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Guest Statute: Equal Protection Challenge to Constitutionality

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GUEST STATUTE: EQUAL PROTECTION CHALLENGE TO CONSTITUTIONALITY—*Sidle v. Majors*, 536 F.2d 1156, *cert. denied*, 97 S. Ct. 366 (1976).

I. INTRODUCTION

Automobile guest statutes, which deny recovery to a non-paying automobile passenger injured as a result of his host driver's ordinary negligence, have existed at one time or another in twenty-eight states.[1] All guest statutes were enacted between 1927 and 1939,[2] and since their inception have been subject to some praise[3] and much criticism.[4] Since the Supreme Court of California struck down that state's guest statute in *Brown v. Merlo*,[5] numerous other states have had to decide the fate of their guest statutes as a result of constitutional challenges based on the equal protection clause of the fourteenth amendment.[6] *Sidle v. Majors*[7] presented for the first time to a United States Court of Appeals an equal protection challenge to a state guest statute.[8]

II. FACTUAL BACKGROUND

In December 1973, Sidle, a resident of North Carolina, brought a diversity action against Majors, a resident of Indiana, alleging that Majors' negligence in failing to keep his automobile on the road resulted in an accident causing Sidle severe injuries. The United States District Court for the Southern District of Indiana entered

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1. Tipton, *Florida's Automobile Guest Statute*, 11 U. FLA. L. REV. 287, 288 (1958).

2. *Id.* at 287-88.

3. *See* Weber, *Guest Statutes*, 11 U. CIN. L. REV. 24 (1937); Comment, 18 CALIF. L. REV. 184 (1930).

4. *See* Lascher, *Hard Laws Make Bad Cases—Lots of Them (The California Guest Statute)*, 9 SANTA CLARA LAW. 1 (1968); W. PROSSER, LAW OF TORTS 382-85 (4th ed. 1971).

5. 8 Cal. 3d 855, 506 P.2d 212, 106 Cal. Rptr. 388 (1973).

6. Sidle v. Majors, 341 N.E.2d 763 (Ind. 1976); Botsch v. Reisdorff, 193 Neb. 165, 226 N.W.2d 121 (1975); Behrns v. Burke, 229 N.W.2d 86 (S.D. 1975); White v. Hughes, 257 Ark. 627, 519 S.W.2d 70 (1975), *appeal dismissed*, 423 U.S. 805 (1975); Primes v. Tyler, 43 Ohio St. 2d 195, 331 N.E.2d 723 (1975); Manistee Bank & Trust Co. v. McGowen, 394 Mich. 655, 232 N.W.2d 636 (1975); McGeehan v. Bunch, 88 N.M. 308, 540 P.2d 238 (1975); Laakonen v. Eighth Judicial District, 538 P.2d 574 (Nev. 1975); Beasley v. Bozeman, 294 Ala. 288, 315 So. 2d 570 (1975); Thompson v. Hagen, 96 Idaho 19, 523 P.2d 1365 (1974); Henry v. Bauder, 213 Kan. 751, 518 P.2d 362 (1974); Johnson v. Hassett, 217 N.W.2d 771 (N.D. 1974); Cannon v. Oviatt, 520 P.2d 883 (Utah), *appeal dismissed*, 419 U.S. 810, *rehearing denied*, 419 U.S. 1060 (1974); Justice v. Gatchell, 325 A.2d 97 (Del. 1974); Keasling v. Thompson, 217 N.W.2d 687 (Iowa 1974); Duerst v. Limbocker, 525 P.2d 99 (Ore. 1974); Richardson v. Hansen, 527 P.2d 536 (Colo. 1974) (Colorado guest statute subsequently repealed); Tisko v. Harrison, 500 S.W.2d 565 (Tex. Civ. App. 1973).

7. 536 F.2d 1156 (7th Cir. 1976).

8. *Id.* at 1160.

summary judgment[9] for Majors based on the 1929 Indiana Guest Statute,[10] which provides that the operator of a motor vehicle shall not be liable to a guest for injuries resulting from the operator's negligent operation of the vehicle.

In both the district court and on appeal to the Seventh Circuit, Sidle challenged the constitutionality of the Indiana guest statute under Article I §§ 12 and 23[11] of the Indiana Constitution and the equal protection clause of the fourteenth amendment[12] to the Constitution. The question of the constitutionality of the guest statute under the Indiana Constitution was certified[13] to the Indiana Supreme Court which held that the statute did not contravene the Indiana Constitution.[14] In affirming the decision of the district court, the Seventh Circuit relied extensively on the substantial rationality approach to equal protection analysis espoused by the Supreme Court in *Reed v. Reed*[15] as opposed to the minimum ra-

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9. *Id.* at 1156-57.

10. IND. CODE ANN. § 9-3-3-1 (Burns) provides:

The owner, operator, or person responsible for the operation of a motor vehicle shall not be liable for loss or damages arising from injuries to or death of a guest, while being transported without payment therefore, in or upon such motor vehicle, resulting from the operation thereof, unless such injuries or death are caused by the wanton or willful misconduct of such operator, owner or person responsible for the operation of such motor vehicle.

11. IND. CONST. art. I, § 12 provides:

All courts shall be open; and every man, for injury done to him in his person, property or reputation, shall have remedy by due course of law. Justice shall be administered freely and without purchase; completely and without denial, speedily and without delay.

IND. CONST. art. I, § 23 provides:

Privileges Equal. The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens.

12. U.S. CONST. amend. XIV, § 1 provides:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

13. This procedure is illustrative of the abstention doctrine. When questions of state law may be dispositive of a case, a federal court can retain jurisdiction until the parties have had an opportunity to obtain from the state court a decision on the state issues involved. Thus, the state court decides the state issues and the federal court avoids deciding a federal constitutional question prematurely or unnecessarily, since if the state court should hold the matter unauthorized as a matter of state law, there will be no need for the federal court to pass on the federal question. C. WRIGHT, LAW OF THE FEDERAL COURTS 218-19 (3d ed. 1976).

14. 341 N.E.2d 763 (Ind. 1976).

15. 404 U.S. 71, 76 (1971), *quoting* Royster Guano Co. v. Virginia, 235 U.S. 412, 413 (1920).

tionality approach espoused by the Court in *Dandridge v. Williams*.[16] It is the conflict between the substantial and minimum rationality standards upon which the question of the constitutionality of the guest statute centers.

III. The Current Supreme Court Approach to Equal Protection Analysis

By the late 1960's the United States Supreme Court had developed a sharply differentiated two-tier approach to equal protection analysis.[17] The first tier of the two-tier analysis is composed of fundamental interests and suspect classifications. The fundamental interest portion of the analysis involves rights found in the constitution and rights which rest on fundamental human activities or interests, including: the fundamental interest in voting and access to the ballot;[18] the fundamental interest in access to the judicial process;[19] and the fundamental right to travel.[20] Classifications based on race, lineage and alienage are considered suspect.[21] If the interest infringed is fundamental or if the statutory classification is suspect the Court applies a strict scrutiny test requiring the state to show a compelling[22] interest which justifies the infringement or classification. Legislation which qualified for strict scrutiny requires a far closer link between the classification and the statutory purpose; that is, a far closer congruence between the means and ends of the legislation. A very heavy burden of justification is placed upon the state rather than the party challenging the classification or alleged infringement.[23] Rarely have courts sustained legislation subject to this standard of review.[24]

The second tier of the equal protection model is composed of the traditional equal protection test. The traditional equal protec-

16. 397 U.S. 471, 485 (1970).

17. The "old" variety of equal protection analysis focused solely on the means used by the legislature. Equal protection analysis was not typically concerned with second-guessing and restraining legislative ends. Only in limited contexts—most notably racial discrimination cases—did the Court closely scrutinize statutory classifications. *See* Daniel v. Family Security Life Ins. Co., 336 U.S. 220, 224 (1949) and Loving v. Virginia, 388 U.S. 1, 11 (1967).

18. Harper v. Virginia Board of Elections, 383 U.S. 663, 666 (1966) and Williams v. Rhodes, 393 U.S. 23, 34 (1968).

19. Douglas v. California, 372 U.S. 353, 357-58 (1963).

20. Shapiro v. Thompson, 394 U.S. 618, 638 (1969).

21. Note, *Developments in the Law—Equal Protection*, 82 Harv. L. Rev. 1065, 1124 (1969) [hereinafter cited as *Equal Protection*].

22. *See* Korematsu v. United States, 323 U.S. 214 (1944).

23. *See Equal Protection*, *supra* note 21, at 1101 (1969). *See also* Korematsu v. United States, 323 U.S. 214, 223 (1944).

24. *See Equal Protection*, *supra* note 21, at 1101 (1969).

tion test deals principally with social and economic legislation,[25] and requires only that there be some rational connection between the legislative classification and objective.[26] The traditional test requires a minimal link between the classifying means and the legislative end. The test is extremely deferential, leaving considerable flexibility to the legislature.[27] Under the traditional test, it has been said that "a statutory classification will not be set aside if any state of facts reasonably may be conceived to justify it."[28] A classification will stand unless it is shown to be essentially arbitrary.[29] Rarely has a statute been found so wanting in rationality as to fail to satisfy this minimum rationality test.[30]

The United States Supreme Court has recently found a number of social and economic statutes unconstitutional by applying a stricter form of the traditional equal protection test.[31] Under this approach, the Court has seriously applied a basic constitutional requirement: that legislative means must substantially further legislative ends.[32] Further, legislative means must have a substantial basis in actuality, not merely conjecture. This new approach to the traditional test, while narrowing the gap between the first and second tier of the equal protection model, would require judges to gauge the reasonableness of the means on the basis of the material offered to the court, rather than by resorting to judicial rationalization.[33] The level of scrutiny required by the traditional test has been raised from virtual abdication to genuine judicial inquiry.[34] The limitations of this new approach stem from the limitations of judicial competence, not from summarily categorizing legislation as social or economic.[35]

The use of this bifurcated approach to the traditional equal protection test has produced conflicting results in states whose guest

25. *See* Railway Express Agency v. New York, 336 U.S. 106 (1949).

26. *Id.* at 109.

27. *See, e.g.*, Kotch v. Board of River Port Pilot Comm'rs, 330 U.S. 552 (1947).

28. Dandridge v. Williams, 397 U.S. at 485, *quoting* McGowan v. Maryland, 366 U.S. 420, 426 (1961).

29. Morey v. Doud, 354 U.S. 457, 464 (1957), *quoting* Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78-79 (1911).

30. From 1941 to 1970, the United States Supreme Court found economic legislation violative of the equal protection clause in only one case, Morey v. Doud, 354 U.S. 457 (1957).

31. *See, e.g.*, Reed v. Reed, 404 U.S. 71 (1971) and Eisenstadt v. Baird, 405 U.S. 438 (1972).

32. Gunther, *Forward: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1, 20 (1972).

33. *Id.* at 21.

34. *Id.* at 24.

35. *Id.* at 23.

statutes have been challenged on equal protection grounds. Employing the substantial rationality test, the supreme courts of eight states have found their guest statutes unconstitutional,[36] while eleven states, employing the minimum rationality test, have found their statutes constitutional.[37] Those states which have upheld their statutes have relied on the minimum rationality approach to equal protection analysis best exemplified by *Dandridge v. Williams*.[38] The *Dandridge* approach literally precludes analysis of the statutory classification and will not support a finding of unconstitutionality so long as there is "any conceivable state of facts" to support the classification.[39] Those states which have overturned their statutes have relied on the substantial rationality approach to the traditional test enunciated in *Reed v. Reed*.[40] The *Reed* approach invites the court to examine and determine whether the classification bears a real relation to the perceived purposes of the statute. The means of the legislation must have a fair and substantial relation to the object of the legislation.[41] Both standards express the rule that the classification must be reasonable, but they differ in defining the criteria for reasonableness.

Two basic reasons for the passage of guest statutes were the protection of the hospitable driver from suits by ungrateful guests[42] and the prevention of collusive lawsuits.[43] With regard to the hospitality rationale, the economic conditions of the 30's gave rise to the fear that the large number of hitchhikers on America's highways would take advantage of generous but unsuspecting motorists.[44] The notion of the collusive lawsuit also arose in the 30's, primarily be-

36. *See* Primes v. Tyler, 43 Ohio St. 2d 195, 331 N.E.2d 723 (1975); Manistee Bank & Trust Co. v. McGowen, 394 Mich. 655, 232 N.W.2d 636 (1975); Laakonen v. Eighth Judicial District, 538 P.2d 574 (Nev. 1975); Thompson v. Hagan, 96 Idaho 19, 523 P.2d 1365 (1974); Henry v. Bauder, 213 Kan. 751, 518 P.2d 362 (1974); Johnson v. Hassett, 217 N.W.2d 771 (N.D. 1974); Brown v. Merlo, 8 Cal. 3d 855, 506 P.2d 221, 106 Cal. Rptr. 397 (1973).

37. *See* Sidle v. Majors, 341 N.E.2d 763 (Ind. 1976); Botsch v. Reisdorff, 193 Neb. 165, 226 N.W.2d 121 (1975); Behrns v. Burke, 229 N.W.2d 86 (S.D. 1975); White v. Hughes, 257 Ark. 627, 519 S.W.2d 70, *appeal dismissed*, 423 U.S. 805 (1975); Beasley v. Bozeman, 294 Ala. 288, 315 So. 2d 570 (1975); Cannon v. Oviatt, 520 P.2d 883 (Utah), *appeal dismissed*, 419 U.S. 810, *rehearing denied*, 419 U.S. 1060 (1974); Justice v. Gatchell, 325 A.2d 97 (Del. 1974); Keasling v. Thompson, 217 N.W.2d 687 (Iowa 1974); Duerst v. Limbocker, 525 P.2d 99 (Ore. 1974); Richardson v. Hansen, 527 P.2d 536 (Colo. 1974) (Colorado guest statute subsequently repealed); Tisko v. Harrison, 500 S.W.2d 565 (Tex. Civ. App. 1973).

38. 397 U.S. 471 (1970).

39. *Id.* at 485.

40. 404 U.S. 71 (1971).

41. *Id.* at 76.

42. Comment, 18 CALIF. L. REV. at 184.

43. *Id.*

44. Tipton, *supra* note 1, at 287.

cause of the increased use of automobile liability insurance.[45] It was felt that the incentive for drivers and passengers to engage in collusive lawsuits to defraud insurers would increase correspondingly with the increased use of the automobile. Guest statutes were enacted as a means of meeting these evils.

When guest statutes were adopted, it was impossible to tell how successful they would be in dealing with the evils enunciated. Since courts have generally given legislatures wide latitude in formulating classes for separate treatment, particularly when experimental legislation in social and economic matters was involved,[46] the minimum rationality analysis of the classification presented by guest statutes was justified.[47] Guest statutes, however, have operated for forty-eight years to deny guests recovery for injuries suffered as a result of a host driver's negligence. When a classification scheme has existed for such a length of time, it is likely that all of the rationales advanced in its support have been developed and the court should fully examine such rationales to determine whether they provide sound support for the statutory classification.[48] As guest statutes can no longer be termed experimental legislation, the *Reed* approach to the equal protection test should be utilized to determine the validity of the guest statute; that is, to determine whether the statutory classification bears a fair and substantial relation to the object of the legislation.

IV. An Analysis of *Sidle v. Majors* in Light of the *Reed* Approach to Equal Protection Analysis

In its opinion responding to the Seventh Circuit's certification, the Indiana Supreme Court enunciated two purposes for the Indiana guest statute: the protection of hospitality by insulating generous drivers from lawsuits instituted by ungrateful guests, and the elimination of collusive lawsuits.[49]

The Seventh Circuit, applying the *Reed* approach to equal protection analysis,[50] however, could find no rational relationship between the classification of the statute and the purposes for such classification as proposed by the Indiana Supreme Court. To reach

45. Weber, *supra* note 3, at 35.

46. *See* Tussman and ten Broek, *The Equal Protection of the Laws*, 37 Calif. L. Rev. 341, 349 (1949). *See also* Williamson v. Lee Optical Co., 348 U.S. at 489.

47. *See* Tussman and ten Broek, *supra* note 46, at 348.

48. Manistee Bank and Trust Co. v. McGowen, 394 Mich. 655, 672, 232 N.W.2d 636, 643 (1975).

49. 341 N.E.2d at 768.

50. 536 F.2d at 1159.

this conclusion, the Seventh Circuit relied heavily upon *Brown v. Merlo*,[51] which effectively eliminated protection of hospitality and prevention of collusion as reasons for upholding a guest statute.

The California Supreme Court like the court in *Sidle*, chose to utilize the *Reed* approach to the traditional equal protection test to conclude that the California guest statute was unconstitutional.[52] The *Brown* court found the interest in hospitality formerly protected by the guest statute was now protected by liability insurance.[53] Therefore, even in the absence of a guest statute, the state's interest in shielding the host from the financial burdens of a lawsuit would remain protected.

The *Brown* court also found the prevention of collusion to be lacking in any substantive merit as a reason for upholding the guest statute. Since recovery is allowed for willful misconduct or when compensation is paid, parties prone to collude could avoid the statute anyway.[54] Given modern techniques for discovery and the availability of other means to detect collusion among parties to a lawsuit, such as cross-exmination, collusion is hardly an acceptable purpose for classifying people as those likely to collude and those unlikely to do so. Prevention of collusion does not provide a substantially rational basis for closing the door on the automobile guest.

V. Supreme Court Authority Supporting Guest Statutes Fails to Survive the Substantial Rationality Test

Relying on the reasoning of *Reed* and *Brown*, then, the *Sidle* court considered prior Supreme Court authority relating to a guest statute, *Silver v. Silver*,[55] to be clearly distinguishable.[56] The *Silver* court applied a *Dandridge* type[57] approach to the equal protection test; that is, the Court was willing to accept any conceivable set of

51. 8 Cal. 3d 855, 506 P.2d 212, 106 Cal. Rptr. 388 (1973).

52. *Id.* at 861, 506 P.2d at 216, 106 Cal. Rptr. at 392.

53. *Id.* at 67-68, 506 P.2d at 221, 106 Cal. Rptr. at 397.

In contrast to the late 1920's when guest statutes began to emerge and only 20 percent of automobile drivers carried insurance, nearly 80 percent of today's drivers carry liability insurance. *Compare* Elsbre and Roberts, *Compulsory Insurance Against Motor Vehicle Accidents*, 76 U. Pa. L. Rev. 690, 691 (1928) *with* Cal. Dept. of Motor Veh. Div. of Drivers Licenses, Report of General Activities at 9 (Nov. 1972).

54. 8 Cal. 3d at 875, 506 P.2d at 226, 106 Cal. Rptr. at 402 (1973).

55. 280 U.S. 117 (1929).

56. 536 F.2d at 1158.

57. The two-tier equal protection model was a product of the Warren Court during the 1960's. Prior to the development of the two-tier analysis, the minimal scrutiny, extremely deferential approach to equal protection analysis illustrated in *Dandridge* was traditionally used by the Court to deal with alleged equal protection violations other than race. G. Gunther, Constitutional Law 658 (9th ed. 1975).

facts to support the classification presented by the Connecticut guest statute.[58] Upholding the constitutionality of the guest statute, the *Silver* Court relied primarily upon the fear that courts would be inundated with troublesome lawsuits.[59]

At the time of the *Silver* decision, this factor did bear a rational relationship to the classification. Automobile use was still in an experimental stage and time was needed to assess the cost of inevitable injuries. The guest statute in that case was an initial attempt by the Connecticut legislature to deal with the problem of vexatious litigation produced by the increase in automobile use. Moreover, the Supreme Court has defended classifications such as that presented in *Silver* on the ground that the legislature may deal with a problem in a piecemeal fashion.[60] The Court will apply a minimum rationality standard to a legislative classification which represents an attempt to deal with a problem one step at a time.[61] In 1929 the *Silver* guest statute represented such an attempt.

However, as forty-eight years have passed since the *Silver* decision, the guest statute can no longer be viewed as an experimental step to deal with the problem of vexatious litigation. On that basis, then, the Seventh Circuit concluded that the *Reed* approach to equal protection analysis should be used to determine the validity of the statutory classification. Because of the rationale espoused in support of the classification,[62] it is doubtful that a guest statute similar to that which formerly existed in Connecticut[63] could survive a *Reed*-type equal protection analysis; that is, the classification is no longer substantially related to the purpose of the legislation.

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58. *See* Silver v. Silver, 280 U.S. at 123-24. The *Silver* Court considered only the statutory distinction between automobile guests and guests in other kinds of conveyances.

59. *Id.* at 122-23.

60. *See* 280 U.S. at 123, and Tussman and ten Broek, *The Equal Protection of the Laws*, 37 CALIF. L. REV. 341, 351 (1949).

61. *See* Williamson v. Lee Optical Co., 348 U.S. 483, 488-89 (1955).

62. Guest statutes, as originally adopted, were seen as a means of protecting the host driver against a guest's ingratitude, which often took the form of a suit for injuries suffered as a result of the host's negligent operation of an automobile. Today, because of the widespread use of automobile liability insurance, it is the insurance company and not the host that wins protection under the guest statute. The insurance company usually represents the insured at trial and any damages awarded will be paid from insurance company coffers. As there is no notion of ingratitude in suing the host's insurer, the statute can no longer be viewed as a necessary means to thwart the ungrateful guest. *See* Comment, *Equal Protection Challenges to Automobile Guest Statutes*, 8 CREIGHTON L. REV. 432, 448 (1974) and Brown v. Merlo, 8 Cal. 3d 868, 506 P.2d 221, 106 Cal. Rptr. 397 (1973).

63. Connecticut repealed its guest statute in 1937. *See* ch. 82, § 540e [1937] CONN. STAT. 277 (Supp. 1939).

VI. The Irrebuttable Presumption: An Alternative to Equal Protection Analysis?

In addition to using a substantial rationality approach to distinguish *Silver*, the Seventh Circuit in *Sidle* suggested that the statutory classification could be attacked as an irrebuttable presumption.[64] An irrebuttable presumption may arise whenever a statute states or implies that one fact (the basic fact) is conclusive evidence of another fact (the presumed fact) that provides the basic rationale for the classification established by the provision.[65] The *Silver* result implies that the fact that one is a guest (the basic fact) is presumed to be conclusive evidence that one will engage in vexatious litigation (the presumed fact). Denial of the opportunity to demonstrate one's lack of such a motive constitutes a denial of due process.[66]

Utilizing an irrebuttable presumption technique to analyze the legislative classification requires the congruence between the classification and the legislative objective to be perfect, or that there be a compelling state interest to support the classification.[67] In effect, the court in *Sidle* advocated a strict scrutiny analysis of the statutory classification.[68] Generally, such a strict standard has been applied only when a fundamental interest or suspect classification is involved,[69] but the use of the irrebuttable presumption technique allows such a standard to be used regardless of the type of interest infringed or classification created.[70]

Since a significant number of state statutes create permanent classifications which are less than perfect,[71] it is conceivable that all could be challenged on the ground that they create an irrebuttable presumption. And, applying strict scrutiny to such statutes would undoubtedly result in the unconstitutionality of most of them.

Because an irrebuttable presumption essentially involves an overbroad[72] classification, the attack on the statute, as a technical

64. 536 F.2d at 1158, *citing* Vlandis v. Kline, 412 U.S. 441 (1972).

65. Note, *Irrebuttable Presumptions: An Illusory Analysis*, 27 Stan. L. Rev. 449, 451 (1975). *See* C. McCormick, Handbook of the Law of Evidence § 342, at 804 (2d ed. 1972).

66. Note, *supra* note 65, at 451.

67. *Id.* at 460.

68. *See* Vlandis v. Kline, 412 U.S. at 451-52.

69. *See* Shapiro v. Thompson, 394 U.S. at 638, and Loving v. Virginia, 388 U.S. at 11.

70. Vlandis v. Kline, 412 U.S. at 460-62 (Burger, C.J., dissenting).

71. *Id.* at 462.

72. An overbroad classification imposes a burden upon a wider range of individuals

matter, should be based on equal protection grounds.[73] This approach avoids the inadvertent application of the strict scrutiny test and allows an actual examination of the relationship between the statutory classification and its purposes in accordance with the *Reed* approach to equal protection analysis.[74]

In spite of these compelling arguments to declare the Indiana guest statute unconstitutional, the Seventh Circuit felt obligated to affirm in light of the Supreme Court's action in *Cannon v. Oviatt.*[75] In that case, the Supreme Court of Utah rejected an equal protection challenge to a guest statute virtually identical to the statute presented in *Sidle.*[76] A subsequent appeal to the United States Supreme Court was dismissed for want of a substantial federal question. Because a dismissal for want of a substantial federal question is an adjudication on the merits,[77] the Seventh Circuit felt compelled to affirm the decision of the district court.[78]

Subsequently, the Supreme Court, relying on its decision in *Cannon*, summarily denied Sidler's petition for a writ of certiorari.[79] Because *Cannon* was dismissed in the face of widespread controvery as to the constitutionality of the guest statute; was dismissed without benefit of briefs or oral argument on the merits; and was announced without opinion or citation to any other precedent, Justices Marshall and Brennan, dissenting, doubted *Cannon's* validity as grounds for denying the petition for writ of certiorari.[80] Both justices viewed the statute as patently open to serious constitutional debate and considered the denial based on *Cannon* a hindrance to developing constitutional jurisprudence.[81]

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than are included in the class at which the law aims. Tussman and ten Broek, *supra* note 46, at 351.

73. Note, *supra* note 65, at 473.

74. *Id.*

75. 520 P.2d 883 (Utah), *appeal dismissed*, 419 U.S. 810, *rehearing denied*, 419 U.S. 1060 (1974).

76. 536 F.2d at 1159.

77. C. WRIGHT, LAW OF THE FEDERAL COURTS 551 (3rd ed. 1976).

78. The significance of a dismissal for want of a substantial federal question has been the subject of much critical comment. *See* Hart, *The Business of the Supreme Court at the October Terms, 1937 and 1938*, 53 HARV. L. REV. 579 (1940); Note, *The Insubstantial Federal Question*, 62 HARV. L. REV. 488 (1949); Note, *Supreme Court Per Curiam Practice: A Critique*, 69 HARV. L. REV. 707 (1956). While the dismissal for want of a substantial federal question is technically a decision on the merits and frequently used as precedent, 69 HARV. L. REV. 707, 709, the use of such decisions as a source of substantive rules should be approached with caution. It is always possible that the dismissal is a technical one, as for failure to properly present the federal question. *Id.* at 711. Per curiams are at times ignored by lower courts and by the Supreme Court itself. *Id.* at 712, 723.

79. 45 U.S.L.W. 3343 (U.S. Nov. 8, 1976).

80. *Id.* at 3344.

81. *Id.*

VII. Conclusion

The purposes for the classification inherent in the Indiana guest statute are unreasonable today. Though the purposes espoused by the legislature may have had validity when the statute was originally adopted, such validity has vanished as a result of the proliferation of automobile liability insurance and the wider use of legal techniques to detect perjury and collusion. Denial to guests of recompense for negligently inflicted injury, death, or loss cannot be justified as a reasonable means to promote hospitality or prevent collusion. The invalidity of the stated statutory purposes coupled with the current Supreme Court approach to equal protection analysis should cause the Supreme Court to reconsider the validity of state guest statutes should a guest statute once again be submitted to that body.

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