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Of Stereotypes and Stigma: Psychiatric Hospitalization and the Right to Keep and Bear Arms

by Michael L. Perlin

United States Department of the Treasury,
Bureau of Alcohol, Tobacco and Firearms

v.

Anthony J. Galioto
(Docket No. 84-1904)

Argued March 26, 1986

When the Supreme Court ruled last year that a municipal ordinance which effectively zoned out group homes for the mentally retarded violated the Equal Protection Clause (*City of Cleburne v. Cleburne Living Center*, 105 S. Ct. 3249 (1985); *Preview*, 1984-85 term, pp. 417-19), it looked carefully at the "irrational prejudice against the mentally retarded" reflected by the legislation. Even though the Court declined to characterize the retarded as a suspect class or to employ "intermediate scrutiny," it looked at the law far more carefully than it has traditionally done in other "rational basis" cases, going out of its way to print out that fear and other negative attitudes are not permissible bases for countenancing discriminatory treatment.

ISSUE

In *Galioto*, the Supreme Court is presented with a different sort of equal protection claim raised by an individual with a history of a different sort of mental disability in a fact context which appears significantly removed from the group home in Cleburne, Texas: the constitutionality of those provisions in Title IV of the Omnibus Crime Control and Safe Streets Act of 1968 (as amended by the Gun Control Act of 1968) (Title IV). The questioned provisions: 1) prohibit any individual "who has been adjudicated a mental defective or who has been committed to any mental institution" from receiving a firearm in interstate commerce; 2) prohibit a federal firearms licensee from selling a firearm to such a person, and 3) provide no administrative mechanism by which this disability may be alleviated or lifted (in contrast to a statutory section which provides for such relief in the case of other groups of individuals otherwise

prohibited from so purchasing a gun, including certain convicted felons).

While there are many striking differences between *Galioto* and *Cleburne*—types of disability, current existence of the disability, the subject matter being regulated, intensity of public opinion—the current case will give the Court its first opportunity to apply *Cleburne* to one of the many areas in which a permanent civil disability may be statutorily imposed because of a history of mental disability. The importance of *Galioto*, in short, far transcends the facts and narrow statutory base of the case.

FACTS

On May 11, 1971, Anthony Galioto voluntarily entered Fair Oaks hospital, a private psychiatric facility in Summit, New Jersey, where he was diagnosed as having experienced "an acute, schizophrenic episode with paranoid features" but he was found by his treating physician (Dr. Alvarez) to be "not acutely psychotic or suicidal, and [not considered] dangerous to himself or others." About three weeks after his admission, Galioto served the hospital with notice of his intention to leave prior to discharge; at this time, the hospital sought his involuntary commitment, and he was so committed on May 31, 1971. Five days later, he was discharged as improved by the same doctor who had filed the involuntary commitment papers. Galioto has not been hospitalized or treated for mental disorder since this 1971 episode.

In 1981, Galioto obtained a New Jersey Firearms Purchaser Identification Card after Dr. Alvarez certified (in keeping with state law, N.J. Stat. Ann. 2C:58-3.c.3) that he was no longer suffering from a mental disability "that would interfere with or handicap him in the handling of firearms." In October of 1982, Galioto applied to the Department of Treasury's Bureau of Alcohol, Tobacco and Firearms (BATF), seeking relief from the disability that followed from his commitment; he included in his application another statement by Dr. Alvarez that he "was no longer suffering from any mental disability that would interfere with his handling of firearms." In April, 1984, BATF denied his application for relief.

Galioto then filed suit in the federal District Court of New Jersey, challenging the constitutionality of the permanent ban on firearms possession imposed by federal law, arguing that the statutory availability of administrative relief to felons and barring such relief to persons

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once committed to mental institutions violated the Equal Protection Clause.

The court granted summary judgment to Galioto, declaring unconstitutional those portions of Title IV which deprived him of the ability to purchase a firearm without affording him the opportunity to contest that disability (602 F. Supp. 682 (D.N.J. 1985)). After determining that the mentally ill are a “quasi-suspect class” for purposes of equal protection analysis (thus deserving “intensified intermediate scrutiny”), the court found that the provisions in question were wholly irrational (and thus, presumably, would have failed constitutional muster under the more lenient “rational basis” test), noting that any such permanent ban would have been “more logically applied to convicts than to mental patients.”

The court premised its finding on three factors: 1) Felons have already demonstrated that they are capable of criminal activity, while former mental patients may have indicated nothing more than a propensity for disruptive, non-criminal behavior; 2) Since patients are unlikely to appeal commitment orders, “the propriety of the original commitment may never be fully explored,” and 3) Commitment procedures, which have fewer due process protections than do criminal trials, “are replete with erroneous factual findings.” The distinction between felons and mental patients in the federal law, the court reasoned, must have been based upon outdated notions that ignored “expanding knowledge about the causes of mental illnesses, their reversibility and treatment.”

In addition, the court alternatively held that the challenged provisions violated due process standards because they denied former patients the opportunity to establish that they no longer present the danger against which the statute was intended to guard, creating “an irrebuttable presumption that one who has been committed, no matter what the circumstance, is forever mentally ill and dangerous.” Such a presumption is irrational, it found, because, “without any good faith extrinsic justification, ... it relies on psychiatric evidence introduced in one proceeding to impose a burden on an individual, and then refuses to accept the same evidence when the individual seeks to have the burden removed.”

Although the court specified that it did not find that statutes generally prohibiting mental patients from purchasing firearms were irrational (in that they served a legitimate and substantial state objective), it found the provisions in question irrational and unconstitutional because they failed to include “some provision for the granting of relief from disability to former mental patients in appropriate cases.” Since the court felt it did not have the competence to make such prophylactic relief available, it declared unconstitutional those provisions of Title IV “which have been used to deprive [Galioto] of his ability to purchase a firearm.”

BACKGROUND AND SIGNIFICANCE

As can be expected, BATF and Galioto present this case through entirely different filters: BATF focuses on Congress’s broad powers to control firearms abuse; Galioto centers on the immutability of his prior commitment and the irrebutability of the statutory presumption. They also differ sharply on what the New Jersey standard for commitment was when Galioto was hospitalized and the significance which can be imputed to that commitment now (an issue looked at closely by joint *amicus*, the New Jersey Department of the Public Advocate and the American Civil Liberties Union of New Jersey).

Other *amici* (all in support of Galioto) raise other issues of broad social policy significance: *amicus* Coalition for the Fundamental Rights and Equality of Ex-Patients (FREE), (an umbrella coalition numbering mental health citizens’ advocacy groups and ex-patient self-help groups) argues that the absolute statutory bar is a “classic example of the irrational discrimination that still exists against many former patients’ fundamental rights” and that ex-patients, like all other Americans, are entitled to the “fundamental right to keep and bear arms.” Also, *amicus* American Psychological Association (APA) argues that the “central issue in the case is Congress’ use of false stereotypes to impose a permanent civil disability” on formerly hospitalized mentally disordered persons.

BATF suggests that it was “entirely reasonable” for Congress to exclude from federal firearms commerce persons with a history of mental illness—a category of “presumptively dangerous persons” (*Lewis v. United States*, 445 U.S. 55, 64 (1980))—along with persons who have been dishonorably discharged from the Armed Forces and those who have renounced American citizenship. The legislative determination that membership in this group predicts a potential for future criminal behavior, according to BATF, is entitled to “substantial deference,” *especially* because the “subtleties and nuances of psychiatric diagnosis render certainties virtually beyond reach” (*Addington v. Texas*, 441 U.S. 418, 430 (1979)). A history of commitment is thus a “reasonable trigger” for the legislative restrictions.

In addition, BATF suggests that the administrative relief offered to certain felons is the statutory exception, not the rule. Other felons (those who have committed firearms offenses or crimes involving weapons), dishonorable dischargees and citizenship renouncers are similarly barred from such relief. The exception in question was added to the law, the government argues, when it became apparent that diversified manufacturing conglomerates convicted of white collar crimes in areas unrelated to their firearms divisions (as happened in a celebrated case to the Olin-Matheson Chemical Corporation) would be subsequently permanently barred from the interstate shipment of arms.

Finally, BATF argues that it was not irrational for Congress to premise this exclusion on the fact of commitment, even if there are "subsequent curative events," as commitment may only be ordered "in the presence of clear and convincing evidence that the individual presents a danger to himself or others" (citing *Donaldson v. O'Connor*, 422 U.S. 563, 576 (1975)).

On the other hand, Galioto stresses that former mental patients (many of whom have been institutionalized for behaviors no longer considered to reflect mental illness) "have been saddled with stereotypical concepts of irrational behavior and violence," which, along with the stigma of overgeneralization and the immutability of the commitment record, have "generated fear and mistrust of former mental patients in the general population long after discharge from the hospital." Thus, he concludes, quasi-suspect status is appropriate for purposes of equal protection analysis.

If, however, the court does not choose to apply this test, Galioto urges that the statute should fall under the rational basis test, due to: 1) its employment of a classification based on the commitment procedure (based on psychiatric opinion) and its concomitant refusal to accept the same opinion to relieve the disability, and 2) its use of the history of commitment—a determination often made without any procedural due process protections—as the "triggering" mechanism.

Here the *factual* disputes are most sharply drawn. BATF is simply wrong, Galioto asserts, in suggesting that the 1971 commitment somehow met the standards for commitment set out in the *Donaldson* case (which was not even decided until 1975). Substantively, dangerousness was *not* a commitment criteria in New Jersey in 1971; commitments were then countenanced on a find-

ing of mental illness alone. Procedurally, pre-1975 commitments in New Jersey were *ex parte*, without testimony or any independent evidence other than the doctor's certification of mental illness, and without notice, appointment of counsel and an opportunity for the patient to be heard.

ARGUMENTS

For the Bureau of Alcohol, Tobacco and Firearms (Counsel, Charles A. Rothfeld, Department of Justice, Washington, DC 20530; telephone (202) 633-2217)

1. Congress acted constitutionally and rationally in prohibiting persons with "a proven history of mental illness" from obtaining firearms and in imposing permanent firearms disabilities on such persons; heightened scrutiny is inappropriate in such cases.

For Anthony J. Galioto (Counsel of Record, Michael Casale, 575 Kingsland Street, Nutley, NJ 07110; telephone (201) 667-8500)

1. Former mental patients are a suspect class; the statutory scheme is unconstitutional both facially and applied under an equal protection analysis. In addition, the statutory scheme is a deprivation of substantive due process.

AMICUS BRIEFS

In support of Anthony J. Galioto

As indicated above, the New Jersey Department of Public Advocate, joined by the American Civil Liberties Union of New Jersey; the Coalition for the Fundamental Rights and Equality of Ex-Patients; and the American Psychological Association all filed briefs supporting Galioto.