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Constitutional Law--Statutory Provision Creating a One-Year Residency Requirement for Receiving Public Assistance is Unconstitutional Denial of Equal Protection of the Laws

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CONSTITUTIONAL LAW — STATUTORY PROVISION CREATING A ONE-YEAR RESIDENCY REQUIREMENT FOR RECEIVING PUBLIC ASSISTANCE IS UNCONSTITUTIONAL DENIAL OF EQUAL PROTECTION OF THE LAWS*

Prior to April 21, 1969, nearly one half of the states and the District of Columbia imposed an arbitrary one-year residency requirement upon any applicant for public assistance.[1] Today these statutory provisions still exist but they have been declared unconstitutional by the celebrated "welfare residency requirements case" of *Shaprio v. Thompson.*[2] This case reached the Supreme Court as a result of appeals from decisions of three district courts holding one-year residency requirements unconstitutional. The basis of all three district court decisions[3] was that the residency requirement created a classification which constitutes an invidious discrimination denying the respondents "equal protection of the laws."[4] However, two cases, *Thompson v. Shapiro*[5] and *Harrell v. Tobriner*,[6] also used an alternate theory that residency requirements created an unconstitutional restriction on freedom of travel. The Supreme Court in *Shapiro* used both theories as a foundation for its decision but based the result principally on the equal protection argument.

I. Equal Protection of the Laws

A. General

Public welfare statutes have been passed by the states and the District of Columbia to promote the general welfare and well-being of all people of the state or district by providing public

* Shapiro v. Thompson, 89 S. Ct. 1322 (1969).

1. The following states, among others, impose a residency requirement of at least one-year as a qualification for receiving relief of any type: Colorado, Connecticut, Illinois, Kansas, Maryland, Michigan, Nebraska, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Texas, Utah, West Virginia, and Wisconsin.
2. 89 S. Ct. 1322 (1969).
3. Harrell v. Tobriner, 279 F. Supp. 22 (D.D.C. 1967); Smith v. Reynolds, 277 F. Supp. 65 (E.D. Pa. 1967); Thompson v. Shapiro, 270 F. Supp. 331 (D Conn. 1967).
4. U. S. Const. amend. XIV, § 1.
5. 270 F. Supp. 331 (D. Conn. 1967).
6. 279 F. Supp. 22 (D.D.C. 1967).

assistance to the needy and distressed. To be effective, that assistance should be administered promptly when need arises.[7] Normally a proceeding for welfare benefits is not an adversary proceeding but is simply an application for relief benefits from a fund. The procedure is prescribed by statute or administrative board but must be in accordance with the basic concepts of due process of law. States, by statute or via administrative proceedings, may classify the applicants for assistance, but such classifications cannot be arbitrary or invidious.[8] When made on natural and reasonable grounds, the grant of rights and privileges to one class will not necessarily amount to a denial of the equal protection of the laws to members of other classes.[9]

B. Rational Relationship Doctrine

In 1911,[10] the Supreme Court set down several rules which were to be used to determine whether classifications for various state purposes violated the equal protection of the laws:

> 1) The equal protection clause of the fourteenth amendment does not take from the state the power to classify in the adoption of police [and welfare] laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis, and therefore is purely arbitrary. 2) A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety, or because in practice it results in some inequality. 3) When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4) One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially abitrary.[11]

7. Green v. Department of Public Welfare, 270 F. Supp. 173 (D. Del. 1967).

8. Gulf, Colorado and Santa Fe Ry. v. Ellis, 165 U.S. 150, 155 (1897). *See also* McGowan v. Maryland, 366 U.S. 420 (1961).

9. Avery v. Midland County, 390 U.S. 474 (1968).

10. Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911). The statute under consideration in this case was directed against pumping gas from wells bored into rock and against pumping gas for the purpose of collecting and vending it. The statute did not affect wells which did not penetrate rock or which pumped gas for purposes other than vending it.

11. *Id.* at 78-79.

Under these rules the legislature has a very broad discretion as to matters of classification, and its judgment with reference thereto will be respected and enforced by the courts, unless the classification is so arbitrary that there is no conceivable basis in reason therefor.[12] The fourteenth amendment permits states a wide scope of discretion in enacting laws which effect some groups of citizens differently than others, and constitutional safeguards are offended only if the classification rests on grounds wholly irrelevant to achievement of legitimate state objectives. State legislatures are presumed to have acted within their constitutional powers despite the fact that, in practice, their laws result in some inequality.[13] With respect to the withholding of a noncontractual benefit under a social welfare program, the equal protection clause interposes a bar only if the statute in question manifests an obviously arbitrary classification, utterly lacking in rational justification.[14]

Recently in *McDonald v. Board of Election Commissioners*,[15] decided eight days *after Shapiro*, the Court reiterated this basic theme when it emphasized the fact that the states have wide leeway under the fourteenth amendment to make classifications. The Court speaking through Chief Justice Warren said that there was no settled formula used by the Court to decide whether or not a state statute violates the equal protection clause, but some basic guidelines have been firmly fixed.

> The distinctions drawn by a challenged statute must bear some *rational relationship to a legitimate state end* and will be set aside as violation of the Equal Protection

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12. Associated Hospital Service, Inc. v. Milwaukee, 13 Wis. 2d 447, 109 N.W.2d 271 (1961).

13. McGowan v. Maryland, 366 U.S. 420 (1961). In this case the Supreme Court upheld a Sunday closing law because the state legislature could reasonably find that Sunday sale of exempted commodities was necessary either for the health of the populace or the enhancement of recreational atmosphere of the day and was not repugnant to equal protection of the laws by virtue of such exemptions.

14. Flemming v. Nester, 363 U.S. 603 (1960). In this case, in a five-to-four decision, the Supreme Court upheld a provision of the Social Security Act which terminated old-age benefits for aliens deported from the United States for having been members of the Communist Party.

15. 89 S. Ct. 1404 (1969). In this case the Supreme Court upheld an Illinois absentee voting statute which, in providing for absentee ballots to persons who for medical reasons could not go to the polls or who would be out of the country, had failed to provide for absentee ballots to inmates in county jails. The Court refused to use the compelling interest doctrine [to be discussed below] in deciding the equal protection issue because the right to vote was not at stake, only a "claimed right to receive absentee ballots." *Id.* at 1408.

> Clause only if based on reasons totally unrelated to the pursuit of that goal.[16]

The Supreme Court went further and stated that state "statutory classifications will be set aside only if no grounds can be conceived to justify them."[17]

C. Compelling Governmental Interest Doctrine

In spite of this continuing line of thought, the Supreme Court, in *Asbury Hospital v. Cass County*,[18] stated that a legislature is free to make classifications in the application of a statute which is relevant to the legislative purpose. The court emphasized that the ultimate test of validity is not whether the classes differ, but whether the differences between them are pertinent to the subject with respect to the classification made. After *Asbury Hospital*, the issue as to whether a classification is constitutional or not would seem to be whether the classification is reasonable in the light of some proper legislative purpose.[19] In spite of the *Asbury Hospital* or the *McDonald* tests, the Court in *Shapiro* proclaimed that a mere rational relationship between the waiting period and several admittedly permissible state objectives (*i.e.* (1) facilitating the planning of the welfare budget; (2) providing an objective test of residency; (3) minimizing the opportunity for recipients fraudulently to receive payments from more than one jurisdiction; and (4) encouraging early entry of new residents into the labor force)[20] will not suffice to justify the classification. This same result was reached in two earlier unappealed district court cases.[21] The basic reasoning of all three

16. *Id.* at 1408 (emphasis added).
17. *Id.* at 1408.
18. 326 U.S. 207 (1945).
19. Drueling v. Devlin, 380 U.S. 125 (1963). In this case a Maryland one-year residence requirement for voting in national elections was upheld under the equal protection clause. The Court recognized that the purposes for the requirement were to identify the voter, to protect against fraud in voting, and to insure that the voter will become in fact a member of the community. Given these purposes, the Court felt that it could not say that the discrimination was irrational. However, in McLaughin v. Florida, 279 U.S. 184 (1964), the Supreme Court held that a Florida statute which made it illegal for a white man and a Negro woman, or vice versa, who are not married, to occupy the same room at night was a violation of the equal protection clause because the classification was not reasonable in light of its legislative purpose. *See also* Smith v. Reynolds, 277 F. Supp. 65 (E.D. Pa. 1968); Green v. Department of Public Welfare, 270 F. Supp. 173 (D. Del. 1967).
20. Shapiro v. Thompson, 89 S. Ct. 1322 (1969).
21. Robertson v. Ott, 284 F. Supp. 735 (D. Mass. 1968). A Massachusetts statute requiring one year residence before applicant is eligible to receive aid to families with dependant children violated the equal protection clause as lacking any proper governmental purpose.; Ramos v. Health and Social Services

cases was that the residency requirement defeated the legislative purpose of the statute, which, according to the courts, was to give aid to needy families regardless of their length of residence in the state.

To support the finding that the residency requirement created an unconstitutional classification the Court in *Shapiro* said that any classification which serves to penalize the exercise of a constitutional right (the right to interestate travel)[22] must be supported by a *compelling* governmental interest. "And it is the character of the right, not of the limitation, which determines which standard governs the choice [Rational Relationship Doctrine or Compelling State Interest Doctrine]."[23] In support of choosing the higher standard of requiring the state interest to be compelling as opposed to merely rational, the Supreme Court drew from a line of cases concerning the encroachment upon personal liberties protected by the Federal Constitution.[24]

This line of cases traditionally involved racial discrimination and constitutionally protected rights in which the Supreme Court had applied the stricter standard for upholding state statutes under the equal protection clause. Recently in *Kramer v. Union Free School District*[25] the Court, in dictum, stated that cases involving election laws should be decided by applying the "compelling state interest"[26] doctrine. However, in *Kramer* the Court did not find it necessary to apply this standard and decided the case on other grounds. The case involved the exclusion of citizens who did not own real property in the district or were not parents or guardians of school children from voting in the election of the district school board. In declaring the statute unconstitutional as a violation of the equal protection clause, the Supreme Court relied on the rational relationship doctrine by stating that even if New York could constitutionally limit the

Bd., 276 F. Supp. 474 (E.D. Wis. 1967). "The one-year residence requirement for state aid was not reasonable in light of purpose of requirement, since it had effect of conclusive presumption that all people who need aid within a year have come to state for that purpose."

22. The right to travel interstate will be discussed in part II.

23. Thomas v. Collins, 323 U.S. 516, 530 (1945).

24. Williams v. Rhodes, 89 S. Ct. 5, 11 (1968). "In determining whether the State has power to place such unequal burdens on minority groups where rights of this kind are at stake [election laws], the decisions of this court have consistently held that 'only a compelling state interest in the regulation of a subject within the state's constitutional power to regulate can justify limiting first amendment freedoms'." *See also* Sherbert v. Verner, 374 U.S. 398 (1963); Bates v. Little Rock, 361 U.S. 516 (1960).

25. 89 S. Ct. 1886 (1969).

26. *Id.* at 1891.

franchises in school district elections to those primarily interested in school affairs, the statute failed to "accomplish this purpose with sufficient precision to justify denying appellant the franchise."[27] In support of its statement that the stricter standard should be used in election law cases, the Court, on the same day they decided *Kramer*, stated:

> [I]f a challenged state statute grants the right to vote in a limited purpose election to some otherwise qualified voters and denies it to others 'the Court must determine whether the exclusions are necessary to promote a compelling state interest.'[28]

One case in South Carolina, *Gray v. Gardner*,[29] avoided the issue. The District Court held that the arbitrary one-year period which determined the parents' eligibility for insurance benefits for the death of their child was not the exclusive period for use in determining their entitlement to Social Security benefits. The case was decided on the definition of "a reasonable time," set forth in an amendment to the applicable Social Security regulation. The amendment said that a reasonable time was ordinarily twelve months, but not automatically.

Waggoner v. Rosenn,[30] whose facts were substantially the same as *Shapiro*, held the opposite from *Shapiro*. This court based its decision on judicial meddling into a traditionally legislative function when it said:

> We can only say that we regard the substitution of judicial judgment for that of legislative judgment as nothing less than judicial usurpation of the legislative function in disregard of the doctrine of separation of powers so firmly established since the founding of our Republic, and of the teaching of numerous decisions of the Supreme Court.[31]

II. RIGHT TO TRAVEL INTERSTATE

The right to travel interstate is not explicitly mentioned in the Constitution of the United States. However, as early as 1849 the

27. *Id.* at 1892.
28. Cipriano v. City of Houma, 89 S. Ct. 1897, 1899 (1969).
29. 261 F. Supp. 736 (D.S.C. 1966).
30. 286 F. Supp. 275 (M.D. Pa. 1968). In this case the district court upheld a one year residency requirement imposed by the Pennsylvania Public Welfare Code as a condition of eligibility for public assistance grants to needy families with minor children.
31. *Id.* at 279.

Supreme Court recognized this right in the celebrated *Passenger Cases*.[32]

> For all the great purposes for which the federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own state.[33]

More recently the Supreme Court has said:

> The constitutional right to travel from one state to another, and necessarily to use the highways and other instrumentalities of interstate commerce in doing so, occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized .... In any event, freedom to travel throughout the United States has long been recognized as a basic right under the Constitution.[34]

The courts in *Harrell v. Tobriner*,[35] *Thompson v. Shapiro*,[36] and *Shapiro v. Thompson* had their greatest difficulty showing that the residency requirement restricted this right to travel interstate without due process of law. In dictum the Supreme Court proclaimed in *Zemel v. Rusk*[37] that a state may prohibit interstate travel by quarantining an area when it can be demonstrated that unlimited travel to the area would directly and materially interfere with the safety and welfare of the area or nation. In *United States v. Guest*[38] the Court placed the federal right of interstate travel upon the Commerce Clause of the United States Constitution by stating that the federal commerce power encompasses the movement in interstate commerce of persons as well as commodities. These two cases suggest that under proper circumstances the states and the federal government may restrict the right to freely travel interstate.

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32. 7 How. 283 (1849).
33. Shapiro v. Thompson, 89 S. Ct. 1322, 1329 (1969), *quoting* Passenger Cases, 7 How. 283, 492 (1849).
34. U.S. v. Guest, 383 U.S. 745, 757-58 (1966).
35. 279 F. Supp. 22 (D.D.C. 1967).
36. 270 F. Supp. 331 (D. Conn. 1967).
37. 381 U.S. 1 (1965).
38. 383 U.S. 745 (1966).

One prior case[39] with substantially identical facts proclaimed that the right to travel argument is so specious and unfounded that it did not merit extended discussion. The court in this case dismissed the contention with one sentence:

> The fact that the one-year eligibility requirement may operate to affect a decision to travel into Pennsylvania cannot by any stretch of imagination be construed as a statutory bar to travel.[40]

The court in *Shapiro* did not feel the restriction on the right to travel was such an outlandish proposition. It said that an idigent person cannot freely travel to another state (regardless of his motivation) for fear of starving in that state until he can procure a job. The court recognized the fact that some individuals may travel to another state to receive higher welfare benefits, but the deterence of this (a legitimate state objective) will not justify the restriction placed on travel by the one-year waiting period to receive welfare benefits.

The Supreme Court in an earlier case[41] struck down a California statute which made it a misdemeanor for a person to bring or assist in bringing into the state any indigent person who was not a resident, on the grounds that the statute imposed an unconstitutional burden upon interstate commerce. Protection of interstate commerce served as the vehicle by which the Supreme Court handled cases in which state legislatures infringed on interstate travel.[42]

Prior to these welfare cases the major litigation condemning restrictions on travel involved passports and travel out of the United States, as opposed to travel within the country.[43] In fact in only one case[44] has the Supreme Court invalidated on a constitutional basis a congressional imposed restriction. This case involved a congressional act which made it a felony for a member of a Communist organization to apply for, use, or attempt to use a United States passport. There have been other cases involving passports and restrictions on travel out of the

39. Waggoner v. Rosenn, 286 F. Supp. 275 (M.D. Pa. 1968).
40. *Id.* at 280.
41. Edwards v. California, 314 U.S. 160 (1941).
42. *See* Kent v. Dulles, 357 U.S. 116 (1958); Aptheker v. Secretary of State, 378 U.S. 500 (1964); Zemel v. Rusk, 381 U.S. 1 (1965).
43. FREEDOM TO TRAVEL, REPORT OF THE SPECIAL COMMITTEE TO STUDY PASSPORT PROCEDURES OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, (1958).
44. Aptheker v. Secretary of State, 378 U.S. 500 (1964).

United States.[45] However, these cases, like the present one, have held that a person cannot be deprived of his right to travel without due process of law. The principle of these cases has been that an individual cannot be deprived of his right to travel unless he is a fugitive, has been returned to the United States at government expense and repayment not having been made, or is in prison or on probation. However, in the interest of national security, certain area restrictions may be made by the Secretary of State.[46] Further discussion of the theory behind restrictions on international travel is outside the scope of this article and will not be pursued further.

IV. CONCLUSION

In *Shapiro* the Supreme Court has expanded the comparatively new constitutional doctrine that some state and District of Columbia statutes will be deemed to deny equal protection of the laws unless justified by a "compelling" governmental interest.[47] By applying the concept to the freedom to travel interstate, this case would seem to have the effect of enlarging the list of traditional freedoms such as speech, press, assembly, and worship[48] which normally cannot be regulated unless "to prevent grave and immediate danger to interests which the state may lawfully protect."[49] However, this expansion was deemed necessary by the Court in order to preserve one of America's basic freedoms.

An analysis of *Shapiro* gives the reader the impression of the opening of Pandora's box to similar litigation. For there are a multitude of situations in which states have imposed residence requirements. It is conceivable that litigation may be initiated to invalidate state residence requirements on the eligibility to vote, to engage in a certain profession or occupation, or to attend a state-supported university.[50] However, a prediction of the long-term effects of the case would only be unwarranted speculation.

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45. *See, e.g.*, Kent v. Dulles, 357 U.S. 116 (1958); Zemel v. Rusk, 381 U.S. 1 (1965).
46. FREEDOM TO TRAVEL, REPORT OF THE SPECIAL COMMITTEE TO STUDY PASSPORT PROCEDURES OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, (1958); Zemel v. Rusk, 381 U.S. 1 (1965).
47. Shapiro v. Thompson, 89 S. Ct. 1322 (1969) (Harlan, J., dissenting).
48. West Virginia State Bd. of Educ. v. Barnette 319 U.S. 624 (1943).
49. *Id.* at 639.
50. Shapiro v. Thompson, 89 S. Ct. 1322, 1342 (1969) (Warren, C. J., and Black, J., dissenting).