A Victory for the Landlords--Or is it? The Constitutionality of the 1997 Amendments to the RPAPL

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NOTES

A VICTORY FOR THE LANDLORDS—OR IS IT? THE CONSTITUTIONALITY OF THE 1997 AMENDMENTS TO THE RPAPL

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INTRODUCTION

Any issue that revolves around a person's home is an important one. Residential matters take on particular acuteness in New York, where the population is massive\(^1\) and homelessness is a major problem.\(^2\) In New York City, the landlord-tenant relationship is of particular importance, as many such relationships exist,\(^3\) resulting in an enormous number of eviction hearings annually.\(^4\)

A delicate balance must be struck between the competing interests of landlords and tenants. While it may be just to penalize a tenant who defaults on rent or wrongfully holds over, forcing a person out on the street through eviction may be an

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2 See *id.* (estimating that 23,000 homeless people use shelters on a daily basis).

3 For example, in New York City alone there are approximately 1,014,751 rent stabilized apartments, 70,572 rent controlled apartments, and 1 million unregulated apartments. See J. Soerensen et al., *Zero-Hour Deal on Rent Limits—Some Decontrol Would Be Allowed*, N.Y. DAILY NEWS, June 16, 1997, at 2.

4 See Dennis Hevesi, *Judge Backs Law Requiring Deposits in Evictions*, N.Y. TIMES, Nov. 17, 1998, at B3 (stating that there are 300,000 eviction proceedings brought each year, with approximately 25,000 actually evicted).
unduly harsh punishment. On the other hand, a landlord who relies on rent as income to pay bills should not be required to shelter a delinquent tenant. Though the New York State legislature has recognized that landlords who are wronged deserve expeditious remedies, it has been reluctant to leave citizens without homes.\(^5\) Balancing the equities between landlord and tenant can be a tenuous, if not daunting, consideration. As a result, landlord-tenant statutes have often been problematic and controversial.\(^6\)

In 1997, the New York State legislature enacted two pro-landlord amendments to the Real Property Actions and Proceedings Law (RPAPL).\(^7\) These amendments attempted to limit tenants' delay tactics during the eviction process,\(^8\) a perceived problem about which landlords have complained for some time.\(^9\) With the passage of the amendments, however, came reaction from tenants claiming that the amendments violated their due process, equal protection, and separation of powers rights.\(^10\) These issues have not yet reached the New York State Court of Appeals and are likely to be litigated frequently with the rights of thousands of tenants potentially at stake.

This Note analyzes the two recent RPAPL amendments and discusses their constitutionality. Part I provides a brief history of landlord-tenant relations leading up to the enactment of the amendments. Part II reviews the potential constitutional problems of the amendments as discussed in *Lang v. Pataki*\(^{11}\) and what the court stated, mostly in dictum, concerning the controversy surrounding them. *Lang* is instructive in its

\(^5\) See infra notes 25–42 and accompanying text.
\(^7\) See N.Y. REAL PROP. ACTS. LAW §§ 745 (2), 747-a (McKinney 1999).
\(^8\) See infra notes 36, 39 and accompanying text.
\(^9\) See Parella, supra note 6, at 703; infra notes 43–47 and accompanying text.
\(^10\) See infra Parts II, III.
constitutional analysis of both amendments. Part III offers an in-depth discussion of the constitutional issues as applied to the statutory provisions. Finally, Part IV discusses the court's inherent power to massage the statutes and the particular circumstances under which a judge may exercise discretion accordingly.

I. THE BACKGROUND, REASONING, AND PASSAGE OF THE 1997 AMENDMENTS TO THE RPAPL

A. The Summary Proceeding: The Problems with Ejectment Corrected?

At common law, the action of ejectment was the only action a landlord could bring to reclaim possession of real property. Ejectment, however, was often disadvantageous to the landlord who wanted to remove a tenant quickly, for the action was plenary and therefore could be a long, tedious, and very costly procedure. As was often the case, this process amounted to a "denial of justice" to the landlords who, as a group, grew weary of ejectment proceedings. During the relatively long time it could

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12 Now codified as the Action to Recover Real Property, N.Y. REAL. PROP. ACTS. LAW art. 6, §§ 601-661 (McKinney 1999). The Action to Recover Real Property is still used when a summary proceeding is not authorized. See LOUIS FRIBOURG & RALPH GERSTEIN, NEW YORK PRACTICE GUIDE: REAL ESTATE § 31.01 (Eugene Morris ed., 1988) (giving as an example the case where a termination provision is interpreted as a condition rather than a conditional limitation, thereby barring the use of a holdover proceeding).

13 See JOSEPH RASCH, NEW YORK LANDLORD & TENANT § 29:5 (3d ed. 1988) (stating that "prior to [the passage of the summary proceeding statutes] the only possessory legal remedy which a landlord had was an action in ejectment"); see also Haskell v. Surita, 439 N.Y.S.2d 990, 991 (Civ. Ct. N.Y. County 1981) (noting that "historically, landowners were exclusively relegated to ... ejectment") (quoting Fisch v. Chason, 418 N.Y.S.2d 495, 496 (Civ. Ct. N.Y. County 1979)); FRIBOURG & GERSTEIN, supra note 12, § 31.01 (noting that at common law, a landlord's remedy was that of ejectment).

14 See 950 Third Ave. Co. v. Eastland Indus., Inc., 463 N.Y.S.2d 367, 370 (Civ. Ct. N.Y. County 1983) (discussing the history and purpose of the summary proceedings); Haskell, 439 N.Y.S.2d at 991 (stating that ejectment is both "cumbersome" and "time consuming"); RASCH, supra note 13, § 29:5 (stating that the ejectment action was "expensive and dilatory"); see also FRIBOURG & GERSTEIN, supra note 12, § 31.01 (referring to ejectment as a more formal type of proceeding).

15 See Reich v. Cochran, 94 N.E. 1080, 1081 (N.Y. 1911) (stating that ejectment often amounts to a "denial of justice"); Maxwell v. Simons, 353 N.Y.S.2d 589, 591 (Civ. Ct. Kings County 1973) (noting that the common law action was a "denial of
take to bring a successful proceeding, the landlord was denied income from the rent while the action was pending. Furthermore, because the tenant would not be evicted pending the outcome of a trial, the landlord was effectively prevented from renting to someone else to mitigate the loss. The landlord was also deprived of rights for a substantial amount of time because the proceeding took so long to complete. Eventually, the New York State legislature responded to the situation.

To correct this perceived injustice to landlords, the legislature created the summary proceeding as a speedy and inexpensive remedy. Non-payment proceedings (brought when the tenant defaults on rent) and holdover proceedings (brought in instances when the tenant wrongfully "holds over" after the expiration of the lease or breaches and fails to cure some

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17 See Fifty States Management Corp. v. Pioneer Auto Parks, Inc., 389 N.E.2d 113, 116 (N.Y. 1979) (noting that landlords often rely on rent to pay their obligations). Prior to the 1997 Act, tenants were not required to deposit rents in court during stays or adjournments. See Parella, supra note 6, at 703-08.

18 See Lindsey v. Normet, 405 U.S. 56, 72-73 (1972) (noting that tenants are "able to deny the landlord the rights of income . . . or rental to someone else [and that] [m]any of the expenses of the landlord continue to accrue whether a tenant pays his rent or not").

19 See supra notes 16-17.

20 The original summary proceeding statute was enacted as part of Chapter 194 of the Laws of 1820. It was eventually replaced with provisions embodied in Article Seven of the N.Y. Real Property Actions and Proceedings Law. For a discussion of the history of the action, as well basic introductory matters, see RASCH, supra note 13, §§ 29:1 to 29:16.

21 See Reich v. Cochran, 94 N.E. 1080, 1081 (N.Y. 1911) (stating that the summary proceeding "was designed to . . . provid[e] the landlord with a simple, expeditious and inexpensive means of regaining possession of his premises"); Gardens Nursery Sch. v. Columbia Univ., 404 N.Y.S.2d 833, 834 (Civ. Ct. N.Y. County 1978) (noting that the purpose of the proceeding was to provide a more expeditious way of evicting tenants than ejectment); RASCH, supra note 13, § 29:5 (discussing the history of the summary proceeding).

22 See N.Y. REAL PROP. ACTS. LAW § 711(2) (McKinney 1999).
obligation under the lease) are the most common forms of summary proceedings.\textsuperscript{23} Landlords believed that they had finally received a "speedy and expeditious" remedy, designed to enforce "the right of the landlord to the immediate possession of his real property."\textsuperscript{24} Nevertheless, this statutory addition did not end the dispute between landlords and tenants.

With the enactment of the summary proceeding laws came statutes providing tenants with several means to prolong the proceedings.\textsuperscript{25} Because the summary proceeding was in derogation of the tenant's common law rights, the New York State legislature "enacted a comprehensive scheme to insure preservation of certain of those rights while achieving the purpose" of the quick remedy for the landlord.\textsuperscript{26} In short, since landlords were granted a speedy method to regain possession of the premises, the legislature created safeguards to "comport with due process."\textsuperscript{27} The legislature recognized that tenants also have a significant property interest at stake in the landlord-tenant relationship.\textsuperscript{28}

Two main devices were given to tenants to protect their due process rights. The first safeguard device was the "stay."\textsuperscript{29} Staying the issuance of the warrant could be effectuated in two instances. RPAPL section 751(1) authorizes a stay after default in rent.\textsuperscript{30} After a judgment in favor of the landlord in a summary proceeding establishing that a tenant has defaulted in payment of rent, a tenant could "stay" the issuance of the warrant.\textsuperscript{31} The stay could be initiated by depositing the rent due, plus interest and penalties, with the court, which then pays the rent to the petitioner landlord.\textsuperscript{32} After the stay is issued, the

\textsuperscript{23} See id. § 711(1).
\textsuperscript{24} See Great Park Corp. v. Goldberger, 246 N.Y.S.2d 810, 812 (Civ. Ct. N.Y. County 1964).
\textsuperscript{25} See infra notes 29, 39 and accompanying text.
\textsuperscript{27} Id.
\textsuperscript{28} See id.
\textsuperscript{29} See N.Y. REAL PROP. ACTS. LAW §§ 751, 753 (McKinney 1999).
\textsuperscript{30} See id. § 751. The statute also applies to default on payment of taxes or other assessments by the tenant. See id.
\textsuperscript{31} See id.
\textsuperscript{32} See id. A second method of staying the warrant is delivering to the court the tenant's undertaking to the landlord "in such sum as the court approves to the effect that he will pay the rent . . . and interest and penalty and costs within 10 days, at
landlord's right to dispossess the tenant terminates. Thus, no stay is really involved—the payment of monies due amounts to a dismissal of the case. The statute is construed so liberally that this rule applies even after a judgment on appeal is affirmed.

A related provision provides for a stay in the case of a tenant holding over. Where a new lessee is entitled to possession, the statute provides that the court may stay the issuance of the warrant, without the consent of the new lessee, if it appears that: (1) the premises are used for a dwelling purpose; (2) the application by the occupant is made in good faith; (3) the occupant cannot secure suitable premises within the same neighborhood; and (4) the occupant had made reasonable attempts to do so, or by reason of other facts there would be an extreme hardship if the stay were not granted. The stay is effective only upon the condition that the tenant against whom the judgment is entered makes a deposit with the court of the amount due for rent through the month in which the lease was to expire, plus the value of the use and occupation of the premises.

The second type of device granted to comport with due
process was the power to adjourn proceedings.\textsuperscript{39} Prior to the 1997 amendments to the RPAPL, the adjournment provision in RPAPL Article Seven provided that, upon sufficient proof of the need to procure witnesses, or by consent, a party may adjourn the trial for not more than ten days.\textsuperscript{40} Furthermore, RPAPL section 745(2) provided that, in the City of New York, on the second request by a tenant for an adjournment, the court must direct such tenant to post all sums due for future rent.\textsuperscript{41} The court, upon a showing of good cause, could waive this posting requirement.\textsuperscript{42} This could easily be used to delay the summary proceeding and allow rents to accrue.

Landlords have long complained that tenants abuse these devices.\textsuperscript{43} The idea behind the summary proceeding—to provide for a speedy, expeditious trial—was arguably negated. Landlords complained that tenants were “granted multiple adjournments for varying reasons while rent continued to accrue and the tenant had absolutely no financial ability to satisfy a judgment should the landlord prevail.”\textsuperscript{45} Additionally, after considerable delay, tenants with the necessary financial resources could frustrate the eviction process by depositing rents due in court.\textsuperscript{46} As discussed above, this results in a dismissal of the claim and not a stay.\textsuperscript{47} Finally, in 1997, the legislature reacted in an effort to aid landlords in their struggle with delinquent tenants.

\begin{itemize}
\item \textsuperscript{39} See id. § 745.
\item \textsuperscript{40} See id. § 745, amended by The Rent Regulation Reform Act of 1997, Ch. 116, [1997] N.Y. Laws 218 (McKinney 1997).
\item \textsuperscript{41} See id. § 745(2)(a). The statute provides that an adjournment to secure counsel, requested by an unrepresented tenant on the return date of the proceeding, shall be included as one of the two permitted adjournments. See id.
\item \textsuperscript{42} See id.
\item \textsuperscript{43} See Lang v. Pataki, 674 N.Y.S.2d 903, 909 (Sup. Ct. New York County 1998) (noting the “abuse of the Housing Court process”) (quoting Plaintiff’s Brief at 68); Yellen v. Baez, 676 N.Y.S.2d 724, 725 (Civ. Ct. Richmond County 1997) (stating that adjournments were “perceived to be an abuse of the summary proceeding process”).
\item \textsuperscript{44} See RASCH, supra note 13, § 29:5 (speaking of the summary proceeding as “designed to remedy [the] evil [of an expensive, dilatory proceeding] by providing the landlord with a simple, expeditious, and inexpensive means of regaining possession”); see also supra note 21.
\item \textsuperscript{45} Yellen, 676 N.Y.S.2d at 725; see also Lang, 674 N.Y.S.2d at 909 (discussing the idea that landlords wanted “to ensure that [landlords] who obtain judgments will be able to collect them”) (quoting Plaintiff’s Brief at 68).
\item \textsuperscript{46} See supra notes 29–35 and accompanying text.
\item \textsuperscript{47} See supra notes 32–38 and accompanying text.
\end{itemize}
B. The New York State Legislature Passes Amendments to the RPAPL: A Victory for the Landlords?

In 1997, the New York State legislature passed the Rent Regulation Reform Act (the "Act"). Besides revising the existing rent regulation laws, the Act contains two important amendments to the RPAPL dealing with evictions. Specifically, the amendments responded to landlords' contentions by dealing with the abuse of the summary proceeding process. The amendments apply to leases in the City of New York and are significantly pro-landlord. The first provision is an amendment to the existing adjournment statute; the second provision is a new section concerning stays. Both the amendment and the new section contain mandatory language, which seems to give the court little or no discretion in applying the provisions.

RPAPL section 745(2) applies to the adjournment of trials in landlord-tenant disputes in the City of New York. The

49 For instance, there were provisions lowering the luxury decontrol income level and for a vacancy allowance when a second generation succeeds to the apartment. See id. In 1997, the luxury decontrol income level was lowered from the $250,000 of the Rent Regulation Reform Act of 1993 to $175,000. See id; see also Dworman v. Division of Hous. and Com. Renewal, 725 N.E.2d 613, 615 (N.Y. 1999). For a summary of important provisions of the Rent Regulation Reform Act, see Parella, supra note 6, at 826.
50 See N.Y. REAL PROP. ACTS. LAW §§ 745(2), 747-a (McKinney 1999) (requiring proof that a judgment amount was paid to the petitioner or deposited in full with the court clerk in order to stay the issuance or execution of a warrant of eviction).
51 See supra notes 43-47 and accompanying text.
52 See Lang v. Pataki, 674 N.Y.S.2d 903, 909 (Sup. Ct. N.Y. County 1998) (referring to the legislative intent as "to end what was perceived to be an abuse of the summary proceeding process"); Yellen v. Baez, 676 N.Y.S.2d 724, 725 (Civ. Ct. Richmond County 1997) (stating that an "objective of the legislation [was] to require the rent to be posted and thereby secure the landlord of payment if victorious"); N.Y. Exec. Memo 116 (1997) (noting that the measures taken by the amendments will "prevent[] abuses of the Housing Court system and ensure[] that judgments will be collectible in the event the [landlord] prevails on his claim").
53 See N.Y. REAL PROP. ACTS. LAW § 745(2) (McKinney 1999).
54 See id. § 747-a (McKinney 1999).
55 See id. § 745(2). This section provides in pertinent part:
2. In the City of New York:
(a) In a summary proceeding upon the second of two adjournments at the request of the respondent, or, upon the thirtieth day after the first appearance of the parties in court less any days that the proceeding has been adjourned upon the request of the petitioner, whichever occurs
sooner, the court shall direct that the respondent, upon an application by the petitioner, deposit with the court within five days sums of rent or use and occupancy accrued from the date the petition and notice of petition are served upon the respondent, and all sums as they become due for rent and use and occupancy, which may be established without the use of expert testimony, unless the respondent can establish, at an immediate hearing, to the satisfaction of the court that respondent has properly interposed one of the following defenses or established the following grounds:

(i) the petitioner is not a proper party to the proceeding pursuant to section seven hundred twenty-one of this article; or

(ii) (A) actual eviction, or (B) actual partial eviction, or (C) constructive eviction; and respondent has quit the premises; or

(iii) a defense pursuant to section one hundred forty-three-b of the social services law; or

(iv) the court lacks jurisdiction.

When the rental unit that is the subject of the petition is located in a building containing twelve or fewer units, the court shall inquire of the respondent as to whether there is any undisputed amount of the rent or use and occupancy due to the petitioner. Any such undisputed amount shall be paid directly to the petitioner, and any disputed amount shall be deposited to the court by the respondent as provided in this subdivision.

Two adjournments shall include an adjournment requested by a respondent unrepresented by counsel for the purpose of securing counsel made on a return date of the proceeding. Such rent or use and occupancy sums shall be deposited with the clerk of the court or paid to such other person or entity, including the petitioner or an agent designated by the division of housing and community renewal, as the court shall direct or shall be expended for such emergency repairs as the court shall approve.

(c) (i) If the respondent shall fail to comply with the court’s directions with respect to direct payment to the petitioner or making a deposit as directed by the court of the full amount of the rent or use and occupancy required to be deposited, the court upon an application by the petitioner shall dismiss without prejudice the defenses and counterclaims interposed by the respondent and grant judgment for petitioner unless respondent has interposed the defense of payment and shows that the amount required to be deposited has previously been paid to the petitioner.

(ii) In the event that the respondent makes a deposit required by this subdivision but fails to deposit with the court or pay, as the case may be, upon the due date, all rent or use and occupancy which may become due up to the time of the entry of judgment, the court upon an application of the petitioner shall order an immediate trial of the issues raised in the
amendment primarily limits the number of adjournments permitted in a summary proceeding and requires that tenants deposit monies with the court while the action is pending. Specifically, the statute purported to sway the balance of power back to landlords in several ways. First, the statute directs the respondent tenant, upon the second of two adjournments, to deposit the rent accrued with the court or pay it to the landlord within five days, unless the respondent can show, at an immediate trial, one of the four listed defenses. The prior statute had given the court some discretion to waive the payment upon a showing of good cause. The amended statute, however, limits the reasons for the waiver of payment and requires an immediate trial to prove the defense. Second, the statute provides for a penalty for a tenant's refusal to comply with the court's order directing a payment or deposit. Specifically, the court may dismiss the tenant's defenses and counterclaims and grant judgment for the landlord. Also, in the event of a late payment, the statute mandates an immediate respondent's answer. An "immediate trial" shall mean that no further adjournments of the proceeding without petitioner consent shall be granted, the case shall be assigned by the administrative judge to a trial ready part and such trial shall commence and continue day to day until completed. There shall be no stay granted of such trial without an order to respondent to pay rent or use and occupancy due pursuant to this subdivision and rent or use and occupancy as it becomes due.

(iii) The court shall not extend any time provided for such deposit under this subdivision without the consent of the petitioner.

(iv) Upon the entry of the final judgment in the proceeding such deposits shall be credited against any judgment amount awarded and, without further order of the court, be paid in accordance with the judgment.

(v) The provisions of this paragraph requiring the deposit of rent or use and occupancy as it becomes due shall not be waived by the court.

Id.

56 See id.
57 See id. The four defenses are listed in RPAPL section 745(2). See supra note 55.
58 See supra text accompanying notes 41–42. Additionally, the phrase "two adjournments" now includes an adjournment requested by the respondent for the purpose of securing counsel. Id.
59 See N.Y. REAL PROP. ACTS. LAW § 745(2) (McKinney 1999).
60 See id. § 745(2)(c)(ii).
61 See id. The only thing the tenant can do to avert this harsh penalty is to prove payment. See id.
trial that cannot be stayed. Finally, in accordance with the imperative language of the statute, the court cannot waive the provisions of the statute.

The new provision—RPAPL section 747-a—concerns stays of non-payment proceedings in the City of New York. RPAPL section 747-a applies after a tenant appears, a judgment is issued, and five days have elapsed. The statute mandates that the court shall not grant a stay unless the tenant can prove that the judgment has been paid or deposited with the court prior to the execution of the warrant. This limits the tenant’s power to effectuate a stay after judgment for the landlord.

The additions to section 745(2) and the enactment of section 747-a seemed to be a victory for landlords. The two statutes were enacted in an attempt to balance the interests of landlords and tenants, at a time when landlords had long complained of a pro-tenant bias. The provisions, however, precipitated controversy and constitutional challenges on the grounds of separation of powers, due process, and equal protection.

See id. § 745(2)(c)(v).
See id. § 747-a (McKinney 1999). Section 747-a reads:
In the city of New York, in any non-payment proceeding in which the respondent has appeared and the petitioner has obtained a judgment pursuant to section seven hundred forty-seven of this article and more than five days has elapsed, the court shall not grant a stay of the issuance or execution of any warrant of eviction nor stay the re-letting of the premises unless the respondent shall have either established to the satisfaction of the court by a sworn statement and documentary proof that the judgment amount was paid to the petitioner prior to the execution of the warrant or the respondent has deposited the full amount of such judgment with the clerk of the court.

Id.; see also supra notes 43–47 (noting that a stay has been viewed by landlords as a device abused by tenants to effectuate a dismissal of the proceeding).

See Lang v. Pataki, 674 N.Y.S.2d 803, 914 (Sup. Ct. N.Y. County 1998) (noting that RPAPL section 749 may still apply in such a situation). It must be noted that a court still has the discretion to apply RPAPL section 749, which allows a court to vacate a warrant “for good cause shown prior to execution thereof” which would allow a tenant who did not appear in the proceeding, claiming lack of jurisdiction, to have the warrant vacated without a deposit. See N.Y. REAL PROP. ACTS. LAW § 749(3) (McKinney 1999).

See id.
See supra notes 29–35 and accompanying text.
See supra notes 43–47 and accompanying text.
See Lang, 674 N.Y.S.2d at 912–13 (challenging the constitutionality of RPAPL sections 745(2) and 747-a on separation of powers grounds).
II. LANG V. PATAKI: AN ANALYSIS OF THE ISSUES

The Supreme Court for New York County, in the case of Lang v. Pataki,73 questioned the constitutionality of RPAPL sections 745(2) and 747-a.74 In Lang, the plaintiff-tenants75 sought to enjoin enforcement of sections 745(2) and 747-a, claiming that the statutes were unconstitutional.76 The court first denied the tenants' request for a preliminary injunction, as there was no showing of irreparable harm that would ensue from denying the motion.77 This alone was dispositive. Nonetheless, the court went on to assess and analyze the "constitutional contentions under the belief that there may be shortly before [the court] a motion for summary judgment on the cause of


72 See Lang, 674 N.Y.S.2d at 911–12; Targee Management, 677 N.Y.S.2d at 208–09; Yellen, 676 N.Y.S.2d at 726–27.


74 See id. Lang, decided in 1998, was not the first case to bring forth these claims. Indeed, both Yellen and Targee Management, were decided before Lang. See Yellen, 676 N.Y.S.2d at 724; Targee Management, 677 N.Y.S.2d at 206. However, Lang is more appropriate for an analysis of the statutes' constitutionality because it is the only case of the three that presents a detailed discussion on the issues presented with respect to both statutes. See Lang, 674 N.Y.S.2d at 906.

75 See Lang, 674 N.Y.S.2d at 906. Besides the individually named plaintiffs in the claim, the plaintiffs also included four organizations that promoted tenants' rights. Among the defendants named in the action were New York Governor George Pataki, the State of New York, the Chief Administrative Judge of the Courts of the State of New York, and the Administrative Judge of the Civil Court of the City of New York. See id.

76 See id. Plaintiffs sought to establish that the sections were violative of due process, equal protection, and separation of powers. See id. The plaintiffs also moved for certification as a class consisting of all persons living in residential housing in the City of New York, as well as for the certification of two defendant classes, namely all judges and clerks of the housing court. See id. at 907. This motion, however, was denied because it would bind all tenants in the New York City area and "if the proposed result were adopted, it would mean that any tenant appearing in Housing Court... would not be able to challenge any aspect of the statute upheld in this decision." Id. at 914. The motion to certify the defendant class was also denied. See id. at 914–15.

77 See id. at 907. The decision rested on the fact that the Housing Court is the preferable forum for the resolution of landlord-tenant disputes and that the tenants would have the opportunity to challenge the constitutionality of the statutes in that court. See id. (citing Post v. 120 E. End Ave. Corp., 464 N.E.2d 125, 129 (N.Y.1984)).
action for a declaratory judgment on constitutionality."\(^7\) The court noted that the "voluminous submissions on this application" indicated the importance of the issue.\(^7\)

**A. Lang and Due Process**

The tenants' first claim in *Lang* was that RPAPL section 745(2) deprived them of a "property interest in violation of due process."\(^8\) The contention revolved around provisions dealing with requested adjournments and the deposit of monies owed.\(^8\) The tenants claimed that this limitation "denie[d] tenants the time necessary to be heard 'at a meaningful time and in a meaningful manner'\(^8\) and penalized them for various delays beyond their control.\(^8\) Furthermore, the plaintiffs contended that the statute violated their due process rights because it deprived them of the right to a hearing on their defenses before they were forced to pay rent.\(^8\) The defendants, on the other hand, argued that the tenants' due process rights were protected because the statute provided for a trial\(^8\) and the tenants could still pursue any dismissed defenses and counterclaims in another proceeding.\(^8\) Additionally, the defendants argued that requiring a deposit of rent did not violate due process because the tenants were contractually responsible for the rent, and if there were an overcharge or violation of the warranty of

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\(^7\) *Id.*

\(^8\) *Id.*

\(^9\) *Id.* at 908. The Due Process Clause of the Fourteenth Amendment states that no State shall "deprive any person of life, liberty, or property, without due process of law . . . ." U.S. CONST. amend. XIV, § 1.

\(^81\) *See Lang*, 674 N.Y.S.2d at 908.

\(^82\) *See id.* (quoting Plaintiff-Tenant's Brief at 24).

\(^83\) *See id.* (treating a delay caused by the court when considering a pre-trial motion as an uncontrollable delay).

\(^84\) *See id.* RPAPL section 745(2)(c)(i) states that if payment is not made as directed, the court is instructed, upon application of the landlord, to dismiss the tenant's defenses and counterclaims without prejudice and grant judgment for the landlord. *See* N.Y. REAL PROP. ACTS. LAW § 745(2) (McKinney Supp. 1999).

\(^85\) *See Lang*, 674 N.Y.S.2d at 908–09 (stating how defendants conceded that although the statute only provides for an "immediate trial," it still provides for a trial); *see also* N.Y. REAL PROP. ACTS. LAW § 745(2) (McKinney Supp. 1999).

\(^86\) *See Lang*, 674 N.Y.S.2d at 908–09; *see also* N.Y. REAL PROP. ACTS. LAW § 745(2)(e) ("The provisions of this subdivision shall not be construed to deprive respondent of a trial of any defenses or counterclaims in a separate action if . . . dismissed.").
habitability, it would result in a refund of the amount overcharged.

The *Lang* court held that the amendment to RPAPL section 745(2) did not infringe on the tenants' right to due process. In deciding the case, the court relied heavily on the United States Supreme Court's decision in *Lindsey v. Normet*.

In *Lindsey*, the Court examined an Oregon forcible entry and detainer statute "which was in many respects similar to the provisions" involved in *Lang*. The *Lindsey* Court analyzed several factors at issue in this analysis of the RPAPL amendments, namely the expedited hearing, the requirement of posting a deposit, and the limitations of defenses. The *Lang* court relied on all three factors in its assessment of the statutes at issue.

First, the *Lang* court quoted the *Lindsey* Court's analysis of

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87 See N.Y. REAL PROP. LAW § 235-b (McKinney 1999). New York has implied in every residential lease a warranty of habitability, which warranties that the premises are "fit for human habitation and for the uses reasonably intended by the parties and that the occupants of such premises shall not be subjected to conditions which would be dangerous, hazardous, or detrimental to their life, health, or safety." *Id.* The warranty cannot be waived by the tenant and any attempt to do so is void. See *id.*

88 See *Lang*, 674 N.Y.S.2d at 909.

89 See *id.* at 910–11. The *Lang* court also noted that leasehold interests are protected by due process and the presumption that statutes are constitutional. See *id.* (quoting *Hotel Dorest Co. v. Trust for Cultural Resources*, 385 N.E.2d 1284, 1289 (N.Y. 1978); *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965)). The *Hotel Dorest* court stated that there was a presumption that an act of the legislature was constitutional and can only be upset by proof beyond a reasonable doubt, and there was a further presumption that the legislature investigated and found support for the legislation. See *Hotel Dorest*, 385 N.E.2d at 1289.

90 405 U.S. 56 (1972).

91 See *Lindsey*, 405 U.S. at 58–63.

92 *Lang*, 674 N.Y.S.2d at 909. The *Lang* court summarized the Oregon Forcible Entry and Wrongful Detainer statute, OR REV STAT §§ 105.105–160 (1999), as follows:

[The] statute provided that a trial on a landlord's action for possession must be held between two and four days after service of a summons, allowing the court discretion to grant a single two-day adjournment. Any conditional continuance was conditioned upon the tenant posting security for the payment of any rent that might accrue during the period of continuance. The statute further limited the defenses that could be asserted.

*Id.*

93 See *Lang*, 674 N.Y.S.2d at 909–10 (outlining arguments set forth by the Court in *Lindsey*).

94 See *id.* at 910.
the tenant's due process challenge to the expedited hearing. "Where a tenant fails to pay rent or holds over after expiration of his tenancy and the issue . . . is simply whether he has paid or held over, we cannot declare that the Oregon statute allows for an unduly short time for trial preparation."95 When applying this principle to RPAPL section 745(2), the court noted that the "time periods set forth in the Oregon statute are significantly shorter than those provided under [RPAPL section 745(2)], [and, thus,] there is no basis for finding the New York time restrictions insufficient per se."96 Moreover, the court noted that the Lindsey holding "specifically approved" of the requirement of deposits for additional adjournments.97 The court quoted the Lindsey Court as stating that this requirement is "hardly irrational or oppressive."98

The Lang court also applied the Lindsey analysis to the due process and the limitation of defenses issues.99 The court quoted Lindsey in rejecting the notion that the statutory provisions amounted to a denial of due process.100 The court stated that "Oregon [did not] deny due process of law by restricting the issues . . . to whether the tenant has paid rent and honored covenants he has assumed."101 The plaintiffs attempted to distinguish Lindsey by noting that a warranty of habitability is implied in every residential lease in New York, and the warranty is interdependent on the obligation to pay rent.102 As an interdependent obligation, liability for rent is conditioned upon the landlord's maintenance of a habitable premises. Therefore, the plaintiffs in Lang believed that the state could not deny them a hearing on the breach of the warranty of habitability, since a breach by the landlord would constitute a defense to the non-payment of rent.103 The court responded by noting that the

95 Id. at 909 (quoting Lindsey, 405 U.S. at 64–65).
96 Id. at 910.
97 See id.
98 Id. at 909 (quoting Lindsey, 405 U.S. at 65).
99 See id. at 910–11.
100 See id. at 910 (quoting Lindsey, 405 U.S. at 65).
101 Id. (quoting Lindsey, 405 U.S. at 65).
102 See id.; see also NEW YORK REAL PROP. LAW § 235-b (McKinney 1999).
103 See Lang, 674 N.Y.S.2d at 910. The plaintiff-tenants relied on the U.S. Supreme Court case of Bell v. Burson, 402 U.S. 535 (1971). In Bell, the Court discussed a Georgia statute that required a bond for a hearing on the issue of liability in a motor accident case and held that "liability plays a crucial role in
tenants still may raise a warranty of habitability defense and get a hearing on the issue. It is only in seeking to adjourn the trial is a deposit required of post petition rent, a situation which the Supreme Court in Lindsey held was appropriate. Thus, the court held that the 1997 amendments did not violate due process of law.

B. Lang and Equal Protection

The plaintiff-tenants in Lang next asserted that RPAPL section 745(2) violated the Equal Protection Clause of the United States and New York State constitutions. The tenants' first contention was that the statute treats tenants who can be prepared for trial promptly differently from those who cannot. Second, the tenants claimed that when either party makes a motion resulting in a delay of the trial, tenants may be required to make a deposit. Finally, the tenants argued that the statute treats tenants differently from landlords. Defendants countered by relying on Lindsey, arguing that there was no violation of equal protection so long as there was a rational

the . . . [statute]" and "a release from liability or an adjudication of non-liability will lift the suspension." Bell, 402 U.S. at 541. In Lang, the plaintiffs argued that a tenant's liability is conditional upon the warranty of habitability, and therefore, in accordance with Bell, the state must first determine if the tenant can be liable at all before denying a tenant a hearing on a breach of warranty claim. See Lang, 674 N.Y.S.2d at 910. In other words, if a tenant is not liable, he or she may not be denied a hearing on a breach of warranty claim.

See Lang, 674 N.Y.S.2d at 911. The court held that because there was an opportunity for the tenant to raise a warranty of habitability defense, there was no need to determine if the tenant is at all liable. This contrasts with the procedure in Bell, where there was "absolutely no opportunity to assert a viable defense unless a bond was posted." See id. (quoting Bell, 402 U.S. at 541).

Id. The court was referring to a statement in Lindsey: "Their claim is that they are denied due process of law because rental payments are not suspended while the alleged wrongdoings of the landlord are litigated. We see no Constitutional barrier to Oregon's insistence that the tenant provide accruing rent pending judicial settlements of his dispute with the lessor." Lindsey, 405 U.S. at 66-67.

See Lang, 674 N.Y.S.2d at 911-12.

See id. at 911.

See id.

See id. at 911-12.

See id. at 912. The contention was that landlords do not have to make a deposit in obtaining an adjournment when defending against counterclaims. See id.

The Fourteenth Amendment mandates that no State shall "deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend.
relation between the legislative purpose and the provisions.\textsuperscript{112}

The \textit{Lang} court again referred to the holding and reasoning of \textit{Lindsey} in deciding this issue. First, the court noted that the applicable standard of review was the rational basis test;\textsuperscript{113} if the classification had a rational basis, it did "not offend the Constitution."\textsuperscript{114} Further, the court noted that, particularly when social legislation is at issue, "the legislation is presumed to be valid and will be sustained . . . [and] the Equal Protection Clause allows the States wide latitude."\textsuperscript{115} The court stated that the legislative purpose behind the Oregon statute, like the New York statute, was the "prompt as well as peaceful resolution of disputes over the right to possession of real property."\textsuperscript{116} The \textit{Lindsey} Court, finding a rational basis for the Oregon provisions, held that "[s]peedy adjudication is desirable to prevent subjecting the landlord to undeserved economic loss . . . [and therefore,] Oregon was well within its constitutional powers in providing for rapid and peaceful settlements of these disputes."\textsuperscript{117} The \textit{Lang} court essentially concluded that since the

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XIV, §1. Further, it has been held that the corresponding provision under the New York Constitution is afforded the same breadth of coverage. \textit{See} Dorsey v. Stuyvesant Town Corp., 87 N.E.2d 541, 548–49 (N.Y. 1949) (determining that a decision regarding discrimination must be based on equal protection clauses of both the state and federal constitutions).
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\textsuperscript{112} \textit{See} Lang, 674 N.Y.S.2d at 912.

\textsuperscript{113} \textit{See id.; see also} Moccio v. New York State Office of Court Admin., 95 F.3d 195, 201 (2d Cir. 1996) (holding that the rational basis test is appropriate where the particular class is not a "suspect class," which would require a "strict scrutiny" standard). A suspect class can be identified by several factors, including a history of discrimination or political powerlessness. Justice Powell said in \textit{Rodriguez} that a suspect class is determined when, "the class is . . . saddled with such disabilities, or subjected to such a history of purposeful unequal treatment or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process." San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 28 (1973); \textit{see also} United States v. Carolene Prods. Co., 304 U.S. 144, 152–53 n.4 (1938) (alluding that suspect classes include "discrete and insular minorities"). Since tenants are not a suspect class, legislation involving tenants is subject to a rational basis review requiring a court to uphold legislative classifications provided that the classifications bear a rational relation to a legitimate state purpose. \textit{See, e.g.,} Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 66–67 (1911) (defining rational basis review).

\textsuperscript{114} \textit{Lang}, 674 N.Y.S.2d at 912 (quoting Dandridge v. Williams, 397 U.S. 471, 485 (1970)).

\textsuperscript{115} \textit{Id.} (quoting City of Cleburne v. Cleburne Living Ctr., Inc. 473 U.S. 432, 440 (1985)).

\textsuperscript{116} \textit{Id.} at 910 (quoting \textit{Lindsey} v. Normet, 405 U.S. 56, 70–71 (1971)).

\textsuperscript{117} \textit{Id.} at 912 (quoting \textit{Lindsey}, 405 U.S. at 72–72).
“provisions here... are so similar to Lindsey, [they] cannot be said to violate the equal protection clause.”

C. Lang and Separation of Powers

Finally, the court addressed the plaintiffs’ claim that RPAPL sections 745(2) and 747-a violated separation of powers. The tenants’ argument centered on the respective powers of the legislative and judicial branches, specifically, whether the statutes “impinged on the inherent power of the judiciary to control the court proceedings and to adjudicate controversies on the merits.” The RPAPL section 745(2) claim revolved around the “immediate trial” provision of the statute; the RPAPL section 747-a claim dealt with the requirement that “[the court] shall not grant a stay of the issuance... of any warrant... nor stay the re-letting of the premises.” The defendants countered by showing that the New York State constitution grants the legislature the power to regulate court proceedings and that section 2201 of the Civil Practice Law and Rules (CPLR) evidences the legislature’s power to restrict stays.

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118 Id.
119 See id.
120 Id.
121 See N.Y. REAL PROP. ACTS. LAW § 745(2) (McKinney Supp. 1999–2000). The immediate trial provision is believed to violate the separation of powers provisions of the New York State constitution because it denies courts authority over their own calendars. See Lang, 674 N.Y.S.2d at 914.
122 N.Y. REAL PROP. ACTS. LAW § 747-a (McKinney 1979 & Supp. 2000). Clearly, the prohibition against stays contained in the statute denies the court recourse to this traditional discretionary judicial device as a tool to control a court’s calendar in the interests of justice. See, e.g., Lang, 674 N.Y.S.2d at 914.
123 See N.Y. CONST. art. VI, § 30. This section provides that [t]he legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and in equity that it has heretofore exercised. The legislature may, on such terms as it shall provide and subject to subsequent modification, delegate, in whole or in part, to a court, including the appellate division of the supreme court, or to the chief administrator of the courts, any power possessed by the legislature to regulate practice and procedure in the courts. The chief administrator of the courts shall exercise any such power delegated to him with the advice and consent of the administrative board of the courts. Nothing herein contained shall prevent the adoption of regulations by individual courts consistent with the general practice and procedure as provided by statute or general rules.
The court first discussed the plaintiffs' claim regarding the constitutionality of section 745(2). The court noted that "[t]he courts are not puppets of the legislature." The court went on to discuss the "inherent power doctrine," the theory under which the courts were vested with an inherent judicial power to do things reasonably necessary to administer justice. This power enables courts to do several things, including "[to] perform efficiently its judicial functions, to protect its dignity, independence and integrity, and to make its lawful actions effective." Thus, while the court apparently conceded that the legislature had the power to regulate court proceedings, the court also recognized the strong interest that courts have in regulating their own proceedings. In conjunction with the statutes at issue, the court noted that a major function of the inherent powers doctrine was to provide the court with the necessary ability to control its calendar through the power to stay proceedings. Therefore, the court held that while the requirement of a deposit as a condition to stay a trial did not violate separation of powers, the "immediate trial" provision prescribed by law, the court in which an action is pending may grant a stay of proceedings in a property case, upon such terms as may be just." Id. This statutory language on its face indicates an infringement on the court's traditional discretionary power. See id.

125 Lang, 674 N.Y.S.2d at 913 (quoting Riglander v. Star Company, 90 N.Y.S. 772, 775 (1st Dep't 1904), affd, 73 N.E. 1131 (N.Y. 1905)).

They are an independent branch of government, as necessary and powerful in their sphere as ... the other great Divisions. And, while the legislature has the power to alter and regulate the proceedings in law and equity, it can only exercise such power in that respect as it has heretofore been exercised.

Riglander, 90 N.Y.S. at 775.

126 See Lang, 674 N.Y.S.2d at 913.

127 Id. (quoting Wehringer v. Brannigan, 647 N.Y.S.2d 770, 771 (1st Dep't 1996), appeal dismissed, 678 N.E.2d 491 (N.Y. 1997)).

128 See id. at 913–14.

129 See id. at 914. The court drew a distinction between requiring a deposit as a condition precedent for granting a stay and the outright prohibition gleaned from a literal reading of the legislative mandate, and found that the latter interpretation interfered with the court's power to control its own docket. See, e.g., Jolin v. Regan, 406 N.Y.S.2d 938, 940 (4th Dep't 1979) (holding that the establishment of a fee schedule did not deny access to court).

130 See Lang, 674 N.Y.S.2d at 914 (stating that the "immediate trial" provision strips the court of its inherent power to control the docket and thus appears to violate the separation of powers doctrine); supra notes 59, 62 and accompanying text.
certainly appeared to result in a violation. The court stated that "such mandate deprives a court of the authority under any circumstances . . . to adjourn or stay the matter and thus strips the court of its ability to utilize its inherent power[s]." 

The court also briefly analyzed RPAPL section 747-a, which restricts a court's ability to issue stays, under the separation of powers doctrine. After noting that the section only applied to a tenant who appears in the proceeding, the court determined the statute to be "constitutional on its face, [although] it may as applied be unconstitutional." The court provided several examples of situations where the application of the statute would strip the court of its discretion to issue a stay for good cause, thus rendering the statute unconstitutional.

III. THE CONSTITUTIONALITY OF RPAPL SECTIONS 745(2) AND 747-A

A. Due Process

The United States Constitution provides that no person shall be "deprive[d] . . . of life, liberty, or property, without due process of law." The New York State constitution's due process clause is virtually identical to its federal counterpart and has been interpreted by the courts to have the same impact. Two key aspects of due process are the right to be

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131 See Lang, 674 N.Y.S.2d at 914.
132 Id.
133 See id.
134 A non-appearing tenant can still invoke the statute. See N.Y. REAL PROP. ACTS. LAW § 749(3) (McKinney 1999).
135 Lang, 674 N.Y.S.2d at 914. "An ordinance, constitutional on its face (or deemed so) may be construed and applied in an unconstitutional manner." See Diocese of Rochester v. Planning Bd., 136 N.E.2d 827, 833 (N.Y. 1956).
136 See Lang, 674 N.Y.S.2d at 914. The examples included cases when a default judgment ensues as a result of illness, when a judgment is entered improperly pursuant to a stipulation, or a delay in obtaining money from Social Services. See id. The court explained that it might be unconstitutional not to allow the warrant to be vacated without a deposit. See id.
137 U.S. CONST. amend. XIV, § 1.
139 See, e.g., Metropolitan Life Ins. Co. v. New York State Labor Relations Bd., 20 N.E.2d 390, 395 (N.Y. 1939) (stating that a statute that offends the federal Due Process Clause also offends the New York State clause).
heard and the ability to defend oneself at trial. Additionally, as the Lang court noted, a leasehold interest is protected under due process. The concept of due process, however, is flexible. A statute may comport with due process on its face, yet violate due process as applied to a particular set of facts. Each case must be decided on its merits, as what may afford due process in one set of circumstances may not in another. In the due process analysis, the first issue is whether RPAPL sections 745(2) and 747-a are unconstitutional on their face, by depriving tenants who are being evicted of due process. Then, even if constitutional on their face, the court still must determine whether situations could arise when the literal application of the statutes would violate due process. This issue is related to the strict language of the provisions and whether the court can use discretion in its application of the statutes.

With regard to the amendments to RPAPL, procedural due process guarantees that a property interest—here the tenant’s leasehold interest—will not be taken away by an arbitrary or inadequate procedure. No particular procedure is necessary; the concept of due process aims solely at a fair hearing or

140 See City of Buffalo v. Hawks, 236 N.Y.S. 89, 93 (4th Dep’t), aff’d, 168 N.E. 438 (N.Y. 1929) (“[T]he ‘due process’ clause in the two Constitutions assures to every person his day in court, and an opportunity to be heard, and defend and preserve his rights.”); Woodwiss v. Jacobs, 211 N.Y.S.2d 217, 218 (Sup. Ct. Queens County 1969) (requiring an opportunity to be heard even when the court is not permitted to substitute its judgment for that of an administrative body).
141 See Lang, 674 N.Y.S.2d at 909 (citing Armstrong v. Manzo, 380 U.S. 545, 552 (1965)).
142 See In re Roxann Joyce M., 417 N.Y.S.2d 396, 397 (Fam. Ct. Kings County 1979) (stating that “[d]ue process is flexible and calls for such procedural protection as the situation demands . . . ”) (quoting Morrissey v. Brewer, 408 U.S. 471, 481 (1972)).
143 See Mathews v. Eldridge, 424 U.S. 319, 333–34 (1976) (finding that respondent had not been denied procedural due process when he was not granted an evidentiary hearing prior to termination of Social Security benefits).
144 See Dobkin v. Chapman, 236 N.E.2d 451, 457 (N.Y. 1968) (discussing adequate notice in relation to due process and how notice may be adequate in one circumstance but not another).
145 See infra Part IV.
146 See Riglander v. Star, 90 N.Y.S. 772, 777 (1st Dep’t 1904) (stating that “the legislature is not vested with the power to arbitrarily provide that any procedure it may choose to declare such shall be regarded as due process of law”) (quoting Colon v. Lisk, 47 N.E. 302, 304 (N.Y. 1897); see also Deriance Milk Prods. Co. v. DuMond, 132 N.E.2d 829 (N.Y. 1956); People v. Hudson River Connections R.R. Corp., 126 N.E. 801 (N.Y. 1920).
Limitations on adjournments present several due process issues. One issue is whether RPAPL section 745(2), by restricting adjournments, hampers the due process guarantee of a right to be heard. In connection with the restriction on adjournments, there is an issue as to whether requiring a deposit as a condition of a second adjournment unduly burdens the tenant who is not yet subject to a judgment. Another issue is whether RPAPL section 747-a, by restricting stays and requiring deposits for stays, has the same effect as the adjournment provision. A fourth issue is whether the mandate of an "immediate hearing" provided by RPAPL section 745(2) gives an inadequate amount of time in which to prepare for trial. The last issue is whether section 745(2) authorizes or commands the dismissal of all the respondent's defenses and counterclaims at the immediate hearing, thereby implicating the due process right to be heard and defend oneself adequately.

It is helpful to look at the Supreme Court's analysis of the Oregon Forcible Entry and Detainer Statute in Lindsey v. Normet, to determine whether the New York statutes violate due process. The Oregon statute at issue in Lindsey is similar to section 745(2). The Oregon statute allowed for a two-day continuance, with a longer continuance based on the tenant's...

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147 See N.Y. JUR. 2D Constitutional Law § 392 (1999) (stating that due process "aims only at fair dealing, adequate hearing . . . and a procedure to obtain them").

148 See City of Buffalo v. Hawks, 236 N.Y.S. 89, 93 (4th Dep't), aff'd, 168 N.E. 438 (N.Y. 1929) ("It is asserted . . . that the commencement of an action in the manner provided by [RPAPL section 745(2)] makes it possible for the property of a defendant to be seized and confiscated without giving him his day in court, and that it is therefore contrary to the fundamental law of the land.").

149 See N.Y. REAL PROP. ACTS. LAW § 745(2)(a) (McKinney 1999).

150 See, e.g., Silverstein v. Minkin, 401 N.E.2d 210, 211 (N.Y. 1980) ("An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." (quoting Mullane v. Central Hanover Trust Co., 339 U.S. 306, 314 (1950)); Yellen v. Baez, 676 N.Y.S.2d 724, 725 ( Civ. Ct. Richmond County 1997) (noting that the immediate trial provision of RPAPL section 745(2) violates due process for non-English speaking defendants without interpreters).

151 See N.Y. REAL PROP. ACTS. LAW § 745(2)(a) (McKinney 1999).

152 See id.


154 405 U.S. 56 (1972).
posting of deposits for rent. The continuance is analogous to the adjournment provision of section 745(2), which provides for one adjournment; however, a second adjournment may be granted by posting rents, much like the second continuance granted in the Oregon statute. Furthermore, the Oregon statute required a trial not more than six days after service, unless rent was provided. The requirement of a trial six days after service under the Oregon statute is analogous to the immediate trial provision of RPAPL section 745(2).

In *Lindsey*, the Court noted that the requirement of a deposit as a condition for a continuance is "hardly irrational or oppressive" and that paying rent in advance is nothing unusual. Furthermore, the Court noted that the requirement of a deposit helps to balance the rights of landlords and tenants; it assures that a landlord will receive any rent that is due. The Court dismissed the defendant's contention that a lack of a continuance does not provide adequate time to prepare for trial, noting that "[t]enants... have as much access to relevant facts as their landlord, and can be expected to know the terms of their lease, whether they have paid rent, [and] whether they are in possession." Thus, the tenant's claim in *Lindsey*, that there was not enough time to prepare for trial, was unpersuasive. Whether a tenant has paid rent and whether a tenant has held over are not complex issues for which the tenant would need months to prepare for trial. Thus, *Lindsey* supports the position that on their face, the expeditious schedule and the deposit requirement in RPAPL section 745(2) comport with due process.

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155 See OR. REV. STAT. § 105.140.
156 See N.Y. REAL PROP. ACTS. LAW § 745.
157 See OR. REV. STAT. § 105.140.
158 See Lindsey v. Normet, 405 U.S. 56, 64 (1972) (citing OR. REV. STAT. § 105.135 (1999)).
159 See id. at 70 n.17; see also OR. REV. STAT. §§ 105.135, 105.140 (1999).
160 See N.Y. REAL PROP. ACTS. LAW § 745.
161 See Lindsey, 405 U.S. at 65.
162 See id. at 67 n.13; Mahdi v. Poretsky Management, Inc., 433 A.2d 1085, 1088 (D.C. 1981) (discussing prospective orders requiring payments and how if "no such payments were required, the landlord would be compelled to permit a tenant who does not pay rent to remain on [the] premises... with little or no assurance that any delinquency would be corrected").
163 Lindsey, 405 U.S. at 65. The Court noted that this was particularly true when "rent has admittedly been deliberately withheld and demand for payment [has been] made." Id.
Additional support for this conclusion can be found in the court decisions of other states, including several decisions that have relied on the reasoning in *Lindsey*.164 There is a consistent theme that due process is not violated by an accelerated trial because the purpose of the statute is to provide speedy relief for the landlord and the tenant has knowledge of all relevant facts.165 This reasoning has been extended to land sale contracts where the state allows for expeditious detainer actions based on the default of a purchaser in possession.166 In the face of a procedural due process challenge, the United States Court of Appeals for the Second Circuit held constitutional a Connecticut statute providing for summary eviction of mobile home residents "for the reasons stated in *Lindsey*."167 Indeed, the courts are in agreement that "[d]ue process is satisfied so long as the... statute permits continuances in cases requiring extensive trial preparation."168 It should be noted that *Lindsey* has been applied in other situations as well, including against non-resident defendants and as authority for not requiring a hearing prior to eviction.169

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164 See *Oaks v. District Court of R.I.*, 631 F. Supp. 538, 547 (D. R.I. 1986) (requiring a tenant to pay a bond before an eviction appeal could be heard); *Jordan v. Duprel*, 303 N.W.2d 796, 800 (S.D. 1981) (stating that a limitation of the time allowed for pleading comports with due process, as was held in *Lindsey*); see also *Starks v. Klopfer*, 468 F.2d 796, 799–800 (7th Cir. 1972) (denying an equal protection claim regarding a five-day appeal bond requirement, relying on *Lindsey*); *Browne v. Peters*, 360 A.2d 131, 132 (Conn. 1976) ("We conclude that [requiring a tenant to] ... guarantee payment of the rent from the commencement of the action until the conclusion of the appeal falls within ... legitimate objectives.").

165 See *Criss v. Salvation Army Residences*, 319 S.E.2d 403, 409 (W. Va. 1984) (stating that an accelerated trial does not violate due process because landlords and tenants have the same access to facts); *Jordan*, 303 N.W.2d at 800 (applying *Lindsey* in a due process analysis of a South Dakota statute, which provided a four-day limitation for a responsive pleading in forcible entry and detainer actions).

166 See *Butler v. Farner*, 704 P.2d 853, 857–58 (Colo. 1985) (noting that "as in landlord-tenant disputes, the facts involved in land sale contract disputes will be equally available to both purchaser and vendor").

167 See *Hancich v. Gopoian*, 815 F.2d 883, 884 (2d Cir. 1987); see also *Letendre v. Fugate*, 701 F.2d 1093, 1095 (4th Cir. 1983); *Oaks*, 631 F. Supp. at 547.

168 See also *Butler*, 704 P.2d at 858; *Criss*, 319 S.E.2d at 409; *Oaks*, 631 F. Supp. at 547.

169 See, e.g., *McNeal v. Habib*, 346 A.2d 508, 513 (D.C. 1975) (interpreting *Lindsey* as "authority for the proposition that the due process clause does not require an evidentiary hearing prior to the entry of a protective order"); *Hancich*, 815 F.2d at 884; *Lexton-Ancira, Inc. v. Kay*, 522 P.2d 875, 878 (Or. 1974) (extending *Lindsey* from resident to non-resident defendants).
The Oregon statute in *Lindsey* limited the defenses of tenants; specifically, tenants could not assert that the landlord failed to maintain the premises as a defense to non-payment. The *Lindsey* Court held that limiting defenses was constitutional because "[t]he tenant is not foreclosed from instituting his own action against the landlord." As long as there is some mechanism for tenants to present available defenses, there cannot be a violation of due process. The Oregon provision is similar to RPAPL section 745(2), which requires the dismissal of tenant counterclaims and defenses when a tenant fails to provide the necessary deposit. Although it is true that "[d]ue process requires that there be an opportunity to present every available defense," Section 745(2) expressly allows tenants to pursue lost defenses and counterclaims in a separate action; therefore, based on the holding in *Lindsey*, section 745(2) does not violate due process. It is also important to note that frequently in eviction proceedings, tenants' defenses and counterclaims will be dismissed, as possession is the only issue on which the court will rule; "[c]laims for damages normally are not heard, because they can be raised in regular proceedings at law."

*Lindsey* appears dispositive on the issue of whether RPAPL section 745(2) is constitutional on its face, and other courts agree with this interpretation. In *Lindsey*, however, the Court did not address the circumstances under which the statute may be found unconstitutional as applied; this second step in the due

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171 *Id.* at 66.
172 See *Butler*, 704 P.2d at 858 (stating that because the "statute provides a mechanism for ensuring that defendants will have an opportunity to fully present available defenses, the statute on its face does not violate due process").
174 *Lindsey*, 405 U.S. at 66 (quoting American Surety Co. v. Baldwin, 287 U.S. 156, 168 (1932)).
175 See N.Y. REAL PROP. ACTS. LAW § 745(2)(e) (allowing the use of lost defenses and counterclaims if they are dismissed without prejudice).
176 See Vinson v. Hamilton, 854 P.2d 733, 735 (Alaska 1993) (stating that "traditionally the court will recognize almost no affirmative defense or counterclaim" in a summary proceeding).
177 *Id.* at 737 (citing *Lindsey*, 405 U.S. at 66–69).
179 See *Lindsey*, 405 U.S. at 65 (noting that "it is possible for this provision to be applied so as to deprive a tenant of a proper hearing in specific situations"); see also
process analysis must also be addressed with respect to the RPAPL amendments.

B. Equal Protection

The Fourteenth Amendment of the United States Constitution provides that no person shall be denied "the equal protection of the laws."\[^{180}\] The New York State constitution grants New York citizens similar equal protection rights.\[^{181}\] The basic notion is that individuals should be treated similarly in like situations.\[^{182}\] The equal protection issue related to the 1997 amendments is whether tenants are discriminated against when they seek an adjournment or a stay because they are required to make a deposit. Admittedly, it appears that an equal protection claim purporting to invalidate the amendments on their face would be the weakest constitutional challenge\[^{183}\] because the statutes fail to establish a "class."\[^{184}\] When examining an equal protection claim, courts apply one of two tests: strict scrutiny or

\[^{180}\] U.S. CONST. amend. XIV, § 1.

\[^{181}\] N.Y. CONST. art. I, § 11.

No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.

\[^{182}\] See City of Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 439 (1985) (noting that the meaning of the Equal Protection Clause is "essentially a direction that all persons similarly situated should be treated alike"); Walker v. Board of Supervisors, 81 So. 2d 225, 232 (Miss. 1955) (discussing how equal protection means equality of opportunity in like circumstances); Anderson v. St. Paul, 32 N.W.2d 538, 543 (Minn. 1948) (defining equal protection as mandating that the rights of all persons rest under the same rule in the same circumstances).

\[^{183}\] See Butler v. Farner, 704 P.2d 853 (Colo. 1985). The Butler court, in a tenant's due process and equal protection challenge to the state's forcible entry and detainer statute, did not even address the equal protection claim, stating that they were "unable to discern the content of the defendants' equal protection argument." Id. at 856 n.4.

\[^{184}\] For example, if a statute applied only to tenants on welfare, a "class" would be established. Because these statutes apply to "all tenants, rich and poor, commercial and noncommercial," no "class" was established. Lindsey v. Normet, 405 U.S. 56, 70 (1972). If the statute applied only to tenants on welfare, however, a "class" would be established.
rational basis.\textsuperscript{185} The rational basis test is used when neither a suspect class nor a fundamental right is at issue.\textsuperscript{186} Under the rational basis test, a statute is constitutional if it is rationally related to legitimate legislative objectives.\textsuperscript{187} Broad deference is given to the legislature through a presumption that the statute is constitutional,\textsuperscript{188} particularly when the statute relates to economics and social welfare, as is the case with the Rent Regulation Reform Act of 1997.\textsuperscript{189} The legislation cannot be arbitrary,\textsuperscript{180} but it need not be perfect. Some inequality may even result.\textsuperscript{191} When a suspect class\textsuperscript{192} or fundamental right\textsuperscript{193} is

\textsuperscript{185} See Golden v. Clark, 564 N.E.2d 611, 613–14 (N.Y. 1990) (stating that when a suspect class or fundamental right is at issue, the proper test is strict scrutiny, and when there is no suspect class or fundamental right at issue, a rational basis test is used).

\textsuperscript{186} See id. Rational basis review is the traditional, and easier test for a statute to meet when it is challenged on equal protection grounds. This test determines whether there is a “reasonable basis” for the classification and whether the basis is “rationally related” to the achievement of a legitimate state interest. Hutchins v. District of Columbia, 144 F.3d 798, 805 (D.C. Cir. 1998). It is used when there is no “fundamental right” or “suspect class” at issue. Id. at 805 (“A statute that does not involve a suspect class or a fundamental right enjoys a strong presumption of validity, and will survive an equal protection challenge if it is rationally related to a legitimate governmental purpose.”); Lutz v. City of York, 399 F.2d 255 (3d Cir. 1990); Bykofsky v. Borough of Middletown, 401 F. Supp. 1242, 1264 (M.D. Pa. 1975).

\textsuperscript{187} See Golden, 564 N.E.2d at 613–14; see also Cleburne, 473 U.S. at 440 (noting that legislation is sustained only if the statute is rationally related to a state’s purpose); McGowan v. Maryland, 366 U.S. 420, 426 (1961) (stating that equal protection is “offended only if the classification rests on grounds wholly irrelevant” to the state’s objective).

\textsuperscript{188} See Cleburne, 473 U.S. at 440 (noting that legislation is “presumed to be valid” in the face of an equal protection charge); McGowan, 366 U.S. at 425 (noting the presumption of constitutionality).

\textsuperscript{189} See Cleburne, 473 U.S. at 440 (stating that “[w]hen social or economic legislation is at issue, the Equal Protection Clause allows the States wide latitude”); Alevy v. Downstate Med. Ctr., 348 N.E.2d 537, 542 (N.Y. 1976) (stating that “[the rational basis] test has been applied with great indulgence, especially in the area of economics and social welfare”).

\textsuperscript{190} See Haves v. Miami, 52 F.3d 918, 922 (11th Cir. 1995) (noting that as long as the legislation is not irrational, it will survive rational basis scrutiny).

\textsuperscript{191} See Lindsey v. Normet, 405 U.S. 56, 71 (1972) (noting that the state is presumed to have acted constitutionally “despite the fact that, in practice, [its] laws result in some inequality”) (alteration in original) (quoting McGowan, 366 U.S. at 425–26).

\textsuperscript{192} See Frontiero v. Richardson, 411 U.S. 677, 686 (1973) (stating that traditional suspect classes possess “immutable characteristics determined solely by . . . birth”); San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1, 28 (1973) (noting that suspect classes are generally determined by disabilities unique to a specific group, a history of unequal treatment, or a lack of political power).
involved, however, the statute is subject to a heightened test known as strict scrutiny. When the strict scrutiny test is applied, the government must have a compelling justification for the course of action taken in order for the statute to be upheld. In cases where a strict scrutiny test is applied, the statute is often invalidated.

Since tenants are generally not considered a suspect class, and the right to housing is not considered a fundamental right, the rational basis test applies to the equal protection analysis. It seems clear that the legislation is rationally related to the objective of speedy adjudication of landlord claims, as well as the elimination of the perceived abuse of the housing process by tenants. The goal of the legislature in preventing tenants from abusing the summary proceeding process is indeed an important one, as significant landlord interests are

193 See Price v. Cohen, 715 F.2d 87, 93 (3d Cir. 1983) (stating that fundamental rights are "those rights which have their source, explicitly or implicitly, in the Constitution") (citing Plyler v. Doe, 457 U.S. 202, 217 n.15 (1982)).
194 See Reno v. Flores, 507 U.S. 292, 308 (1993) (noting that statutes infringing on fundamental rights are subject to strict scrutiny and that "the infringement [must be] narrowly tailored to serve a compelling state interest").
195 See Flores, 507 U.S. at 302.
196 See Korematsu v. U.S., 323 U.S. 214 (1944) (applying strict scrutiny because a suspect class was involved—Japanese-Americans). Korematsu is one of the few cases when the legislation at issue survived strict scrutiny. "[R]arely are statutes sustained in the face of strict scrutiny." Bernal v. Fainter, 467 U.S. 216, 220 n.6 (1984). The Court applies the most stringent review with this test. See United States v. Virginia, 518 U.S. 515, 532 n.6 (1996). The Court recently noted, however, "that strict scrutiny ... is not inevitably 'fatal in fact.' " Id. (quoting Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 237 (1995)).
197 See Lindsey v. Normet, 405 U.S. 56, 70 (1972) (noting that a statute applying "to all tenants ... cannot be faulted for over-exclusiveness or under-exclusiveness"); see also Frontiero, 411 U.S. at 686 (discussing criteria of a suspect class); Rodriguez, 411 U.S. at 28 (same).
198 See Lindsey, 405 U.S. at 74 (applying rational basis scrutiny and stating that the Constitution does not guarantee "access to dwellings of a particular quality" nor does it recognize "the right of a tenant to occupy the real property of his landlord beyond the term of his lease"); Illinois Hous. Dev. Auth. v. Van Meter, 412 N.E.2d 151, 153 (Ill. 1980) (holding that a "wealth classification infringing on a person's right to housing, a non-fundamental right, should be examined under a rational-relationship standard of review").
199 See Romer v. Evans, 517 U.S. 620, 631 (1996) (stating that "if a law neither burdens a fundamental right nor targets a suspect class, we will uphold the legislative classification as long as it bears a rational relation to some legitimate end").
200 See supra notes 43–54 and accompanying text.
involved. Provisions that limit adjournments and stays and require "immediate hearings" on occasion necessarily further this objective, as does the requirement of deposits, which aids landlords in collecting judgments and rent. "Speedy adjudication is desirable to prevent subjecting the landlord to undeserved economic loss." Providing a shorter time frame in which to litigate such claims is not repugnant to the U.S. Constitution, as it is rationally related to the purpose of the rapid settlement of such disputes.

Moreover, the deposit requirement is rational because the money deposited is simply what is owed for rent or the amount of a judgment, and it is returned if the tenant should prevail. When the deposit secures the payment of rent while the tenant is in possession, "[t]here is justification for affording landlords these protections." It should be noted that the U.S. Supreme Court in Lindsey struck down a statute requiring the posting of a double bond as violative of equal protection. This provision was not rationally related to the purpose of the statute, as the amount posted was more than the amount owed by the tenant. Since there is no such provision in RPAPL section 745(2) or 747-a requiring the tenant to deposit more than the amount owed, the argument that the statutes are not violative of equal protection is strengthened.

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201 See supra notes 17–21 and accompanying text.
202 The Lindsey Court apparently would agree with this conclusion, noting that "[t]he objective of achieving rapid and peaceful settlement of possessory disputes between landlord and tenant has ample historical explanation and support." Lindsey, 405 U.S. at 72; The Court added, "It is also clear that the provisions for early trial and simplification of issues are closely related to that purpose." Id. at 70.
203 See id. at 72–73; Lang v. Pataki, 674 N.Y.S.2d 903, 909 (Sup. Ct. N.Y. County 1998).
204 Lindsey, 405 U.S. at 73. The expenses of the landlord continue to accrue while the action is pending. See id. at 72–73.
205 See id. at 71–74; Hamilton Corp. v. Alexander, 290 N.E.2d 589, 591 (Ill. 1972) (holding that a shorter period in which to perfect appeals in possessory disputes does not violate equal protection).
206 See N.Y. REAL PROP. ACTS. LAW § 745(2) (McKinney 1999).
207 Dixon v. Davis, 521 S.W.2d 442, 444 (Mo. 1975) (holding that the requirement of an appeal bond when possession of the premises has been surrendered is violative of equal protection).
208 See Lindsey, 405 U.S. at 74–79. The Lindsey Court applied rational-basis scrutiny and held that the double bond requirement was "arbitrary and irrational." Id. at 79.
209 See id. at 74–79.
With respect to whether the statutes arbitrarily establish a class, the Lindsey Court stated that the Oregon statute, which is similar to the New York statute at issue here, "potentially applies to all tenants, rich and poor... [and] cannot be faulted for over-exclusiveness or under-exclusiveness." The Court added that "[t]here are unique factual and legal characteristics of the landlord-tenant relationship that justify special statutory treatment," since tenants are "in possession of the property of the landlord." The statutes, on their face, cannot be said to violate equal protection with respect to tenants generally. As the Lindsey Court held, Oregon was "well within its constitutional powers in providing for rapid and peaceful settlement of these disputes." It must be noted, however, that depending on the particular tenant and the circumstances involved, the statute may be deemed irrational under a due process challenge.

C. Separation of Powers

The separation of powers doctrine, applicable to both RPAPL amendments, requires that no branch of government impinge on the functions of another. In New York, the power of the judiciary is vested in a unified court system; thus, neither the legislative nor the executive branch may exercise judicial power. The power of the courts to do all that is reasonably
necessary to perform their functions is implicit in the idea of "judicial power." This concept, known as the "inherent powers doctrine," is the cornerstone of the separation of powers analysis of RPAPL sections 745 and 747-a.

Although courts have this inherent power, it is clear that the legislature has the power to create laws that regulate the proceedings of the judiciary. This inter-branch conflict has created difficulty in the application of the RPAPL amendments. The problem begins with the imperative language of the statutes themselves. First, RPAPL section 745(2) says that "the court shall direct that the respondent . . . deposit" the money for rent unless "the respondent can establish, at an immediate hearing" one of four defenses. The word "shall" suggests that the court has no discretion in deciding

N.E. 724 (N.Y. 1923) (noting that "[t]he courts are not the puppets of the legislature") (quoting Riglander v. Star Co., 90 N.Y.S. 772, 774 (App. Div. 1904)).

See Landis v. North Am. Co., 299 U.S. 248, 254 (1936) (holding that "the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes"); Cohn v. Borchard Affiliations, 250 N.E.2d 690, 694–97 (N.Y. 1969) (discussing certain of the court's inherent powers); Langan v. First Trust & Deposit Co., 62 N.Y.S.2d 440, 445 (4th Dep't 1946) (stating that "it is well established that 'every court has inherent power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction' ") (citation omitted).

The inherent powers doctrine grants the courts "all powers reasonably required to enable it to: perform efficiently its judicial functions, to protect its dignity, independence and integrity, and to make its lawful actions effective." Lang, 674 N.Y.S.2d at 913 (quoting Wehringer v. Brannigan, 647 N.Y.S.2d 770, 771 (1st Dep't 1996)). All courts have the inherent power "to control the disposition of the cases on its docket." Landis, 299 U.S. at 254. The New York "constitutional structure is founded on the concept that each branch may not interfere with . . . the other." Lang, 674 N.Y.S.2d at 913. By enacting RPAPL sections 745(2) and 747-a, the New York State legislature directed the New York State courts how to manage their dockets. See id.

See N.Y. CONST. art. VI, § 30 (granting the legislature "the same power to alter and regulate the jurisdiction and proceedings in law and in equity that it has heretofore exercised"). For the full text of N.Y. CONST. art. VI, § 30, see supra note 123.

See generally Lang, 674 N.Y.S.2d at 914 (discussing how the immediate trial provisions may interfere with the authority of the courts).

N.Y. REAL PROP. ACTS. LAW § 745(2) (McKinney 1999) (emphasis added). No deposit will be required if the defendant can establish one of the following defenses: (i) the petitioner is not a proper party to the proceeding; (ii) actual eviction, actual partial eviction or constructive eviction, providing that the defendant has quit the premises; (iii) a defense pursuant to section 143-b of the New York Social Services Law; or (iv) a lack of proper jurisdiction. See id.
whether to make the tenant deposit rent owed and more importantly, directs the court to have an “immediate” trial, regardless of whether the court believes this is proper. Similarly, RPAPL section 747-a directs that the “court shall not grant a stay of the issuance or execution of any warrant of eviction” when there has been a judgment and more than five days have elapsed.224

The essential question is whether the apparent mandate interferes with the inherent power of the judiciary.225 By directing that a trial be “immediate,”226 RPAPL section 745(2) leaves the judge with no discretion in the scheduling of the case, which is a way of controlling the court calendar. Yet, courts have noted that “[i]t is ancient and undisputed law that courts have an inherent power over the control of their calendars, and the disposition of business before them.”227 Riglander v. Star Co.228 supports the view that section 745(2) deprives the court of its ability to use discretion in applying its calendar.229 Riglander held unconstitutional a statute similar to RPAPL section 745(2).230 The statute in Riglander required that certain preferential cases be set for trial on a specific date and that the court hear the trial on that date, regardless of availability.231 In

224 Id. § 747-a (McKinney 1999) (emphasis added).
225 See Lang, 674 N.Y.S.2d at 913 (describing the judiciary as “an independent branch of the government, as necessary and powerful in their sphere as either of the other great divisions”).
226 N.Y. REAL PROP. ACTS. LAW § 745(2)(c)(ii) (defining “immediate” as meaning that “no further adjournments of the proceeding without petitioner consent shall be granted, [and] the case shall be assigned by the administrative judge to a trial ready part and such trial shall commence and continue day to day until completed”).
227 Plachte v. Bancroft Inc., 161 N.Y.S.2d 892, 893 (1st Dep’t 1957); see also Link v. Wabash R.R., 370 U.S. 626, 630 (1962) (noting the court’s power to dismiss a case derives from “the control necessarily vested in courts to manage their own affairs”); Headley v. Noto, 237 N.E.2d 871, 873 (N.Y. 1968) (noting that the “power to control its calendar is a vital consideration in the administration of the courts”); Grisi v. Shainswit, 507 N.Y.S.2d 155, 158 (1st Dep’t 1986) (stating that “it hardly bears repeating that courts have the inherent power . . . to control their calendars”) (citing Headley, 237 N.E.2d at 873–74); Gabrelin v. Gabrelin, 489 N.Y.S.2d 914, 919 (2d Dep’t 1985) (discussing the inherent powers doctrine used as a basis for calendar control) (citing Plachte, 161 N.Y.S.2d at 893).
228 90 N.Y.S. 772 (1st Dep’t’ 1904), aff’d, 73 N.E. 1131 (N.Y. 1905).
229 See id. at 775.
230 See id. at 778.
231 The statute at issue in Riglander was the old New York Code of Civil Procedure section 793, which provided for a procedure which gave judges the ad hoc power to pre-schedule cases. See ch. 173, § 793, [1904] N.Y. Laws 312.
holding that the statute violated the court’s power to conduct its own affairs, the New York Appellate Division stated that although the legislature regulates judicial procedure, it had never “attempted to deprive the courts of that judicial discretion which they have been always accustomed to exercise.”232 Like section 745(2), the statute in Riglander provided that the court “must” designate a certain day for the hearing and “shall” hear the case on that day.233 Although that particular statute did not designate an immediate hearing per se, it effectively tied the court’s hands by designating a specific date for the hearing.234 When compared with the section 745(2) requirement that the court “shall” grant an immediate trial, it is apparent that the legislature, in passing this amendment to the RPAPL, infringed on the court’s inherent discretion to regulate its calendar, a fundamental judicial power.

It should be noted, however, that “[m]erely because a particular section does not comport with [the court’s] own idea of what is needed for efficient judicial administration furnishes insufficient basis for declaring that section unconstitutional.”235 In Cohn v. Bochard Affiliations,236 the New York Court of Appeals noted that the court must “accord to the legislature . . . a considerable degree of controlling effect over the powers of the court.”237 In that case, the court held that a statutory provision eliminating the motion to dismiss did not deprive the court of its inherent power to regulate its own proceedings.238 The court, in reversing the Appellate Term, chose to distinguish Riglander rather than overrule it.239 Riglander dealt with issues already on the calendar, while the statute in Cohn concerned whether a case “should ever reach a trial on the merits;” in other words, a case not yet on the calendar.240 This difference also supports the conclusion that RPAPL section 745(2) violates the separation of

232 Riglander, 90 N.Y.S. at 775.
234 See Riglander, 90 N.Y.S. at 774.
237 Id. at 697.
238 See id. at 697. The statute involved in Cohn was N.Y. C.P.L.R. § 3216 (McKinney 1967); see also Cohn, 250 N.E.2d at 691.
239 See Cohn, 250 N.E.2d at 696 (discussing the difference between the statute involved in Riglander and the one at issue in Cohn).
240 Id.
powers doctrine. The "immediate trial" provision does not come into play before the trial is placed on the calendar, but after a trial has been scheduled and adjourned.\(^{241}\) "This [is] a matter which, by long tradition, had been left to the absolute discretion of the courts to exercise not only on the basis of calendar convenience but also upon considerations of fairness to the parties concerned."\(^{242}\) Thus, because adjournments are an important way for courts to control their calendars, and because section 745(2), when read literally, limits adjournments and directs immediate trials, the statute seems to violate the separation of powers doctrine. The legislature here, in effect, attempted to exercise a judicial function by controlling the court's calendar.\(^{243}\) On the other hand, the provision commanding the court to require deposits\(^{244}\) does not seem to interfere with the court's power to control its calendar. Unlike the "immediate hearing" provision,\(^{245}\) the requirement of making a deposit as a condition for a delay does not schedule the court proceedings or deprive the court of the power to adjourn; it merely imposes a condition upon doing so.\(^{246}\)

Much like RPAPL section 745(2), section 747-a is written in strict language, giving the court little or no discretion to issue stays.\(^{247}\) When issuing stays, the court's discretion is even more important.\(^{248}\) "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the

\(^{241}\) An "immediate hearing" is not mandated until the second of two adjournments, which means that the "trial" has already been adjourned and is thus already scheduled. See N.Y. REAL PROP. ACTS. LAW § 745(2)(c)(ii) (McKinney 1999).

\(^{242}\) Cohn, 250 N.E.2d at 696 (emphasis added) (discussing the statute and the reasoning involved in the Riglander decision).

\(^{243}\) See supra note 220 (discussing the courts' inherent power to control their dockets).

\(^{244}\) See N.Y. REAL PROP. ACTS. LAW § 745(2)(a).

\(^{245}\) Id.

\(^{246}\) The court is not prohibited from issuing a stay, but the legislature has merely made the payment of a deposit a prerequisite to a grant of a stay. See id.

\(^{247}\) See N.Y. REAL PROP. ACTS. LAW § 747-a (McKinney 1999).

\(^{248}\) See Shiosberg v. New York Life Ins. Co., 216 N.Y.S. 215, 224 (1st Dep't. 1926), aff'd, 155 N.E. 749 (N.Y. 1927) (noting that a stay is a "matter which is wholly discretionary with the courts"); see also N.Y. C.P.L.R. §2201 (McKinney 1999) (codifying the courts' inherent power to grant stays "upon such terms as may be just"); Sampson v. Murray, 415 U.S. 61, 93 (1974) ("The power to issue a stay is inherent in judicial power.") (Douglas, J., dissenting); Maloney v. Rincon, 581 N.Y.S.2d 120, 122 (Civ. Ct. N.Y. County 1992) (citing New York C.P.L.R. section 2201 as the codification of the court's inherent power to grant a stay).
causes on its docket . . . this can best be done . . . [by] the exercise of judgment, which must weigh competing interests . . . .”249 As the court in Lang demonstrated, there may be times when a court must, as it weighs the interests of the litigants, issue a stay. It would be unconstitutional to deny the court power to stay an issuance of the warrant.250 Applying the statute literally would violate separation of powers251 by permitting the legislature to infringe on the court's inherent power. The legislature “certainly may not interfere, so as to deprive the courts of all discretion” with regard to stays.252

IV. EXERCISING INHERENT JUDICIAL POWER

A. The Court's Power to Exercise Discretion in the Interests of Justice

Courts, in determining whether statutes have been applied constitutionally, require the ability to massage statutes and exercise discretion to ensure that the interests of justice are best served. In Mennella v. Lopez-Torres,253 the New York State Court of Appeals discussed the boundaries of this discretion.254 Mennella involved a default judgment in an eviction non-payment proceeding.255 It was undisputed that the landlord complied fully with all notice requirements in the proceeding when the default judgment was obtained.256 The Civil Court judge, however, entered judgment with a stamped notation that the warrant may issue only after five days passed from the

250 The court in Lang cited examples such as a tenant's illness, inability or failure to receive Social Services payments, or improper entry of an order. See Lang v. Pataki, 674 N.Y.S.2d 903, 914 (Sup. Ct. N.Y. County 1998).
251 By depriving the courts of their inherent power to exercise their discretion by issuing stays, the legislature has usurped the court's inherent power to control their calendars.
252 Sliosberg, 216 N.Y.S. at 224.
254 See id. at 704 (recognizing the delicate nature of "balanc[ing] the rights of landlords and tenants [in] provid[ing] for expeditious and fair procedures for the determination of disputes . . . .”).
255 See id.
256 See id. (noting that “in accordance with the procedures of Article 7, service of the notice of petition and the petition upon the tenant . . . was duly effected . . . and the required papers for obtaining a judgment by default were filed with the court”).
service of a copy of the judgment on the tenant by mail. The petitioner landlord then sought mandamus to compel issuance of the warrant of eviction without the added notice requirement. The judge thereafter issued the warrant, rendering the mandamus proceeding moot; however, he amended the judgment sua sponte and stayed the execution of the warrant until five days after notice was sent to the tenant by mail. Thereafter, the landlord brought a second mandamus to compel a proceeding seeking the issuance of the warrant without the condition of notice. The Court of Appeals noted that the requirement of a default judgment as a condition precedent to the execution of a warrant was imposed for no reason other than the individual judge's policy of imposing additional safeguards for defaulting tenants in non-payment proceedings. The notice requirement was not imposed "because of any actual or apparent infirmity in the process . . . or that it was incidental to . . . good cause."

Thus, the question before the court in Mennella revolved around "the authority of Judges of the Civil Court . . . to impose additional procedural hurdles upon landlords before obtaining an eviction" when there is a default judgment in a summary proceeding. RPAPL section 749(1) provides, in part, that "[u]pon rendering a final judgment for petitioner, the court shall issue a warrant directed to the sheriff . . . to put the petitioner into full possession." The court, relying on Brusco v. Braun, interpreted the imperative "shall" as directing the court to

257 See id. The stamped notation read "[f]inal judgment of possession only. Warrant may issue 5 days after service of copy of the judgment upon the tenant by regular mail with a post office certificate of mailing to be filed with the clerk of the court." Id.
258 See id.
259 See id.
260 See id.
261 See id.
262 See id.
263 Id.
264 Id.
265 N.Y. REAL PROP. ACTS. LAW § 749 (McKinney 1999) (emphasis added). The court in Mennella noted that RPAPL section 749(3) allows the court to vacate a judgment for good cause prior to the execution, but there was no contention by the tenants in Mennella that there was any application to vacate the judgment. See Mennella, 695 N.E.2d at 704.
266 645 N.E.2d 724, 726 (N.Y. 1994) (interpreting the term "shall").
“render an unqualified judgment upon tenant’s default.”

Declaring, “[j]udges . . . presiding over . . . summary proceedings lack the authority to fashion additional notice requirements,” the court deferred to the legislature and its right to regulate court proceedings. The court concluded, however, that the judge who stayed the execution of the warrant did so for no particular reason. The court, in addressing the judiciary’s inherent power to issue stays in the interests of justice, “assume[d], without deciding, that there may be particularized circumstances in an individual case, where upon a showing of good cause, the court would have the authority” to issue a stay. While great deference was given to the legislature to regulate such proceedings, the court still maintained the authority to exercise its discretion in particular situations when it would be unjust to apply the statute literally. As Mennella stresses, however, the court must defer to the legislature when there are no such circumstances.

Courts have failed to comply with legislative mandates in other instances when the particular circumstances of a case suggest that the court should use its inherent judicial power. For instance, in the rent stabilization and luxury decontrol cases, the Court of Appeals held that the Division of Housing and Community Renewal (DHCR) has the authority to accept late responses, although the applicable statute provides that notice “shall” be given within sixty days of service. Again, the court, or in this case the administrative agency, must have good cause to avoid abusing its discretion.

Another area where a similar result is reached is the power

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267 Mennella, 695 N.E.2d at 705.
268 Id. at 704.
269 See id. at 705.
270 Id.
271 See id. (“[R]espondent Judge lacked the discretionary legal authority to thus fashion an additional procedural safeguard, as a matter of policy . . . beyond the policy choices made by the legislature in this regard.”).
272 See Dworman v. New York State Div’n of Hous. and Community Renewal, 725 N.E.2d 613, 616 (N.Y. 1999). Relying in part on Mennella, the Court of Appeals held in three consolidated cases that the Division of Housing and Community Renewal (DHCR) could accept late notice for good cause, which included being in Europe and not receiving mail and mistakenly sending notice to the landlord rather than the DHCR. See id. at 616–17. However, “inadvertent neglect” was not considered good cause for the extension. See id. at 618.
273 See id. at 621.
to vacate default judgments. Although the applicable statute directs that a court may vacate a judgment for excusable default if a motion is made within one year after service of a copy of the judgment, the court has inherent power to open vacated judgments in the interest of justice "even after the expiration of the one-year period."

Seemingly, the Mennella court’s ruling defers to the legislature in regard to regulation of judicial proceedings. The court, however, may be able to tailor the statute to the facts of the case if it is in the interests of justice. This may become very important in the application of RPAPL sections 745(2) and 747-a.

B. When Discretion Should Be Exercised in Applying Sections 745(2) and 747-a

As noted earlier, a statute that is constitutional on its face may be unconstitutional as applied, depending on the merits, facts, and circumstances of each case. The court’s inherent power to tailor the statute to the facts becomes crucial in preserving the statute’s constitutionality. Three times in the brief life of RPAPL sections 745(2) and 747-a, the statutes have been challenged successfully on constitutional grounds as related to the circumstances of a particular case. In each case, the statutes could not be applied literally because they would have violated the constitutional protections of due process and

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274 See Rhulen-Immoor, Inc. v. Rivera, 403 N.Y.S.2d 586, 587 (3d Dep't 1978) (holding that a default judgment may be opened after the one-year period). The trial court in Rhulen-Immoor initially opened the default judgment, but withdrew its decision and denied the appellant's motion to vacate because the one-year period had expired. See id.; see also Abbott v. Conway, 539 N.Y.S.2d 538, 539 (3d Dep't 1989) (agreeing that default judgments may be opened after the one-year period, but refusing to do so because good cause was not shown).

275 See N.Y. C.P.L.R. § 5015 (McKinney 1999).

276 See id.


278 Id.

279 See supra notes 142–44, 179, 214 and accompanying text.

280 This does not include the Lang decision holding that there was a violation of the separation of powers doctrine.

equal protection. The court was forced to tailor the statutes in
the interests of justice.

In Yellen v. Baez, the respondent tenant was a Spanish-

speaking woman who appeared pro se. The first time the
tenant appeared, the court determined that an interpreter would
be necessary. Since interpreters were not available absent a
special request, the court granted an adjournment on behalf of
the respondent tenant. The issue thus arose as to whether the
adjournment could be charged to the tenant; if so, section 745(2)
would require a posting of rents in order for the tenant to get a
second adjournment. The statute, as the court pointed out,
had no provision for the handling of adjournments that were
necessary under such circumstances and thereby severely
deprived the court of its discretion to decide whether the tenant
should be charged for the adjournment.

The court held that charging the tenant with an
adjournment would violate both due process and equal
protection. In addressing the tenant's due process
entitlement, the court noted that part of the right to due process
included the "right to have interpretive services furnished." Thus, the failure of the court to appoint an interpreter violated

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282 See Jones, 712 N.Y.S.2d at 329 (holding that the statute is unconstitutional as applied to temporary stays because it interferes with the court's power to act in the interest of justice); Targee Management, 677 N.Y.S.2d at 229 (holding that a literal reading of the statute required that in order for a tenant to be granted a stay, the tenant must pay into court an excess of any possible judgment; if the tenant cannot do so, the statute would not afford the tenant a stay); Yellen, 676 N.Y.S.2d at 726 (holding that charging the defendant for an adjournment, when such adjournment was necessary to obtain an interpreter, would violate the due process rights of the defendant).


284 See id. at 724.

285 See id.

286 See id. The petitioners at all times were prepared to go on with the trial. See id.

287 See id. The tenant did not raise one of the four defenses, in which case no adjournment would be required. See id. at 725.

288 See id. at 725, 727. The court was expressly critical of the legislature by stating that "in stripping the Court of all its discretion, [the amendment] has fashioned a new ministerial role for the judiciary, one that can better be performed by a bookkeeper, rather than a jurist, at the expense of litigant's rights." Id. at 727.

289 See id. at 725-26.

290 Id. at 726. This requirement of an adequate translation applies to people who do not speak English, as well as people who cannot understand for other reasons, such as if they suffer from a disability or are in need of a guardian. See id.
due process.\textsuperscript{291} Although the right to an interpreter is not fundamental, the court held that allowing a Spanish-speaking tenant to proceed without an interpreter would violate due process.\textsuperscript{292} Therefore, charging the tenant with an adjournment in this type of situation, thereby requiring rent deposits upon the second adjournment, "would make a mockery of the due process protection afforded by the Constitution."\textsuperscript{293}

In analyzing the RPAPL amendments under an equal protection context, the court chose to apply strict scrutiny.\textsuperscript{294} The court noted that language could be a basis for discrimination when the result discriminated against persons who do not speak English.\textsuperscript{295} Applying strict scrutiny, the court held that RPAPL section 745(2) "burdens a fundamental right . . . to understand the nature of the litigation and provide a proper defense."\textsuperscript{296} Additionally, the court noted that an analysis using the rational basis test would have produced the same result.\textsuperscript{297} "[T]he method chosen here to achieve [speedy adjudication of landlord and tenant disputes] is not rationally related to that purpose since it discriminates against persons who cannot speak English . . . ."\textsuperscript{298} Also, the court noted that the legislature could not have intended such an absurd result.\textsuperscript{299}

\textsuperscript{291} See id. at 726 (citing People v. Rodriguez, 546 N.Y.S.2d 769, 772 (Sup. Ct. Queens County 1990)).

\textsuperscript{292} See id. at 724. While there is no fundamental right to have proceedings interpreted, a failure to provide an interpreter would deny non-English speaking litigants the ability to communicate to protect his or her fundamental rights, thereby denying access to the legal process.

\textsuperscript{293} Id. at 726.

\textsuperscript{294} See id. (citing Soberal-Perez v. Heckler, 717 F.2d 36, 41 (2d Cir. 1983)) ("Where a governmental action disadvantages a suspect class or burdens a fundamental right, the conduct must be strictly scrutinized and will be upheld only if the government can establish a compelling justification for the action.").

\textsuperscript{295} See id.

\textsuperscript{296} Id.

\textsuperscript{297} See id. at 727 (quoting Soberal-Perez, 717 F.2d at 41) (stating that when a suspect class or fundamental right is not affected, the legislation must only be rationally related to a legitimate governmental purpose in order to be valid).

\textsuperscript{298} Id.

\textsuperscript{299} The court went on to state that it is entirely possible that a tenant can be charged with two adjournments rather quickly. There can be one adjournment for the interpreter and a second adjournment to secure counsel after being informed of this right through the interpreter. See id. at 725. The idea that the tenant can be penalized in this manner is rather harsh.
Targee Management v. Jones\textsuperscript{300} likewise dealt with the constitutionality of the amendments. The respondent tenant had previously entered into a stipulation that stayed the execution of the warrant and judgment, provided that the tenant made payments to the landlord pursuant to a schedule agreed to by both parties.\textsuperscript{301} The tenant made the first two payments, but subsequently defaulted on three remaining payments.\textsuperscript{302} Thereafter, the landlord brought an action requesting issuance of a warrant of eviction.\textsuperscript{303} The tenant agreed that she defaulted, but contended that she now had the ability to pay the balance that was due.\textsuperscript{304}

First, the court determined that RPAPL section 747-a should be applied retroactively.\textsuperscript{305} Second, the court held that the statute violated equal protection because it took away the court’s discretion to decide when a tenant should be required to post money.\textsuperscript{306} The court reasoned that “the use of the word ‘shall’ in the language of RPAPL section 747-a ... [did not] mean ‘must’ ” because the word must “strip[s] the Court of discretion to decide in what situations ... a tenant will be required to post money ... .”\textsuperscript{307} Furthermore, the court found a violation of due process, as “[t]he inability of the tenant to post the entire money judgment would result in the tenant being evicted from the apartment and deprived of that property right without a hearing.”\textsuperscript{308} Thus, “[p]ursuant to the inherent authority of the Court,” the court held that RPAPL section 747-a could not be applied literally, at least in certain situations.\textsuperscript{309}

These decisions, though prior to Mennella, were decided correctly and consistently with Mennella. In Mennella, although

\textsuperscript{300} 677 N.Y.S.2d 206 (Civ. Ct. Richmond County 1997).
\textsuperscript{301} See id. at 207. The total judgment was for $3,825.00. See id.
\textsuperscript{302} See id. The first two payments totaled $2,660.00. See id.
\textsuperscript{303} See id.
\textsuperscript{304} See id.
\textsuperscript{305} See id. at 207–08. The statute was enacted on October 17, 1997, while the action was commenced on August 6, 1997, prior to the effective date of the statute. The default, however, occurred after the statute had gone into effect. See id. at 208.
\textsuperscript{306} See id. at 209 (referring to Article I, section 11 of the New York State constitution).
\textsuperscript{307} Id. The court reasoned that to “mak[e] access to the Court available only to those who can afford to make payments” was a violation of equal protection. Id.
\textsuperscript{308} Id. at 210.
\textsuperscript{309} Id. at 211.
the Court of Appeals deferred to the legislature, the court recognized that certain circumstances arise when a court has the “inherent power, in the interests of justice” to massage the statute.\textsuperscript{310} The \textit{Yellen} and \textit{Targee Management} decisions are consistent with this view. Fashioning the statute to the facts to avoid violations of due process or equal protection is certainly in the “interests of justice” and for “good cause.”\textsuperscript{311} Indeed, the \textit{Yellen} court noted that on their face, the new amendments “ha[ve] stripped the Court of any discretion in granting adjournments” and that in certain circumstances, such as when there is a need for an interpreter, this inherent discretion is needed.\textsuperscript{312}

Most recently, RPAPL section 747-a was held unconstitutional in \textit{Jones v. Allen}.\textsuperscript{313} The court held that it was proper to grant a stay without requiring a deposit. In \textit{Jones}, the tenant showed the court checks from the Department of Social Services (DSS) in excess of the amount owed.\textsuperscript{314} The checks, however, were never deposited with the court because they were not payable to the Finance Administrator.\textsuperscript{315} The court, nevertheless granted the stay, holding that the “[t]enant’s showing that she had the full amount of the judgment (which could not be deposited) and that the lateness in payment was due to delay in receiving funds from DSS constituted a proper basis to grant the temporary stays without requiring a deposit.”\textsuperscript{316} The court held that a literal application of the statute in such a situation would “substantially detract[] from the ability of the court to achieve a just resolution of the summary proceeding [and thus] it cannot withstand constitutional scrutiny.”\textsuperscript{317}

\begin{footnotes}
\item[311] Id.
\item[314] See id. at 308.
\item[315] See id.
\item[316] Id. at 311.
\item[317] Id.
\end{footnotes}
CONCLUSION

The enactment of the 1997 amendments to the RPAPL seemed to provide a victory for landlords. They purported to cure what were perceived to be abuses of the eviction process by tenants. By limiting stays and adjournments and requiring deposits of rent, RPAPL sections 745(2) and 747-a sought to finally give landlords a speedy and effective remedy that they had lacked in the past. The legislature's categorical, mandatory language may have gone too far. Do the statutes infringe on the court's inherent power and violate separation of powers? Do they, when applied literally, violate due process and equal protection? Cases such as Yellen, Targee Management, and Jones suggest that, at least under certain circumstances, the answer is "yes." When necessary, deference to the legislature, however, should yield to the court's discretion and power to massage the statute in order to achieve a just result. The issue is an important one that, in all likelihood, will not be decided definitively until the New York State Court of Appeals rules on it—something that is likely to happen within the next few years.