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Social Welfare--Paupers--Residency Requirements [*Thompson v. Shapiro*, 270 F. Supp. 331 (D. Conn. 1967), *cert. granted*, 36 U.S.L.W. 3278 (U.S. Jan. 16, 1968)]

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SOCIAL WELFARE — PAUPERS — RESIDENCY REQUIREMENTS

Thompson v. Shapiro, 270 F. Supp. 331 (D. Conn. 1967), *cert. granted*, 36 U.S.L.W. 3278 (U.S. Jan. 16, 1968).

One of the fundamental concepts of the English Poor Laws — the progenitors of modern welfare systems[1] — is the idea of settlement.[2] The theory is that each person belongs to some geographical area, and the citizens of that place are the proper people to provide for their poor. In order to determine when it is that a person truly belongs to an area, it has been a traditional requirement that some period of residency be established before settlement is granted.[3] Although the scope of welfare in this country has broadened considerably since the Poor Laws, and much is governed by statute, residence requirements are still common.[4]

Recently, however, there has been some judicial controversy over several State statutes which have reflected these traditional settlement concepts, as federal district courts in Delaware and Connecticut have considered the constitutionality of residence requirements for categorical welfare assistance,[5] and have rendered seemingly inconsistent decisions.[6]

The considerations involved in this area are whether such residency statutes conform to the privileges and immunities and equal protection clauses of the 14th amendment.[7] The privileges and immunities argument is based upon the privilege of a national citizen to travel freely into the various States either for temporary residence or permanent domicile. Any statute which interferes with this privilege, it is argued, is unconstitutional. The equal protec-

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[1] *See* Harvath, *The Constitutionality of Residence Tests for General and Categorical Assistance Programs*, 54 CALIF. L. REV. 567 (1966).

[2] *See* 70 C.J.S. *Paupers* § 20 (1951).

[3] *See* BLACK'S LAW DICTIONARY 1539 (4th ed. 1951).

[4] *See, e.g.*, OHIO REV. CODE ANN. § 5113.05 (Page 1954).

[5] Categorical assistance is to be distinguished from general assistance. The former includes specific programs such as aid to dependent children, old age benefits, and deaf and blind benefits. There is federal participation in categorical assistance. General assistance is State controlled and State financed. *See* Harvath, *supra* note 1. The present discussion concerns itself with categorical assistance only, although the arguments herein advanced may be relevant to the latter also.

[6] *Compare* Green v. Department of Pub. Welfare, 270 F. Supp. 173 (D. Del. 1967), *with* Thompson v. Shapiro, 270 F. Supp. 331 (D. Conn. 1967), *cert. granted*, 36 U.S.L.W. 3278 (U.S. Jan. 16, 1968).

[7] *See generally* Harvath, *supra* note 1.

tion argument is that a State which makes welfare available to needy citizens cannot divide the citizenry into new residents and old residents for the purpose of denying payments to the former class. Of the two recent decisions discussed here, only the Connecticut one considers the privileges and immunities argument; both discuss the equal protection aspect.

In *Thompson v. Shapiro*,[8] the plaintiff had moved from Boston, Massachusetts, to Hartford, Connecticut, in order to be near her mother, a Hartford resident. She had one child prior to moving, and a second child shortly thereafter. While in Boston, the plaintiff had received Aid to Dependent Children (ADC) and she immediately applied to the State of Connecticut for similar assistance. ADC funds were denied her because she had not met the 1-year residency requirement of the Connecticut welfare statute.[9]

The statute, in essence, denied welfare to those entering the State "without visible means of support for the immediate future."[10] This provision was interpreted by the Connecticut Welfare Department to exclude those who came without specific employment, or income or resources enough to sustain them for at least 3 months.[11]

The plaintiff maintained that the statute violated her rights under the Constitution, alleging violations of the privileges and immunities clause of article IV, section 2, and of the privileges and immunities and equal protection clauses of the 14th amendment.

The federal district court of Connecticut, sitting as a three-judge court, found for the plaintiff holding that the statute abridged the 14th amendment privilege of a citizen of the United States to move into a State and reside there enjoying the benefits of citizens of that State.[12] It further held that a statute which on its face denies welfare benefits to a new resident of a State for 1 year because of his indigent condition upon entering is violative of the equal protection clause of the 14th amendment.[13] The court rejected the article IV argument.[14]

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[8] 270 F. Supp. 331 (D. Conn. 1967), *cert. granted*, 36 U.S.L.W. 3278 (U.S. Jan. 16, 1968).

[9] CONN. GEN. STAT. ANN. § 17-2(d) (Additional Supp. 1965).

[10] *Id.*

[11] Thompson v. Shapiro, 270 F. Supp. 331, 333 (D. Conn. 1967), *cert. granted*, 36 U.S.L.W. 3278 (U.S. Jan. 16, 1968).

[12] *Id.* at 334.

[13] *Id.* at 338.

[14] *Id.* at 334. It was not disputed that the plaintiff was a citizen of Connecticut;

In finding the privileges and immunities violation, the court relied on the right of citizens of the United States to travel freely through the various States as stated in *Edwards v. California.*[15] The doctrine of the concurring opinions in *Edwards* applied the privileges and immunities clause to statutes which *prohibited* travel. This rule was extended in *United States v. Guest.*[16] *Guest* found a violation of the privileges and immunities clause of the 14th amendment in upholding an indictment for practices which merely *discouraged* travel.

The statute in *Thompson* clearly did not prohibit travel. The question, then, becomes whether *Thompson* fits within the *Guest* rule, or is an extension of it. The court defined the discouraging effects of the Connecticut statute as a denial of a gratuitous benefit.[17] By denying the benefit, the statute indirectly interfered with a constitutional right.[18] This, it seems, is an extension of *Guest*, where the act and the effect were directly related.

In finding that the statute violated the 14th amendment equal protection requirements, the *Thompson* court asked the question of whether the statute made reasonable classifications in light of its purpose.[19] The court found that the purpose of the statute was to protect the State treasury from indigents who entered the State solely as welfare seekers.[20] This was one of the arguments of the State of California in *Edwards*, and *Thompson* cites *Edwards* in holding this purpose invalid.[21] And, the court reasoned, even if this purpose were valid, there was no evidence that persons with jobs or cash

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therefore, since the controversy was not between a State and a citizen of another State, the court felt article IV, section 2 was not applicable.

[15] 314 U.S. 160 (1941). *Edwards* involved a California statute which made it a misdemeanor to aid a nonresident indigent in entering the State of California. The Supreme Court unanimously held the statute unconstitutional. The majority opinion held the statute "an unconstitutional barrier to interstate commerce," thus violating article I, section 8. Two concurring opinions, while not rejecting the majority's view, felt that the real question was whether there was a violation of the privileges and immunities clause of the 14th amendment. The concurring opinions held that the right to travel was a privilege of a citizen of the United States, and that a statute which prohibited a citizen from a legal exercise of this right violated the 14th amendment.

[16] 383 U.S. 745 (1966).

[17] 270 F. Supp. at 336.

[18] *Id.*

[19] *Id. See also* McLaughlin v. Florida, 379 U.S. 184 (1964); Morey v. Daud, 354 U.S. 457 (1956).

[20] 270 F. Supp. at 337.

[21] *Id.*

stakes at the outset would, in the long run, be lesser drains on the State treasury.[22]

It is unfortunate that the court did not offer a more detailed examination of the question of whether a State may try to protect its treasury by discouraging welfare seekers. It would seem that this and other policy considerations deserve more consideration. There was a vigorous dissent in *Thompson* which argued that the State of Connecticut should not be subjected to an influx of people from other States who come solely because the other States have less lucrative welfare programs.[23] The dissent also pointed out that residency requirements exist for various other purposes, *e.g.*, voting, and that the policies which support these should be taken into consideration in the welfare area. The dissent quoted Mr. Justice Frankfurter in *West Virginia State Board of Education v. Barnette*[24] for the proposition that the test for an equal protection violation should be "whether legislators could in reason have enacted such a law."[25] It certainly seems that there were some arguably rational reasons for the Connecticut statute.

Some 10 days after the *Thompson* decision came down, the federal district court for Delaware decided the case of *Green v. Department of Public Welfare*.[26] Here, the plaintiff had moved to Delaware with his wife and children for the purpose of taking a job in the building trade. He did in fact get the job, but bad weather and the seasonal nature of the work did not allow him to earn enough to support his family. His application for welfare payments was denied because he had not resided in Delaware for 1 year as required by the Delaware statute.[27]

The plaintiff filed a class action seeking a declaratory judgment that the statute was unconstitutional as a violation of the equal protection clause of the 14th amendment and the commerce clause of

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[22] *Id.* at 338. The implication of course is that the burden was on the State to produce evidence in support of its rationale.

[23] *Id.* at 339 (dissenting opinion).

[24] 319 U.S. 624 (1942).

[25] 270 F. Supp. at 340, *quoting from* 319 U.S. at 647:

> It can never be emphasized too much that one's own opinion about the wisdom or evil of a law should be excluded altogether when one is doing one's duty on the bench. The only opinion of our own even looking in that direction that is material is our opinion whether legislators could in reason have enacted such a law.

See also McGowan v. Maryland, 366 U.S. 420 (1961).

[26] 270 F. Supp. 173 (D. Del. 1967).

[27] DEL. CODE ANN. tit. 31, § 504 (1953).

article 1, section 8.[28] The court held the statute unconstitutional as a violation of the 14th amendment because it constituted an "invidious discrimination" against a new citizen of Delaware.

The question presented in *Green* was slightly different from that in *Thompson* because the Delaware statute made no distinction between new residents based on financial position or job expectation; instead it applied to *all* new residents.[29] In fact, the plaintiff in *Green* would have qualified for aid under the Connecticut statute.[30]

The *Green* court examined the statute to see if the classifications therein made were reasonable in light of the legislative purpose. The court found three possible purposes and considered each separately. The admitted legislative purpose of the welfare statute as a whole was to promote welfare, promptly and humanely, in order to preserve family life.[31] The court decided that the 1-year requirement tended to frustrate rather than implement this purpose.[32] The second purpose, the protection of the public purse,[33] was dismissed by the court on the authority of *Edwards v. California.*[34] As in *Thompson,* the court refused to look farther than the *Edwards* precedent,[35] thereby ignoring the obvious distinguishing argument that in protecting the funds available for welfare payments, the State is protecting its residents who need such aid, consequently promoting the welfare and preserving the family life of Delaware residents.

The third purpose offered for the requirement was the most interesting. It was argued that the statute was designed to assure that welfare recipients were bona fide residents of the State of Delaware.[36] There were three alternatives put forth in support of this argument. One was that the 1-year span was needed to investigate the claims of applicants to protect against fraud. The second was that a "durational residency requirement" was needed to assure the proper intent to establish domicile. The third argument was an

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[28] The court never reached the article I, section 8 issue. For a discussion of the application of the commerce clause to welfare residency requirements, see Harvath, *supra* note 1.

[29] DEL. CODE ANN. tit. 31, § 504 (1953).

[30] *See* text accompanying notes 9-11 *supra.*

[31] DEL. CODE ANN. tit. 31, § 501 (1953).

[32] 270 F. Supp. at 177.

[33] *Id.*

[34] 314 U.S. 160 (1941).

[35] *See* text accompanying note 21 *supra.*

[36] 270 F. Supp. at 177.

analogy to voting cases where it has been held that a "durational residency requirement" is valid.[37]

The court dismissed all three of these propositions, stating that 1 year was an unreasonable period to require a person to wait to have a claim processed.[38] The court also found that "a domiciliary under Delaware common law is defined as one who is physically present in Delaware with an intention to remain indefinitely,"[39] and concluded that for purposes of traditional domicile, 1 year was too long a period for a reasonable test of intention. This is a sensible result, for to hold otherwise would be to create a new concept of domicile.

The argument by analogy to voting cases was clearly the defense's strongest point, and the court treated it in a curious manner. The court seemed to admit that a period of residence was a valid condition precedent to the right to vote.[40] The arguments for a voting requirement are that it is needed for indentification purposes and to protect against fraud.[41] The court disposed of the identification problem by calling 1 year an unreasonably long time to investigate a claim. However, the contention that the requirement was to protect the State against persons entering for a single purpose (to vote or to collect welfare payments) brought the court directly to the real issue involved.

The entire analysis of the court in settling this important issue was contained in one sentence: "But certainly it takes little logic to conclude that the need for food, clothing and lodging has an aspect of immediacy which differentiates it in kind from the right to vote."[42] Therefore, with little explanation, and, as the court itself says, with "little logic," the court arrived at a new test for the validity of residency requirements. If a State denies a generally available benefit to a new citizen for a period of time, and this denial involves an immediate need, then the denial will violate the 14th amendment. The court gave no further definition of an immediate need than "food, clothing, and lodging."

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[37] Pope v. Williams, 193 U.S. 621 (1904); Drueding v. Devlin, 234 F. Supp. 721 (D. Md. 1964), *aff'd per curiam*, 380 U.S. 125 (1965); Mabry v. Davis, 232 F. Supp. 930 (W.D. Tex. 1964).

[38] 270 F. Supp. at 177. The court gave no indication of what it would consider a reasonable time to be.

[39] *Id.*

[40] *Id.* at 178.

[41] *See* cases cited note 37 *supra.*

[42] 270 F. Supp. at 178.

There have been but three other reported cases challenging welfare residence requirements.[43] One of these was decided prior to *Edwards v. California*,[44] and has been held to have been overruled by *Edwards*;[45] the second was in the District of Columbia where the 14th amendment arguments are inapplicable.[46] The third case, decided in December 1967, held the Pennsylvania residency requirement unconstitutional under the equal protection clause.[47] *Thompson* and *Green* were both cited.

However, *Thompson* and *Green* have left some interesting questions for the future. Aside from the fate of 1-year residency requirements for ADC in other States, there are some 35 States which have residency requirements for old age and deaf and blind benefits.[48] These latter restrictions generally require residence for 5 of the preceding 9 years including the year prior to application.[49]

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[43] Smith v. Reynolds, 277 F. Supp. 65, (E.D. Pa. 1967); Harrell v. Tobriner, 269 F. Supp. 919 (D.D.C. 1967); People *ex rel.* Heydenreich v. Lyons, 374 Ill. 557, 30 N.E.2d 46 (1940).

[44] People *ex rel.* Heydenreich v. Lyons, 374 Ill. 557, 30 N.E.2d 46 (1940).

[45] Green v. Department of Pub. Welfare, 270 F. Supp. 173, 177 (D. Del. 1967).

[46] Harrell v. Tobriner, 269 F. Supp. 919 (D.D.C. 1967). This three-judge panel, with one dissent, ruled the District of Columbia residence requirement unconstitutional, as violative of equal protection of the laws. But, since the 14th amendment only applies to the States, not to Congress, the result can only be explained as an extension of the due process clause of the fifth amendment. If so, the case provides a fine example of poor judicial craftsmanship: a novel interpretation of the fifth amendment without any discussion at all of the issue. *See generally* Lewis, *The High Court: Final . . . But Fallible*, 19 CASE W. RES. L. REV. 528 (1968). If federal public policy were involved, the court certainly did not so state.

[47] Smith v. Reynolds, 277 F. Supp. 65 (E.D. Pa. 1967).

[48] There are some 40 States which have 1-year residency requirements for the ADC-type aid. *See* Thompson v. Shapiro, 270 F. Supp. 331, 338-39 (D. Conn. 1967) (dissenting opinion); U.S. DEP'T OF HEALTH, EDUCATION, AND WELFARE, PUBLIC ASSISTANCE REPORT # 50, CHARACTERISTICS OF STATE PUBLIC ASSISTANCE PLANS (1962).

[49] It is interesting to note that all of these requirements meet the standards of the Social Security Act which makes provision for federal participation in State welfare programs. With regard to dependent children the Act specifies that the Commissioner "shall not approve any plan which imposes as a condition of eligibility for aid to dependent children, a residence requirement which denies aid with respect to any child residing in the State who has resided in the State for one year immediately preceding the application for such aid . . . ." Social Security Act § 402(b), 42 U.S.C. § 602(b) (1964).

With regard to aid for the aged, the Commissioner shall not approve a plan which includes "[a]ny residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for old-age assistance and has resided therein continuously for one year immediately preceding the application . . . ." Social Security Act § 2(b)(2), 42 U.S.C. § 1202(b) (1964).

In the case of benefits for the disabled, no plan shall be approved which contains "[a]ny residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid

The decisions in *Thompson* and *Green* deal only with ADC-type aid, but there seems to be no reason why the arguments could not be extended to the other areas of categorical welfare. It would seem that the aged, deaf, and blind would be less mobile than those seeking ADC, while their needs would be no less immediate.

In summary, the *Thompson* case appears to be an extension of the right to travel principle of *United States v. Guest*,[50] in that it finds a discouragement where a State merely denies a gratuity for a fixed period of time. And, when *Thompson* is read with *Green*, these cases present a rather arbitrary finding that it is a violation of the 14th amendment equal protection clause for a State to attempt to protect itself from welfare seekers by a durational residency requirement.

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and has resided therein continuously for one year immediately preceding the application. . . ." Social Security Act § 1402(b)(1), 42 U.S.C. § 1352(b)(2) (1964).

[50] 383 U.S. 745 (1966).