded as cheaply and effectively in the absence of the rule.

At its simplest, the District Court's conclusion was that TA's rule is broader than necessary to exclude those methadone users who are not actually qualified to work for TA. We may assume not only that this conclusion is correct but also that it is probably unwise for a large employer like TA to rely on a general rule instead of individualized consideration of every job applicant. But these assumptions concern matters of personnel policy that do not implicate the principle safeguarded by the Equal Protection Clause. As the District Court recognized, TA's rule serves the general objectives of safety and efficiency.

Because it does not circumscribe a class of persons characterized by some unpopular trait or affiliation, it does not create or reflect any special likelihood of bias on the part of the ruling majority. Under these circumstances, it is of no constitutional significance that the degree of rationality is not as great with respect to methadone users in treatment for at least one year as it is with respect to the classification of narcotics users as a whole.

No matter how unwise it may be for TA to refuse employment to individual car cleaners, track repairmen, or bus drivers simply because they are receiving methadone treatment, the Constitution does not authorize a federal court to interfere in that policy decision.

Mr. Justice WHITE, with whom Mr. Justice MARSHALL joins, dissenting.

The District Court found that the evidence conclusively established that TA excludes from employment all persons who are successfully on methadone maintenance—that is, those who after one year are "free of the use of heroin, other illicit drugs, and problem drinking." The District Court further found that successful methadone maintenance is not a meaningful predictor of poor performance or conduct in most job categories; that TA could use its normal employee-screening mechanisms to separate the successfully maintained users from the unsuccessful; and that TA does exactly that for other groups that common sense indicates might also be suspect employees.

It bears repeating, then, that the District Court found that those who have been maintained on methadone for at least a year and who are free from the use of illicit drugs and alcohol can easily be identified through normal personnel procedures and, for a great many jobs, are as employable as and present no more risk than applicants from the general population.

The question before us is the rationality of placing successfully maintained persons in the same category as those just attempting to escape heroin addiction or who have failed to escape it, rather than in with the general population. The asserted justification for the challenged classification is the objective of a capable and reliable work force, and thus the characteristic in question is employability. "Employability," in this regard, does not mean that any particular applicant, much less every member of a given group of applicants, will turn out to be a model worker. Nor does it mean that no such applicant will ever become or be discovered to be a malingerer, thief, alcoholic, or even heroin addict. All employers take such risks. Employability, as the District Court used it in reference to successfully maintained methadone users, means only that the employer is no more likely to find a member of that group to be an unsatisfactory employee than he would an employee chosen from the general population.

TA had every opportunity, but presented nothing to negative the employability of successfully

maintained methadone users as distinguished from those who were unsuccessful. Instead, TA, like the Court, dwells on the methadone failures—those who quit the programs or who remain but turn to illicit drug use. The Court, for instance, makes much of the drug use of many of those in methadone programs, including those who have been in such programs for more than one year. But this has little force since those persons are not "successful" and can be and have been identified as such. That 20% to 30% are unsuccessful after one year in a methadone program tells us nothing about the employability of the successful group, and it is the latter category of applicants that the District Court held to be unconstitutionally burdened by the blanket rule disqualifying them from employment.

Finally, even were the District Court wrong, and even were successfully maintained persons marginally less employable than the average applicant, the blanket exclusion of only these people, when but a few are actually unemployable and when many other groups have varying numbers of unemployable members, is arbitrary and unconstitutional. Many persons now suffer from or may again suffer from some handicap related to employability. But TA has singled out respondents—unlike ex-offenders, former alcoholics and mental patients, diabetics, epileptics, and those currently using tranquilizers, for example—for sacrifice to this at best ethereal and likely nonexistent risk of increased unemployability. Such an arbitrary assignment of burdens among classes that are similarly situated with respect to the proffered objectives is the type of invidious choice forbidden by the Equal Protection Clause.