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Constitutional Law: Residence Requirements--An Unconstitutional Barrier to Public Assistance

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CONSTITUTIONAL LAW: RESIDENCE REQUIREMENTS – AN UNCONSTITUTIONAL BARRIER TO PUBLIC ASSISTANCE

Crapps v. Duval County Hospital Authority, 314 F. Supp. 181 (M.D. Fla. 1970)

Plaintiffs moved to Jacksonville, Florida and applied for free medical care based upon their status as indigents. Medical care was refused solely on the basis that the plaintiffs had not resided in Duval County for one year preceding their application. This residency requirement was established by a state statute of local application that precluded any medical treatment for indigents with less than one year of residency in Duval County.[1] Plaintiffs brought suit alleging this action to be a denial of rights, privileges, and immunities guaranteed by the equal protection clause of the fourteenth amendment. The United States District Court for the Middle District of Florida HELD, the residence statute unconstitutional and issued a permanent injunction against further enforcement of the statutory residency requirement.[2]

Residency requirements date from English feudal society. The first laws dealing with residence were embodied in the Elizabethan Poor Laws,[3] which were aimed at reducing the welfare burden and provided than any person chargeable to the community as a poor person, who did not have a forty-day residence therein, could be "removed or passed on" to his place of settlement.[4] Under this concept each community had exclusive responsibility for the care of its own poor. Thus, a distinction between local and foreign indigents developed; community support being granted to local indigents while foreign indigents were coerced to return to their place of settlement.

Because of the English practice of banishing undesirables to the American colonies and the economic crises during the period, the colonists adopted settlement laws similar to those of the English.[5] Similarly, early welfare programs in America were locally financed and administered. These early developments influenced the present welfare programs, which remain almost completely under local or state control enabling local authorities to establish the conditions and the benefits available.[6]

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1. Fla. Laws 1963, 63-1305, §21.
2. 314 F. Supp. 181, 184 (M.D. Fla. 1970).
3. 47 Eliz. 1, c. 2 (1601).
4. Poor Relief Act, 14 Car. 2, c. 12, §§1, 2 (1662).
5. Mandelker, *The Settlement Requirement in General Assistance*, 1955 WASH. U.L.Q. 355, 356-58; Note, *Welfare Residence Requirements: A Study in Due Process and Equal Protection*, 31 OHIO ST. L.J. 371 (1970).
6. Note, *Residence Requirements in State Public Welfare Statutes*, IOWA L. REV. 1080, 1081 (1966). To a limited degree the Social Security Act continued the practice of requiring a period of residency for public assistance. The Social Security Act of 1935 provided that residence requirements would be allowed for state family-aid plans that disbursed federal funds if the requirement did not exceed the acceptable maximum provided by Congress. Social Security Act of 1935, §402(b), 49 Stat. 627 (1935), *as amended*, 42 U.S.C. §602(b) (1964). Although Congress did not define an acceptable maximum, it stated it would not reject any program that required a one-year residency or less. *Id.* Congress, itself, greatly furthered the existence of residency provisions by enacting certain residency requirements

Prior to 1966 residency requirements imposed by various states' welfare programs received only two constitutional challenges. In 1822 a Massachusetts court upheld a statute establishing a three-year residency period as a prerequisite to the attainment of "resident status" by a pauper.[7] The second constitutional challenge was brought against an Illinois statute that required a three-year period of residency to qualify for public assistance. The Illinois supreme court upheld the statute, finding it impaired no fundamental rights.[8] The court stated the equal protection clause of the fourteenth amendment merely required that a classification be based upon real and substantial distinctions having a rational relation to the subject of the legislation.[9]

In the instant case the court relied on *Shapiro v. Thompson*[10] to hold the residency provision violative of the equal protection clause because the provision discriminated against one class of citizens based solely on residency.[11]

Equal protection of the laws, required by the fourteenth amendment, does not prevent the states from passing legislation that results in the classification of persons.[12] However, any classification must be reasonable,[13] not arbitrary,[14] and rest upon some distinction having a fair and substantial relation to the object of the legislation so that all persons similarly situated are treated alike.[15] A violation of the equal protection clause occurs when legislation creates systematic inequality through: (a) classifications of persons causing unequal treatment;[16] or (b) actions resulting in systematic inequality in treatment received by a definable group of persons.[17] If the classification is suspect, the criteria that explicitly or implicitly are used to classify the affected groups must be analyzed.[18] If the criteria show no taints of invidious dis-

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for categorical assistance programs in the District of Columbia. D.C. CODE ANN. §3-203 (Supp. III, 1964).

7. Inhabitants of Rutland v. Inhabitants of Mendos, 18 Mass. (1 Pick.) 153 (1822).

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

9. *Id.* at 565, 30 N.E.2d at 51.

10. 394 U.S. 618 (1969).

11. *Id.* at 627.

12. McGowan v. Maryland, 366 U.S. 420, 425-26 (1961). *See also* Flemming v. Nestor, 363 U.S. 603, 611 (1960); Note, *Developments in the Law—Equal Protection,* 82 HARV. L. REV. 1065, 1076 (1969). Courts, where examining statutory classifications that are based upon "suspect" criteria or that affect "fundamental rights," invoke a test that holds a denial of equal protection to occur unless the classification is supported by a compelling governmental interest. Korematso v. United States, 323 U.S. 214, 216 (1944). The compelling interest doctrine is a significant exception to the established practice of upholding a statute that is rationally related to a legitimate governmental objective.

13. McLaughlin v. Florida, 379 U.S. 184, 191 (1964).

14. Levy v. Louisiana, 391 U.S. 68, 71-72 (1968).

15. F. S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920); *see* Tussman & tenBroek, *The Equal Protection of the Laws,* 37 CALIF. L. REV. 341, 346 (1949).

16. Yick Wo v. Hopkins, 118 U.S. 356, 368 (1886).

17. *Id.* at 374.

18. Harper v. Virginia Bd. of Elections, 383 U.S. 663, 670 (1966). The application of the equal protection clause is analyzed in depth in Michelman, *The Supreme Court, 1968 Term, Foreword: On Protecting the Poor Through the Fourteenth Amendment,* 83 HARV. L. REV. 7, 33-35 (1969).

crimination, the case will be treated as one of substantive due process and no violation of equal protection will result.[19]

Arguably, justifications that a state may claim for residence tests must qualify under the "compelling" interest standard.[20] Residency provisions may be justified by three alleged governmental interests: (1) the protection of welfare assistance programs for those who have lived in the state for a year and have contributed to the state's economy; (2) the need to establish the welfare budget of the state; and (3) to deter "raiding" of welfare benefits by persons who come solely to obtain higher welfare benefits.[21]

In the instant case the court, in discussing the third governmental interest, noted that the state could constitutionally enact criteria to determine the intent of indigents seeking free medical care.[22] The court found the present statute impermissible, however, since it established no such criteria, but created an all-inclusive category of newcomers consisting of indigents who came solely for higher benefits as well as those coming for other purposes.[23]

The residency provision in the instant case established a non-rebuttable presumption that those who have not satisfied the statutory period do not have the present intent to make Duval County their permanent home and that every such application for assistance came to the county solely for higher welfare benefits.[24] In actual operation, the provision established two separate classifications: (1) a delineation between old and new indigent residents based on the completion of one year's residence in the jurisdiction and (2) the all-inclusive joining of indigents who came to Duval County for other purposes as distinguished from those who came for the sole purpose of collecting higher benefits. The court found that the dissimilar treatment of otherwise equal indigents was based on irrational distinctions and was prohibited by the equal protection clause.[25] No standards were found in the residency requirement that could be effectively used to deny benefits only to those indigents seeking higher benefits and not to those coming for other reasons.[26]

The instant opinion differed greatly from *Shapiro* in respect to transient

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19. In other words, the challenged actions of the government will be invalidated only if they are not rationally related to a proper governmental purpose. The actions may also be invalid if they are so detrimental to some judicially favored interest as not to be justified by whatever tendency they do have to advance a proper governmental end. *E.g.*, Reynolds v. Sims, 377 U.S. 533, 561-62 (1964). Where there is a noticeable degree of oppression or stigmatization, the inspection shifts to the balancing of the interests in the case. The personal interests that are adversely affected by unequal treatment are balanced against the compelling interests of the government. *E.g.*, Konigsberg v. State Bar of California, 366 U.S. 36 (1961).

20. 314 F. Supp. 181, 183 (M.D. Fla. 1970). *See also* Michelman, *supra* note 18, at 34. For a discussion of the "compelling interest" doctrine see note 12 *supra*.

21. Shapiro v. Thompson, 394 U.S. 618, 633-35 (1969).

22. 314 F. Supp. 181, 183 (M.D. Fla. 1970).

23. *Id.*

24. *Id.*

25. *Id.* at 184. *See generally* Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966).

26. 314 F. Supp. 181, 183 (M.D. Fla. 1970).

persons seeking higher benefits in another jurisdiction. The present court indicated that the state could enact criteria "rationally related to the finding of" the intent of indigents seeking welfare benefits,[27] while the decision in *Shapiro* indicated that "a state may no more try to fence out indigents who seek higher welfare benefits than it may try to fence out indigents in general."[28]

Although the court did not base its decision in the instant case on the constitutional right to travel it did indicate that the denial of medical benefits may have infringed upon that right.[29] The right to travel, although not specifically mentioned in the Constitution, has long been recognized as a fundamental guarantee of national citizenship protected by the Constitution.[30] Statutory classifications that hinder this "fundamental right of migration" are invalid unless necessary to advance a compelling state interest.[31]

While most right-to-travel cases are concerned with absolute proscriptions on the freedom of movement, the vital question in contesting a residency requirement for welfare assistance is whether an indirect and unintentional burden on a citizen's right to travel is also prohibited. Since an indigent is not barred from the state but is only denied welfare assistance for a certain period, an extension of the right to travel doctrine must be made.[32]

The court did not make such an extension in the instant case, but chose to base its decision on the constitutional guarantee of equal protection. In basing its decision on equal protection the court deviated from the usual application of the clause in cases concerning impermissible classifications.[33] Interests that have been previously identified as fundamental and therefore deserving of special treatment under the equal protection clause include

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27. *Id.*

28. 394 U.S. 618, 632 (1969). However, the present court interpreted *Shapiro* as not precluding the states from enacting "any criteria for determining the intent of indigents seeking free medical care to reside in the community." 314 F. Supp. 181, 183 (M.D. Fla. 1970). The *Crapps* court noted: "[T]he standards for determining intent must be rationally related to that ultimate fact, and any resulting classification must be shown to promote a *compelling* state interest." *Id.*

29. 314 F. Supp. 181, 183 (M.D. Fla. 1970).

30. Edwards v. California, 314 U.S. 160, 176 (1941). *See also* Z. CHAFEE, THREE HUMAN RIGHTS IN THE CONSTITUTION 162 (1956).

31. United States v. Guest, 383 U.S. 745, 757-58 (1966). *See also* Corfield v. Coryell, 6 F. Cas. 546, 552 (No. 3230) (C.C.E.D. Pa. 1823). In Paul v. Virginia, 75 U.S. (8 Wall.) 168, 180 (1868) and Ward v. Maryland, 79 U.S. (12 Wall.) 418, 430 (1870), the right to travel was based on the privileges and immunities clause, U.S. CONST. art. IV, §2. In Twining v. New Jersey, 211 U.S. 78 (1908), and Slaughter-House Cases, 83 U.S. (16 Wall.) 36 (1872), the privileges and immunities clause of the fourteenth amendment has been used to support the right. Freedom of travel outside the United States was based on the due process clause of the fifth amendment. Zemel v. Rusk, 381 U.S. 1, 14 (1965); Aptheker v. Secretary of State, 378 U.S. 500, 505-06 (1964); Kent v. Dulles, 357 U.S. 116, 125-26 (1958).

32. The district court in Thompson v. Shapiro, 270 F. Supp. 331, 336 (D. Conn. 1967), made such an extension by interpreting United States v. Guest, 383 U.S. 745, 760 (1966), as proscribing even a discouragement of interstate travel.

33. Note, Shapiro v. Thompson: *Travel, Welfare and the Constitution*, 44 N.Y.U.L. REV. 989, 1003 (1969).

voting,[34] procreation,[35] rights with respect to criminal procedure,[36] and education.[37] As a result of the instant case, it may be ultimately viewed that welfare benefits are now a fundamental right within the scope of the equal protection clause. The residence requirement in the instant case denied medical services to new Duval residents, while granting these same services to otherwise equal indigents who qualified by residing in the county for at least a year. Thus, it may be a citizen's right to welfare services, the right to medical care, food, shelter, and clothing that emerges as fundamental in the case.

The present case, along with *Shapiro,* could have an immediate impact on other welfare programs in the state.[38] The potential ramifications may be enormous. Although the majority in *Shapiro* took great pains to limit the decision in that case[39] the "compelling interest test" of equal protection may now be extended into areas never before considered. Chief Justice Warren, dissenting in *Shapiro,* warned of the multitude of situations that now must be examined in light of the holding.[40] The validity of other state imposed waiting periods or residence requirements is questionable. Statutes and ordinances containing residency provisions may now be considered suspect if the provisions are not rationally related to a compelling state interest.[41]

The present case may have its greatest effect in Florida by enabling large numbers of migrant workers to obtain welfare benefits while working within the state. These applicants must qualify in all other respects, but they no longer need to reside in the jurisdiction for a designated period in order to qualify for welfare assistance.

In holding the residency provision unconstitutional, the courts have elevated the "right to welfare" to a fundamental right that is without precedent or constitutional support except for the broadening of the reasonable classification test to establish a new right to food, shelter, and clothing for all citizens. The court seems to have adopted this course in order to make welfare programs compatible with the economic and social realities of the day.

Two primary consequences may be inferred from this decision. First, a legislative or administrative agency may no longer set up classifications of

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34. Harper v. Virginia Bd. of Elections, 383 U.S. 663 (1966).

35. Skinner v. Oklahoma, 316 U.S. 535, 541 (1942).

36. *See, e.g.,* Griffin v. Illinois, 351 U.S. 12 (1956).

37. *See, e.g.,* Brown v. Board of Educ., 347 U.S. 483 (1954).

38. *See* FLA. STAT. ANN. §§409.205, .215, .225 (Supp. 1970) where the residency requirements in the statutes were noted to be similar to the residency requirements declared unconstitutional in *Shapiro.*

39. 394 U.S. 618, 638 n.21 (1969).

40. 394 U.S. 618, 655 (1969) (dissenting opinion).

41. Note, *Poverty Law—Unconstitutionality of Residence Requirements for Welfare Assistance,* 48 N.C.L. REV. 399, 403 (1970). Examples in Florida of suspect residence requirements are: FLA. STAT. §470.08 (1) (a) (1969) (provisions for embalmers); FLA. STAT. §470.08 (2) (a) (b) (1969) (provisions for funeral directors); FLA. STAT. §475.17 (2) (1969) (provisions for real estate brokers): FLA STAT. §482.132 (1969) (provisions for pest control operators); FLA. STAT. §473.08 (1) (1969) (provisions for public accountants); FLA. STAT. §240.052 (2) (a) (c) (1969) (provisions for university students).