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Residence Waiting Period Denies Equal Protection

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CONSTITUTIONAL LAW: RESIDENCE WAITING PERIOD DENIES EQUAL PROTECTION

In *Shapiro v. Thompson*,[1] the United States Supreme Court declared unconstitutional the provisions of two state statutes[2] and a District of Columbia Statute[3] which required a one year waiting period before an applicant could become eligible for welfare assistance.[4] In addition to the foregoing statutes, *Shapiro*, in effect, invalidated similar provisions in the welfare legislation of a great majority of the states.[5]

Shapiro involved six individuals who had been denied aid to families with dependent children and one permanently

[1] 394 U.S. 618 (1969).

[2] CONN. GEN. STAT. REV. § 17-2d (Supp. 1965), *cited in* Shapiro v. Thompson, 394 U.S. 618, 622 n.2 (1969); PA. STAT. tit. 62, § 432(6) (1968), *cited in* Shapiro v. Thompson, 394 U.S. 618, 626 n.5 (1969).

[3] D.C. CODE ANN. § 3-203 (1967), *cited in* Shapiro v. Thompson, 394 U.S. 618, 624 n.3 (1969).

[4] The Court affirmed the decisions below in three cases on appeal from three-judge district courts. Harrell v. Tobriner, 279 F. Supp. 22 (D.D.C. 1967), *aff'd sub nom.* Shapiro v. Thompson, 394 U.S. 618 (1969); Smith v. Reynolds, 277 F. Supp. 65 (E.D. Pa. 1967), *aff'd sub nom.* Shapiro v. Thompson, 394 U.S. 618 (1969); Thompson v. Shapiro, 270 F. Supp. 333 (D Conn. 1967), *aff'd*, 394 U.S. 618 (1969); *accord*, Denny v. Health & Social Servs. Bd., 285 F. Supp. 526 (E.D. Wis. 1968); Robertson v. Ott, 284 F. Supp. 735 (D. Mass. 1968); Ramos v. Health & Social Servs. Bd., 276 F. Supp. 474 (E.D. Wis. 1967); Green v. Department of Pub. Welfare, 270 F. Supp. 173 (D. Del. 1967). *Contra*, Waggoner v. Rosenn, 286 F. Supp. 275 (M.D. Pa. 1968), *vacated and remanded*, 394 U.S. 846 (1969).

[5] *See* Shapiro v. Thompson, 394 U.S. 618, 639 n.22 (1969). For a complete list of state statutory welfare residence requirements, see Note, *Residence Requirements in State Public Welfare Statutes*, 51 IOWA L. REV. 1080, 1091-95 (1966) (Appendix).

and totally disabled individual who had been denied aid. Each of the individual applicants met all requirements for welfare assistance except residence in his jurisdiction for one year immediately preceding his application. Accordingly, the denial of assistance by welfare authorities was based solely on each applicant's failure to meet the one year residence requirement. As a result, two classes of needy residents were created by the one year waiting period with the only distinction between the two groups being that one had resided in the state for at least one year while the other had resided in the state for less than one year.[6]

The principal objective advanced in support of the waiting period was a desire to deter the migration of indigent persons to states having higher welfare assistance payments. Thus, the proposition was that an influx of indigents would place an unwarranted burden on the financial resources of such states.[7] Before ruling on the constitutionality of the principal objective, the Court reaffirmed the right to travel among the states as a basic right under the Constitution.[8] Several prior decisions of the Court were cited as authorities which established this basic right to travel interstate; however, the majority was reluctant to attribute that right to any specific provision of the Constitution.[9] Then, the Court ruled that the avowed objective of impeding migration of indigent persons violated the basic constitutional right to travel interstate; and therefore, that objective could not be utilized to justify the residence requirement.[10]

Welfare authorities also argued four administrative and related governmental objectives in support of the waiting period. As stated by the Court, "the requirement (1) facilitates the planning of the welfare budget; (2) provides an

[6] 394 U.S. at 627.
[7] *Id.* at 627-28.
[8] *Id.* at 629-31.
[9] *Id.* at 630 n.8.
[10] *Id.* at 631.

objective test of residency; (3) minimizes the opportunity for recipients fraudulently to receive payments from more than one jurisdiction; and (4) encourages early entry of new residents into the labor force."[11]

While accepting the four propositions as proper state objectives, the Court ruled that they must be able to withstand the *compelling* state interest test before such objectives, would be constitutional under the equal protection clause.[12] That the *compelling* state interest test was the proper standard to be applied is clearly shown by the following statement:

> [I]n moving from State to State or to the District of Columbia appellees were exercising a constitutional right, and any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a *compelling* governmental interest, is unconstitutional.[13]

To determine whether the standard had been satisfied, the Court ascertained that the four objectives were not necessary to promote a *compelling* state interest because welfare authorities either did not use the objectives or could have accomplished them by some alternative method. Therefore, the residence requirement violated the equal protection clause of the fourteenth amendment.[14]

Although the opinion left no doubt that the *compelling* state interest test was determinative, it was noted that the waiting period would also be unconstitutional under traditional equal protection standards.[15] Traditional equal protection standards apply where the classification is *purely*

[11] *Id.* at 634.

[12] For other applications of the *compelling* state interest test, see Sherbert v. Verner, 374 U.S. 398, 406 (1963); NAACP v. Alabama *ex rel.* Patterson, 357 U.S. 449, 463 (1958).

[13] 394 U.S. at 634 (Citations omitted.) (emphasis by the Court).

[14] *Id.* at 634-38.

[15] *Id.* at 638.

arbitrary so that there is *no reasonable* basis for the classification.[16]

Since the equal protection clause of the fourteenth amendment does not apply to the District of Columbia, the waiting-period requirement of that jurisdiction was held unconstitutional under the due process clause of the fifth amendment. To reach that conclusion, the same reasoning that had been applied to the state statutes was held to be controlling as to the District of Columbia Statute. Thus, according to the Court, the classification created by the District's waiting period was so unjustifiable that it denied due process.[17]

Notwithstanding the alternative grounds noted in the majority opinion, clearly, the holding in *Shapiro* was grounded principally on the *compelling* state interest standard.[18] Based on that standard, a two step procedure was used to determine whether the classification created by the residence waiting period was constitutionally permissible under the equal protection clause. First, did the classification create a group whose members had been denied some *fundamental* right guaranteed by the Constitution? That question was answered in the affirmative because the members of the group which resulted from the residence requirement had been deprived of the *fundamental* right to travel among the states without restriction. Secondly, did the state objectives urged in support of the denial of a *fundamental* right qualify as *compelling* state interests? After answering that question in the negative, the Court distinctly stated the holding as follows:

> [T]he traditional criteria do not apply in these cases.

[16] Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78 (1911).
[17] 394 U.S. at 641-42.
[18] For a thorough analysis of the constitutionality of welfare residence requirements and the alternative theories available to the courts on that question, see Harvith, *The Constitutionality of Residence Tests for General and Categorical Assistance Programs,* 54 CALIF. L. REV. 567 (1966).

> Since the classification here touches on the fundamental right of interstate movement, its constitutionality must be judged by the stricter standard of whether it promotes a *compelling* state interest. Under this standard, the waiting-period requirement clearly violates the Equal Protection Clause.[19]

Under a plan for joint federal and state funding of welfare assistance, the residence requirements in *Shapiro* had been accepted by Congress. As provided by statute under the plan, federal approval was required for state plans which had a one year residence requirement for aid to dependent children and a five of nine years residence requirement for old age assistance, aid to the blind, and aid to the permanently and totally disabled.[20] Why did Congress adopt the foregoing residence requirements? Professor Harvith, Visiting Assistant Professor of Law and Legal Director, Project on Social Welfare Law, New York University School of Law, has suggested that Congress may have accepted state residence requirements because such requirements were traditional in assistance programs.[21] Whatever the reason, congressional acceptance could not authorize violation of the equal protection clause.[22]

Though the residence requirements in *Shapiro* were enacted under a joint federal-state program, the decision seems to be applicable to all state welfare assistance programs without regard to whether such programs are jointly funded by the federal government. There was no language in the majority opinion which could reasonably be interpreted as limiting the holding to an unconstitutional classification of otherwise eligible residents under programs partially funded

[19] 394 U.S. at 638 (Footnote omitted.) (emphasis by the Court).

[20] Social Security Act, 42 U.S.C. § § 302(b)(2), 602(b), 1202(b)(1), 1352(b)(1) (1964).

[21] Harvith, *The Constitutionality of Residence Tests for General and Categorical Assistance Programs,* 54 CALIF. L. REV. 567, 592 n.179 (1966).

[22] Shapiro v. Thompson, 394 U.S. 618, 641 (1969).

by the federal government. On the other hand, since the waiting period was held to be repugnant to the equal protection clause on the ground that it imposed an unconstitutional distinction between indigent applicants who had resided in the jurisdiction for one year and such applicants who had resided in the jurisdiction for less than one year, a statute which provided a waiting period for all indigent applicants would seem to be constitutionally permissible.[23]

Following *Shapiro*, some states may be inclined to consider legislation which excludes from welfare eligibility those persons who migrate to such states for the sole purpose of obtaining higher welfare assistance.[24] The constitutionality of a statute which included only persons seeking greater benefits was not specifically decided in *Shapiro* because the statutes considered by the Court excluded all new residents. However, dictum in *Shapiro* indicates that such a classification would also be repugnant to the equal protection clause. Mr. Justice Brennan speaking for the majority said:

> More fundamentally, a State may no more try to fence out those indigents who seek higher welfare benefits than it may try to fence out indigents generally. Implicit in any such distinction is the notion that indigents who enter a State with the hope of securing higher welfare benefits are somehow less deserving than indigents who do not take this consideration into account. But we do not perceive why a mother who is seeking to make a new life for her-

[23] *See Id.* at 637. *See Also* Note, *Social Welfare—An Emerging Doctrine of Statutory Entitlement,* 44 NOTRE DAME LAWYER 603 (1969) for a discussion of the constitutionally permissible limitations which the legislatures may place on indigents' statutory "rights" to welfare benefits. *But cf.* Sherbert v. Verner, 374 U.S. 398, 404 (1963), indicating that the distinction between *right* and *privilege* is no longer a controlling factor once a *privilege* has been granted by a state to some persons.

[24] *See* Shapiro v. Thompson, 394 U.S. 618, 676 n.35 (1969) (Harlan, J.) (dissenting opinion).

> self and her children should be regarded as less deserving because she considers, among others [sic] factors, the level of a State's public assistance. Surely such a mother is no less deserving than a mother who moves into a particular State in order to take advantage of its better educational facilities.[25]

Moving now to the Oklahoma Statutes which provide residence qualifications for welfare assistance,[26] it is noted that such statutes were also enacted pursuant to the plan for joint federal and state funding of welfare assistance.[27] Therefore, *Shapiro,* in effect, invalidated Oklahoma's welfare residence requirements. Oklahoma's waiting period for aid to dependent children was one year[28]— the same as the period involved in *Shapiro.* A similar residence period was required for aid to crippled children.[29] An extended residence requirement of five years within the nine years immediately preceding the application for assistance (the last year of the five years must immediately precede the application) was

[25] 394 U.S. at 631-32.

[26] Oklahoma Social Security Act, OKLA. STAT. tit. 56, § 164 (1961).

[27] Social Security Act, 42 U.S.C. §§ 301-1396 (1964), *as amended* (Supp. IV, 1968).

[28] Oklahoma Social Security Act, OKLA. STAT. tit. 56, § 164 (d) (1) provides in part:

> [Aid will be provided to a dependent child under eighteen years who] has been a resident of this state at least one (1) year immediately preceding the date of the application for assistance; or if under one (1) year of age was born within the year immediately preceding the date of the application for assistance and the parent or other relative with whom the child is living has resided in the state for one (1) year immediately preceding the date of birth. . . .

[29] Oklahoma Social Security Act, OKLA. STAT. tit. 56, § 164(c) (5) (1961).

provided for old age assistance,[30] aid to the blind,[31] and aid to the permanently and totally disabled.[32]

Welfare authorities in Oklahoma predict that the result of *Shapiro* will be a considerable increase in welfare costs to the State. According to State Welfare Director Lloyd Rader, Oklahoma has more generous welfare benefits than most surrounding states and can now expect to attract poor persons from such states. Thus, it is estimated that the *Shapiro* ruling could add as many as 17,000 persons to the welfare roles at a cost of $6,000,000 annually.[33]

However, it is submitted that the *Shapiro* decision may not increase costs to the extent estimated in the foregoing paragraph. For example, in *Smith v. Reynolds*,[34] the weight of the evidence showed that poor persons generally did not migrate to the State of Pennsylvania for the purpose of obtaining higher welfare payments. Moreover, the cost of providing assistance to new residents would not constitute a significant position of the welfare budget in that State.[35] Furthermore, some studies indicate that the costs attributable to the administration of residence requirements may exceed the welfare payments which would become necessary in the absence of such requirements.[36]

Whatever the ultimate result in additional welfare costs in Oklahoma, all welfare programs may be slated for drastic revisions as a result of the *Shapiro* decision. Oklahoma State

[30] *Id.* § 164(a) (1).
[31] *Id.* § 164(b) (1).
[32] *Id.* § 164(e) (1).
[33] Tulsa World, April 22, 1969, § A, at 1, col. 2; *Id.*, April 23, 1969, § A, at 1, col. 3.
[34] 277 F. Supp. 65, 66 (E.D. Pa. 1967), *aff'd sub nom.* Shapiro v. Thompson, 394 U.S. 618 (1969).
[35] 277 F. Supp. at 67.
[36] Note, *Residence Requirements in State Public Welfare Statutes*, 51 IOWA L. REV. 1080, 1083 (1966); cf. Smith v. Reynolds, 277 F. Supp. 65, 67 (E.D. Pa. 1967), *aff'd sub nom.* Shapiro v. Thompson, 394 U.S. 618 (1969). *But see* Harvith, *supra* note 21, at 615-17.

Welfare Director Lloyd Rader feels that the elimination of residence requirements may reduce the time until state welfare programs will be completely federalized.[37] Also, the Secretary of Health, Education and Welfare, Robert Finch, has indicated that some form of national minimum welfare program may become necessary now that welfare residence requirements have been declared unconstitutional.[38]

It is the opinion of this writer that the *compelling* state interest standard will be applied extensively by the Supreme Court to all state laws which are challenged on the ground that such laws create a forbidden classification under the equal protection clause of the fourteenth amendment. Undoubtedly, the constitutionality of other residence waiting-period requirements, such as residence prerequisites for voter eligibility, resident college tuition and professional licenses, will be challenged in actions based on the *Shapiro* rationale. And it is probable that the rationale of *Shapiro* will not be limited to residence requirements. Thus, one who attacks the validity of any state classification on the basis of *Shapiro* must establish that the challenged state law results in the denial of a *fundamental* constitutional right and that the grounds for such denial fail to qualify as *compelling* state interests. Accordingly, *Shapiro* established a clearly defined standard to be applied whenever a state classification can be brought within the *compelling* state interest doctrine.

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[37] Tulsa World, April 22, 1969, § A, at 1, col. 2.
[38] *Id.*, May 1, 1969, § A, at 1, col. 6.