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Constitutional Law - Right to Travel

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CONSTITUTIONAL LAW—RIGHT TO TRAVEL—The United States Supreme Court has held that state residency requirements for eligibility under federal welfare assistance programs are unconstitutional because they restrict the right to travel.

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

The Supreme Court in *Shapiro* heard a consolidation of three separate appeals from determinations by three-judge panels of district courts. In *Shapiro* v. *Thompson,* appellee had been declared ineligible for welfare assistance under the federal program of Aid to Needy Families with Children[1] as administered by the Connecticut Welfare Department because she failed to conform to the state's one-year residency requirement.[2] Appellee had moved to Hartford, Conn., from Dorchester, Mass., to live with her mother while awaiting the birth of a second illegitimate child. When her mother was no longer able to provide for her, she moved to a separate apartment and applied for public assistance.[3] The three-judge district court panel held[4] the residency requirement unconstitutional, saying that the requirement had a "chilling effect" on the right of travel and that it violated the equal protection clause of the fourteenth amendment because there was "no permissible purpose" in making a distinction in welfare payments between those residents of more and those of less than one year.[5]

In *Washington* v. *Legrant,* there were four separate appellees who did not receive assistance from the District of Columbia because of their failure to satisfy the one-year residency requirement there.[6]

1. 49 Stat. 620, as amended, 42 U.S.C. § 601 (1962). The program is usually referred to as aid to Families with Dependent Children or AFDC. Future references here will call it AFDC.

2. CONN. GEN. STAT. REV. § 17-2d (1963), now § 17-2c, providing: "When any person comes into this state without visible means of support for the future and applies for aid to dependent children under Chapter 302 or general assistance under Part I of Chapter 308 within one year from his arrival, such person will be eligible only for temporary aid or care until arrangements are made for his return, provided ineligibility for aid to dependent children shall not continue beyond the maximum federal residence requirement."

3. 89 S. Ct. 1322 at 1325.

4. 270 F. Supp. 331, 336 (1967).

5. *Id.* at 336.

6. D.C. CODE ANN. § 3-203 (1967) providing: "Public Assistance shall be awarded to or on behalf of any needy individual who either (a) has resided in the District for one year immediately preceding the date of filing his application for such assistance; or (b) who was born within one year immediately preceding the application of such aid, if the parent or other relative with whom the child is living has resided in the District for one year

Appellee Harrell, deceased at the time of the Supreme Court decision, had moved to the District to be near members of her family because she had cancer.[7] Appellee Barley, after a month's residence in the District in 1941, had been in a mental hospital ever since and during all of that time had been unable to transfer to a foster home because elegibility for Aid to the Permanently and Totally Disabled[8] there depended on residence in the District exclusive of time in the hospital.[9] Appellee Brown, denied AFDC assistance, had moved to the District from Arkansas after her mother, with whom she had been living, had moved to Oklahoma.[10] Appellee Legrant had been unable to gain AFDC assistance after she had moved to the District from South Carolina following the death of her mother, although she was pregnant and ill at the time of her application.[11] By a divided vote the three-judge panel held[12] the residency requirement unconstitutional because of its denial of due process of law as guaranteed by the fifth amendment.

The third appeal was *Reynolds* v. *Smith,* in which two appellees had not qualified for AFDC assistance in Pennsylvania because of that state's residency requirement.[13] Appellee Foster, had moved to South Carolina to care for her grandfather and grandmother after she had lived in Pennsylvania from 1953 to 1965, and had returned to Pennsylvania in 1967.[14] A three-judge panel of the District Court for the Eastern District of Pennsylvania, again by a divided vote, held the Pennsyl-

immediately preceding the birth; or (c) is otherwise within one of the categories of public assistance established by this chapter."

7. 89 S. Ct. at 1326.
8. 42 U.S.C. § 1351-1355.
9. 89 S. Ct. at 1326.
10. *Id.*
11. *Id.*
12. 279 F. Supp. 22, 25-27 (1967).
13. PA. STAT. ANN. tit. 62 § 432(6) (1968), providing:
Assistance may be granted only to or in behalf of a person residing in Pennsylvania who (i) has resided therein for at least one year immediately preceding the date of application; (ii) last resided in a state which, by law, regulation, or reciprocal agreement with Pennsylvania grants public assistance to or in behalf of a person who has resided in such state for less than one year; (iii) is a married woman residing with a husband who meets the requirement prescribed in subclause (i) or (ii) of this clause; or (iv) is a child less than one year of age whose parent or relative with whom he is residing, meets the requirement prescribed in subclause (i), (ii), or (iii) of this clause or resided in Pennsylvania for at least one year immediately preceding the child's birth. Needy persons who do not meet any of the requirements stated in this clause and who are transients or without residence in any state may be granted assistance in accordance with rules, regulations and standards established by the department.
14. 89 S. Ct. at 1327.

vania provision unconstitutional[16] as violative of the equal protection clause of the Fourteenth Amendment.

The majority of six, by Mr. Justice Brennan, held the residency requirement unconstitutional. It denied that a state may impose the restriction on welfare benefits to discourage indigent persons from entering the state because the restriction violates the constitutional right to travel. The majority further denied that a state may impose the restriction for any of the reasons advanced by the appellants because the reasons did not show the compelling governmental interest necessary to justify discrimination against the right to travel.[17]

The majority confronted the argument that the distinction, by eliminating a large class of persons from the welfare rolls, preserved the fiscal integrity of the welfare system by preventing the drain on welfare funds that would result from permitting newcomers to receive welfare benefits. Reviewing the legislative background of some welfare programs, the majority stated that such was the purpose of many of the residency requirements.[18] The Court concluded that this justification is totally impermissible, in that it is merely calculated to discourage people from exercising their right of travel and thus is nothing other than an unconstitutional restriction of that right.[19]

The majority next held that it is constitutionally impermissible for a state to try to restrict entry by those indigents who come into a state specifically to take advantage of higher welfare benefits.[20] After first observing that the existing residency provisions operate far too broadly to be justified by such a rationale, the majority went on to say that indigents have just as much right to take advantage of a state's welfare

16. 277 F. Supp. 65, 67 (1967).
17. 89 S. Ct. at 1327.
18. *Id.* at 1328.
19. *Id.* at 1328-1329:
But the purpose of inhibiting migration by needy persons into the State is constitutionally impermissible.
This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel . . .
Thus, the purpose of deterring the immigration of indigents cannot serve as justification for the classification created by the one-year waiting period, since that purpose is constitutionally impermissible. If a law has no other purpose . . . than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it is patently unconstitutional.
20. *Id.* at 1330.

benefits as they do of any other state services, such as higher education.[21]

Nor would the majority permit the states to distinguish between old and new residents because of the amount of taxes that they have paid in. Such a distinction is invidious discrimination.[22] In terms of present tax contributions, there is no showing by appellants that recently established residents pay less in taxes than long-term residents. If past tax contributions are to be the standard, the present system fails to make a distinction for new residents who satisfy such a rationale by having lived in the state for long periods in the past. More important, to allow this discrimination would permit the states to apportion all of their services on the basis of past contributions.

Next the majority considered possible administrative justifications for the residency requirement,[23] namely: (1) that it aids in budget planning; (2) that it provides an objective test of residency; (3) that it minimizes opportunity for fraud on the welfare system; and (4) that it encourages early entry into the labor force. The majority found the residency requirement as justified by this administrative rationale unconstitutional as violative of the equal protection clause of the fourteenth amendment in that the government failed to show a compelling interest for the distinction.[24]

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21. This comparison seems to have been suggested by an article mentioned in the Warren dissenting opinion, Harvath, *The Constitutionality of Residence Tests for General and Categorical Welfare Assistance Programs,* 54 CALIF. L. REV. 567 (1966), at 622:

> This motive seeking better welfare payments seems little different from that of persons who are attracted to a state because it has better public facilities, or furnishes superior services in any other area of public programs.

22. 89 S. Ct. at 1330.

23. *Id.* at 1331.

24. *Id.* The Court relied on a well-established line of cases denying state discrimination without a showing of compelling governmental interest: Skinner v. Oklahoma, 316 U.S. 535 (1942) (conviction under Oklahoma Habitual Criminal Sterilization Law reversed as a discrimination against right of procreation and marriage); Korematsu v. United States, 323 U.S. 214 (1944) (prosecution of American citizen of Japanese descent for entering a restricted area during World War II upheld despite discrimination based on the "suspect" category of race because of the danger of sabotage and espionage); Bates v. Little Rock, 361 U.S. 516 (1960) (conviction for failure to submit membership list of organization as required by local tax ordinance reversed where infringement on First Amendment rights was not justified by governmental interest in light of the purpose of the ordinance); Sherbert v. Verner, 374 U.S. 398 (1963) (Denial of unemployment benefits to a person refusing employment requiring work on Saturdays because of religious beliefs reversed because no danger of abuse of the unemployment compensation system had been shown). The application of the "compelling interests" doctrine is confined to certain basic categories—here, procreation, race, association, and religion—affecting fundamental human interests. It should be noted, however, that the majority opinion did not, like Justice Harlan at 1344-1346, distinguish any "suspect category" and "fundamental right" branches

The majority answered the argument that Congress has authorized the state residency requirements[25] by saying that Congress merely acquiesced to the desires of the states in order to secure state co-operation for the federal welfare program and that, in any event, Congress may not authorize the states to act unconstitutionally.[26]

Finally, the majority held that the one-year residency requirement imposed by the District of Columbia, although not subject to the fourteenth amendment equal protection clause pertaining to the states, is nevertheless unconstitutional as a denial of due process under the fifth amendment.[27]

Chief Justice Warren, joined by Mr. Justice Black, dissented. The Chief Justice defended the present residency requirement as an exercise of Congress' plenary power under the commerce clause. In his view, infringement on the right of travel is justified because of its insubstantiality. Congress does not authorize unconstitutional state activity but rather enlists the co-operative effort of the states in administering a national welfare system.[28]

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of the doctrine; the operation of the rule would seem to be the same for what Justice Harlan would call separate categories.

25. 42 U.S.C. § 602(b) (1962).

26. 89 S. Ct. at 1334-1335. It would seem to be fundamental that, granting the unconstitutionality of an activity because of its violation of personal rights, it may not be made constitutional by Congressional fiat. The majority relied on Katzenbach v. Morgan, 384 U.S. 641 (1965), an action for declaratory judgment wherein petitioner sought to strike down the Voting Rights Act of 1965, 42 U.S.C. § 1973b(e) (1965), as unconstitutional. The Court held that the power of Congress to enact legislation to implement the Fourteenth Amendment is analagous to that under its other specified powers. However, the Court said, at 651, that this power did not enable Congress to dilute the effectiveness of the amendment by enacting legislation contrary to the Court's interpretation of its meaning. Applying this rationale to the present case, the majority has said that Congress, despite its wide legislative powers, may not authorize state action under the Fourteenth Amendment that will deny equal protection of law to indigent persons exercising their right of travel.

27. *Id.* at 1335. The problem of invalidating District of Columbia laws because of any discriminatory character has not been seriously enlarged because of the lack of an equal protection clause in the Fifth Amendment. The classic statement of the equal protection character of the Fifth Amendment Due Process Clause when applied in cases of this sort is Bolling v. Sharpe, 347 U.S. 497 (1954), where racial segregation in schools in the District was held unconstitutional. There, the Court said at 497:

> The "equal protection of laws" is a more explicit safeguard of prohibited unfairness than "due process of law" and, therefore, we do not imply that the two are always interchangeable phrases. But, as this Court has recognized, discrimination may be so unjustifiable as to be violative of due process.

The Court also cited Schneider v. Rusk, 377 U.S. 163 (1964), where the State Department's denial of a passport to a naturalized American citizen was overturned because there was no similar practice in the case of native-born citizens.

28. The Chief Justice relied on Prudential Insurance Company v. Benjamin, 328 U.S. 408 (1946), where the Court upheld Congressional authorization of state regulation of the

Mr. Justice Harlan filed a separate dissenting opinion in which he recorded a lengthy review of the Court's approach to legislation in the light of the Equal Protection Clause and the Right of Travel. In his consideration of the Equal Protection Clause, Justice Harlan noted with displeasure the gradual extension of the Court's "compelling interest doctrine" increasingly invoked to deny the validity of classifications in legislation. Justice Harlan portrayed the doctrine as having two distinct branches: first, the application of the doctrine to certain suspect criteria (such as race, wealth, and political allegiance)[29]; and, second, its application to classifications affecting fundamental rights.[30] Justice Harlan would have race as the only suspect category because the fourteenth amendment was created to alleviate the ills of slavery.[31] He expressed his fear over the extension of the second branch of the doctrine since many states enact legislation affecting fundamental rights and this latter fact would render the Court a super-legislature.[32] According to Justice Harlan, the Court is in no position to classify certain rights as fundamental and then proceed to closely scrutinize legislation affecting those rights.[33]

Justice Harlan then embarks on a long discussion of the right to travel, concluding, ". . . the right to travel interstate is a 'fundamental' right which, for present purposes, should be regarded as having its

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insurance industry despite the fact that state regulation amounted to a barrier to interstate commerce. The Chief Justice thus saw the challenged regulation less as unilateral state action denying a basic right than as a joint state-federal effort regulating a national welfare system. This presentation of the facts was countered by the majority's view that Congress may not authorize the state to act unconstitutionally.

The analogy to interstate commerce by the Chief Justice is quite misleading. Regulation of commerce, local and interstate, is recognized by the Constitution and divided between state and federal government. Because the constitutional division of labor has been difficult to implement in practice, there traditionally has been a need for agreement—either tacit or, as in Benjamin, explicit—on the question of who shall regulate a specific kind of commerce. In contrast, where the right of travel is concerned, the question is not who shall regulate specific activity (travel) but rather whether that activity may be permissibly regulated at all.

29. 89 S. Ct. at 1344. Justice Harlan cited, respectively: Korematsu v. United States, 323 U.S. 214 (1944); Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966); Williams v. Rhodes, 393 U.S. 23 (1968).

30. *Id.* at 1345. Here, Justice Harlan relied on: Skinner v. Oklahoma, 316 U.S. 535 (1942) (procreation and marriage); Reynolds v. Sims, 377 U.S. 533 (voting); Carrington v. Rash, 380 U.S. 89 (1965) (voting); and as alternative grounds in Harper v. Virginia Bd. of Elections and Williams v. Rhodes, *supra* note 29.

31. *Id.* at 1344.

32. *Id.* at 1345-1346.

33. *Id.* Justice Stewart wrote a concurring opinion to refute this statement saying that the right of travel is an "established constitutional right," at 1335-1336.

source in the Due Process Clause of the Fifth Amendment."[34] However, unlike the majority, upon considering possible justifications for the residency requirement and balancing them against the resulting restriction on interstate travel, Justice Harlan would uphold the residency requirement.[35]

Shapiro is quite obviously an important decision. As an expression of dissatisfaction with present welfare policies, it may add impetus to an already existing reform sentiment. What direction that sentiment might eventually take would be speculative and beyond the scope of this inquiry. Perhaps more important, *Shapiro* adds definition to the Court's recurrent discussion of a right of travel. The question of the historical roots of that right has by now become academic.[36] What matters especially for future concern is the Court's view of the importance and nature of the right.

Earlier decisions involving the right of travel led to difficulty in interpreting the importance of the right of travel because the facts of the cases also raised substantial First Amendment questions. Analytically, the restricted activity involved in the cases was not the bare fact of moving from one point to another but, additionally, moving to the other point to conduct activity more properly protected by the First Amendment. This confusion over which right was being asserted seemed to give the right of travel a quasi-associational status.

Kent v. *Dulles*,[37] although it refrained from giving exact description, took the approach often found in First Amendment cases; that of taking pains to assume that Congress has authorized no restriction

34. *Id.* at 1350.
35. *Id.* at 1353.
36. The majority in *Shapiro* relied on United States v. Guest, 383 U.S. 745 (1965). There, appellees were indicted, inter alia, for conspiring to oppress, injure, threaten, and intimidate Negro citizens in the free exercise and enjoyment of their right of travel under 18 U.S.C. § 241. The District Court dismissed the indictment on the ground that it did not involve rights which are attributes on national citizenship. Reversing, the Supreme Court said at 749:

> Although there have been recurring differences in emphasis within the Court as to the source of the constitutional right of travel, there is no need here to canvass these differences further. All have agreed that the right exists.

Thus, ignoring the threshold question of how a constitutional right of travel came to be, the Court in Guest and in Shapiro discussed its nature. Older decisions, discussed later herein, considered it a Fifth Amendment Due Process right.
37. 357 U.S. 116 (1958), in which petitioner appealed from an adverse decision in a suit for declaratory judgment wherein petitioner challenged the authority of the Secretary of State to deny issuance of a passport without the submission of an affidavit by petitioner stating himself not to be a communist.

rather than considering the constitutional implications of a restriction.[38] There,[39] the Court said: "Freedom to travel is indeed, an important aspect of the citizen's liberty. We need not decide the extent to which it can be curtailed. We are first concerned with the extent, if any, to which Congress has authorized its curtailment." Subsequently in *Aptheker* v. *Secretary of State,*[40] the Court seemed to reiterate this status when it said: "Since freedom of association is itself guaranteed by the First Amendment, restrictions imposed upon the right of travel cannot be dismissed by asserting that the right of travel could be fully exercised if the individual would give up his membership in a given association."[41] However, the Court later denied the associational character of the right of travel in *Zemel* v. *Rusk.*[42] There, the Court said:

> His [appellant's] claim is different from that which was raised in *Kent* v. *Dulles, supra,* for the refusal to validate appellant's passport does not result from and expression or association on his part; appellant is not being forced to choose between membership in an organization and freedom to travel . . . we cannot accept the contention of appellant that it is a First Amendment right which is involved.[43]

The *Zemel* decision made explicit what might have been doubted after *Aptheker,* that the rights of travel and association are completely distinct. It could have been argued after *Aptheker* that the Court meant that a restriction on association at the terminus of travel was pro tanto a restriction on travel itself. The quoted statement of the *Aptheker* Court could have been interpreted to mean that an individual under State Department restrictions was forced to curtail his own freedom to travel. As doubtful as this interpretation now seems in retrospect, it afforded counsel a basis for argument in *Zemel* and suc-

38. *See* Dennis v. United States, 341 U.S. 494 (1951), where the court construed proscribed advocacy not to include mere advocacy in the realm of ideas, as opposed to action.
39. 357 U.S. at 127.
40. 378 U.S. 500 (1964), in which petitioner challenged the constitutionality of § 6 of the Subversive Activities Control Act of 1950, 50 U.S.C. § 785, making it unlawful for a member of an organization registered as subversive to make application for passport.
41. *Id.* at 507.
42. 381 U.S. 1 (1965), in which appellant in a declaratory suit had been unable to secure the necessary validation of his passport for travel in Cuba in order "to satisfy my curiosity about the state of affairs in Cuba" after the Secretary of State had restricted travel there following breaking of diplomatic relations by the United States.
43. *Id.* at 16.

ceeded in obscuring the nature of the right of travel by giving it the appearance of a corollary of the First Amendment.

This classification left the Court in subsequent cases with the job of assigning more specific content to the right of travel. *United States* v. *Guest, supra,* was not an appropriate vehicle for this purpose since it dealt merely with whether certain allegations of an indictment were privileges of national citizenship.

Shapiro v. *Thompson* made it clear that, although the right of travel is not a First Amendment right, it nevertheless enjoys a similar preferred position. Indeed, the most intriguing aspect of the case, and potentially the most important, is the slight interference with the right necessary to invoke constitutional protection; one can scarcely imagine a case being dismissed on a de minimis basis.

The majority emphasized in its presentation of the facts that the various appellees had not moved into a new jurisdiction in order to take advantage of increased welfare benefits. This seemed to undermine the policy argument that the poor should not be permitted to shop for a larger handout. However, this statement of the facts cut both ways; if the existence or non-existence of welfare benefits is not a factor in the decision to change jurisdiction, then it is not relevant to the decision to exercise the right of travel. And if welfare requirements are not involved in that decision, then they can hardly be said to interfere with the decision. The response to this assertion seems to be that the broadness of the requirement must operate to interfere with those to whom welfare benefits are a relevant factor. However, it seems likely that, except for those wanting to establish multiple residency benefits from more than one jurisdiction (and they should not be protected), the number of persons for whom welfare is a relevant factor may be comparatively slight.

The significant point is that the majority was willing to invalidate the residency requirement without a showing of actual interference with the right of travel. To say that a state may not intentionally restrict entry by indigents need not require such a showing because, as the majority points out, such state action is completely impermissible. But to say that a state may not impinge on the right of travel when it acts for a valid purpose should require the presence of actual interference.

Despite this necessity, the appellants were said to have failed to demonstrate the compelling governmental interest necessary to justify their discrimination against the right of travel.

This analysis is to be compared with the "compelling interests" cases on which the majority relied. In those cases, in contrast, the protested discrimination was personal to the parties before the Court. In *Skinner* v. *Oklahoma,*[44] for example, petitioner himself was subject to the sterilization provision; in *Korematsu* v. *United States,*[45] petitioner was excluded from the area in question because of his race; in *Bates* v. *Little Rock,*[46] it was clear that petitioners would personally be subject to harassment because of their organizational membership; and in *Sherbert* v. *Verner,*[47] petitioner was being coerced to violate personal religious beliefs. In the instant case, the demonstrable interference with the right of travel is so slight that one might conclude that a mere remote possibility of interference is sufficient to overturn a non-compelling governmental interest. If this interpretation is correct, then clearly the Court is moving away from a balancing test in which it quantifies the relative interests of the parties and toward a decision of the case based on the *quality* of the asserted right or interest. Thus, in *Shapiro,* the right of travel, not as applicable to parties before the Court but in itself, is given greater importance than administrative efficiency.

Future effects of the Court's approach are highly doubtful. In the first place, it is entirely possible that the basic reason for the decision was that the Court felt that the true reason of the requirement was specifically to exclude the poor.[48] If this is true, and if the application of the "compelling interests" doctrine was simply makeweight, the worth of the case as a future precedent might be greatly depreciated. On the other hand, if the Court in future cases does place reliance on this extreme extension of the doctrine, basic questions still remain unanswered: will this approach be confined to right of travel cases; will it be extended to "preferred right" cases under the First Amend-

44. Note 24 *supra.*
45. *Id.*
46. *Id.*
47. *Id.*
48. The majority seems to intimate this in its opinion, 89 S. Ct. at 1328:
There is weighty evidence that exclusion from the jurisdiction of the poor who need or may need relief was the specific objective of these provisions. . . .

ment; will it be extended to all cases in which the "compelling interest" doctrine now applies; or will it be even further extended?

One feature of the case, although not given weight in any of the opinions, should not remain unnoticed: Justice Douglas' concurring opinion in *Edwards v. California*,[49] seems to have been vindicated. There, the majority invalidated a California law making it a misdemeanor knowingly to bring an indigent person into the state. The majority held that the law was an unconstitutional burden on interstate commerce. Justice Douglas, joined by Justices Black and Murphy, concurred by disclaiming any reliance on the commerce clause. Instead, Justice Douglas relied squarely on the right of travel:

> . . . a state statute which obstructs or in any substance prevents that movement must fail. . . . But to allow such an exception to be engrafted on the rights of *national* citizenship would be to contravene every conception of national unity.[50]

The *Shapiro* case saw the majority refuse to recognize, as the Warren dissent did, that movement of people interstate may be placed on the same basis as interstate commerce.

Some observation should be made concerning the charge made both in the Warren[51] and in the Harlan[52] dissenting opinions that the approach of the majority in *Shapiro* renders the Court a super-legislature. There was, of course, a time when the Court habitually scrutinized congressional enactments to insure that they did not violate certain highly regarded liberties embodied in the concept of due process.[53] Changes in social circumstances later necessitated abandonment of this approach and the adoption of a more elastic due process concept,[54] a correct decision since constitutions are enduring documents that must be approached with broad-mindedness. However, this shift in the interpretation of due process did not change the fact that the first reason for the Constitution is to safeguard individual interests from encroachments by the state. The *Shapiro* case, and the trend that it represents, insofar as it may be said to renew the older tradition, also

49. 314 U.S. 160 (1941).
50. *Id.* at 181.
51. 89 S. Ct. at 1342.
52. *Id.* at 1354.
53. *See* Lochner v. New York, 198 U.S. 45 (1905).
54. *See* Nebbia v. New York, 291 U.S. 502 (1934).

must be said to continue committment to preservation of fundamental rights represented by ascertainable legal concepts. More important, the contemporary "compelling interests" doctrine has the salutary advantage of leaving vast areas of social policy determination in the presumably more expert hands of the legislature.

Patrick J. Kearney

WILLS—LEGACIES—STOCK SPLITS—The Supreme Court of Pennsylvania has held that a legatee is entitled to shares resulting from a stock split which occurred after the execution of a will and codicil but prior to death of testator where testator had disposed of all such stock owned by him at time he wrote the will and codicil.

Marks Will, 435 Pa. 155, 255 A.2d 512 (1969).

The testator executed a codicil on April 19, 1963, in which he provided that "[c]ontrary to anything in my will I direct that the two certificates attached covering 104 shares of Sears and Roebuck shall be paid over to Dale Wayne Satterfield as a legacy in addition to any sum bequeathed to him in my will."[1] At that time 104 shares were the total number of shares that he owned. The testator died on October 25, 1967. Two years and seven months prior to his death Sears and Roebuck split two-for-one and issued to each stockholder certificates representing the additional shares. No change was made in either his will or in the codicil after the split. The certificates were found in an envelope together with the codicil. The certificate representing the shares resulting from the split were not attached to those representing the original 104 shares.

The Orphan's Court of Philadelphia County awarded the additional shares to the residuary legatee. This decision was reversed by the Supreme Court of Pennsylvania.[2] The shares that resulted from the split were awarded to Satterfield, the named legatee. Justice Jones,[3] speaking for the majority, ruled that the testator's intent was to give

1. Marks Will, 435 Pa. 155, 157, 255 A.2d 512, 513 (1969).
2. 435 Pa. 155, 255 A.2d 512 (1969).
3. Chief Justice Bell filed a dissenting opinion in which Justice O'Brien joined.