IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 813

BERNARD SHAPIRO, WELFARE COMMISSIONER OF CONNECTICUT

Appellant

v.

VIVIAN THOMPSON

Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

AMICUS CURIAE BRIEF OF THE STATE OF TEXAS

To the Honorable Supreme Court of the United States:

NOW COMES the State of Texas in its sovereign capacity by Crawford C. Martin, its Attorney General, and files this amicus curiae brief pursuant to Subdivision 4 of Rule 42 of the Supreme Court Rules in support of the jurisdictional statement of Appellant, upon the condition that such appearance will not have the effect of making the State of Texas or any of its agencies parties to this litigation.

The interest of the State of Texas is revealed by the fact that Section 51a of Article III of the Constitution of Texas and the provisions of Article 695c, Vernon's Texas Civil Statutes, likewise contain residency requirements regarding the granting of public moneys to needy individuals. The validity of these residency

requirements is the subject matter in Civil Action No. 68-18-SA, styled *Alvarez, et al. v. Hackney, et al.,* currently pending in the United States District Court, Western District of Texas, San Antonio Division.

Section 51 of Article III of the Constitution of Texas in its original form as placed in the Constitution of 1876 prohibited the making of "any grant of public moneys to any individual, or association of individuals whatsoever." This prohibition is still retained in Section 51 of Article III of the Constitution of Texas. Section 51a of Article III of the Constitution of Texas was adopted as an exception to Section 51 rather than repealing the prohibition. In 1933 Section 51a of Article III of the Constitution of Texas was adopted which authorized the issuance and sale of bonds of the State of Texas not to exceed the sum of $20,000,000.00; "the proceeds of the sale of such bonds to be used in financing relief and work relief to needy and distressed people and in relieving the hardships resulting from unemployment, . . ." S.J.R. No. 30 of the 43rd Legislature, 1933. In 1935 the Constitution was again amended so as to authorize old age assistance to "actual bona fide citizens of Texas who are over the age of sixty-five (65) years, . . ." H.J.R. No. 19 of the 44th Legislature, 1935.

Various other amendments to Section 51a of Article III have been adopted so as to authorize the Legislature to grant public moneys to specified resident needy individuals. Section 51a of Article III of the Constitution of Texas at the present time provides:

> "Sec. 51a. The Legislature shall have the power, by General Laws, to provide, subject to limitations herein contained, and such other limitations,

restrictions and regulations as may by the Legislature be deemed expedient, for assistance to and/or medical care for, and for rehabilitation and any other services included in the Federal legislation providing matching funds to help such families and individuals attain or retain capability for independence or self-care, and for the payment of assistance to and/or medical care for, and for rehabilitation and other services for:

"(1) Needy aged persons who are citizens of the United States or noncitizens who shall have resided within the boundaries of the United States for at least twenty-five (25) years and are over the age of sixty-five (65) years;

"(2) Needy individuals who are citizens of the United States who shall have passed their eighteenth (18th) birthday but have not passed their sixty-fifth (65th) birthday and who are totally and permanently disabled by reason of a mental or physical handicap or a combination of physical and mental handicaps;

"(3) Needy blind persons who are citizens of the United States and who are over the age of eighteen (18) years;

"(4) Needy children who are citizens of the United States and who are under the age of twenty-one (21) years, and to the caretakers of such children.

"The Legislature may define the residence requirements, if any, for participation in these programs.

"The Legislature shall have authority to enact appropriate legislation which will enable the State of Texas to cooperate with the Government of the United States in providing assistance to and/or medical care on behalf of needy persons, and in providing rehabilitation and any other services

included in the Federal legislation providing matching funds to help such families and individuals attain or retain capability for independence or self-care, and to accept and expend funds from the Government of the United States for such purposes in accordance with the laws of the United States as they now are or as they may hereafter be amended, and to make appropriations out of State funds for such purposes; provided that the maximum amount paid out of State funds to or on behalf of any individual recipient shall not exceed the amount that it matchable out of Federal funds; provided that the total amount of such assistance payments and/or medical assistance payments out of State funds on behalf of such recipients shall not exceed the amount that is matchable out of Federal funds; provided that if the limitations and restrictions herein contained are found to be in conflict with the provisions of appropriate Federal statutes as they now are or as they may be amended, to the extent that Federal matching money is not available to the State for these purposes, then and in that event the Legislature is specifically authorized and empowered to prescribe such limitations and restrictions and enact such laws as may be necessary in order that such Federal matching money will be available for assistance and/or medical care for or on behalf of needy persons; and provided further that the total amount of money to be expended per fiscal year out of State funds for assistance payments only to recipients of Old Age Assistance, Aid to the Permanently and Totally Disabled, Aid to the Blind, and Aid to Families with Dependent Children shall never exceed Sixty Million Dollars ($60,000,000).

"Nothing in this Section shall be construed to amend, modify or repeal Section 31 of Article XVI of this Constitution; provided further, how-

ever, that such medical care, services or assistance shall also include the employment of objective or subjective means, without the use of drugs, for the purpose of ascertaining and measuring the powers of vision of the human eye, and fitting lenses or prisms to correct or remedy any defect or abnormal condition of vision. Nothing herein shall be construed to permit optometrists to treat the eyes for any defect whatsoever in any manner nor to administer nor to prescribe any drug or physical treatment whatsoever, unless such optometrist is a regularly licensed physician or surgeon under the Laws of this State." (Emphasis ours.)

While various other constitutional amendments have been adopted from time to time authorizing certain exceptions to the prohibition concerning grants of public moneys to individuals contained in Section 51 of Article III of the Constitution of Texas, we believe that the foregoing constitutional amendments are sufficient to show the method and pattern of providing public assistance to individuals by the State of Texas, and thus the interest of the State of Texas in this appeal.

We therefore adopt the jurisdictional statement of Appellant, the authorities cited therein, as well as the authorities cited in the dissenting opinion of this cause in the lower court. In addition thereto we call the Court's attention to Civil Action No. 9841, *Waggoner v. Rosenn,* in the United States District Court for the Middle District of Pennsylvania (not yet reported), wherein the court stated:

"The one-year residence requirement in the Connecticut, Delaware, Pennsylvania and District of Columbia acts has been ruled unconstitutional by three-judge District Courts in 1967: Thompson

v. Shapiro, 270 F.Supp. 331 (D. Conn.); Green v. Department of Public Welfare, 270 F.Supp. 173 (D. Del.); Smith v. Reynolds, —— F.Supp. —— (E.D.Pa.); Harrell v. Tobriner, —— F.Supp. —— (D.D.C.). The court was unanimous only in Green; dissenting opinions were filed in the other cases cited. It may be noted that the writer of this opinion dissented in Smith v. Reynolds, and that Chief Judge Sheridan, who is here dissenting, was a member of the majority in that case.

"We have taken into consideration the contrary views expressed in the foregoing cases. We can only say that the courts therein have substituted their judgment for that of the legislatures of forty states and the Congress of the United States as expressed in the enactment of the District of Columbia Public Assistance Act and Section 602(b), 42 U.S.C.A. of the Social Security Act, which, in providing for federal contributions to state-administered public assistance programs specified that states may establish a one-year residence eligibility requirement. We can only say that we regard the substitution of judicial judgment for that of legislative judgment as nothing less than judicial usurpation of the legislative function in disregard of the doctrine of separation of powers so firmly established since the founding of our Republic, and of the teaching of numerous decisions of the Supreme Court.

"There remains this, too, to be said, with respect to the plaintiffs' asserted claim that the one-year residence eligibility requirement is unconstitutional because it abridges their right of freedom to travel from one state to another in contravention of the interstate commerce clause of the Constitution, Article I, Section 8.

"In our opinion this claim is so specious and unfounded that it does not merit extended discus-

sion. It is only necessary to say that the Pennsylvania statute does not prohibit travel into the Commonwealth, as evidenced by the fact that the plaintiffs in the instant case were freely permitted entry. The fact that the one-year eligibility requirement may operate to affect a decision to travel into Pennsylvania cannot by any stretch of the imagination be construed as a 'statutory' bar to travel.

"For the reasons stated we hold that the one-year residence requirement as a condition of eligibility for public assistance grants to needy families, provided by Section 432(6) of the Pennsylvania Public Welfare Code, Act of June 13, 1967, is constitutional. The plaintiffs' complaint will be dismissed for failure to state a claim upon which relief can be granted."

Respectfully submitted,

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