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Cases Cited

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In the

Supreme Court of the United States

October Term, 1967

No. 813

Bernard Shapiro, Welfare Commissioner of Connecticut,
Appellant,

v.

Vivian Thompson,
Appellee.

No. 1134

Walter E. Washington, *et al.*,
Appellants,

v.

Minnie Harrell, *et al.*,
Appellees.

No. 1138

Roger A. Reynolds, *et al.*,
Appellants,

v.

Juanita Smith, individually, and by her,
her minor children, *et al.*,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT, THE DISTRICT OF COLUMBIA, AND THE EASTERN DISTRICT OF PENNSYLVANIA, RESPECTIVELY

BRIEF OF THE CITY OF NEW YORK AS *AMICUS CURIAE*

This brief is submitted by the City of New York as *amicus curiae* pursuant to subdivision 4 of Rule 42 of the Rules of this Court.

Interest of the *Amicus Curiae*

The City of New York by its Corporation Counsel, the authorized law officer thereof, has an essential interest in joining with the appellees in the above captioned cases to urge this Court to invalidate the statutes in question, which permit or prescribe a durational residence requirement for eligibility for aid to families with dependent children and other forms of public assistance under federally-aided programs.

New York State provides assistance under its Aid to Dependent Children and other social welfare programs to all eligible persons who reside in the state at the time application for assistance is made. *E.g.,* New York Social Services Law (formerly Social Welfare Law), §§349, 366 (52-A McKinney's Consolidated Laws of New York).

The unavailability in other states of such assistance for up to one year to persons otherwise eligible but for lack of sufficient residence, represents an arbitrary denial of rights, privileges and benefits conferred by federal law. Accordingly, New York City takes the position that neither the federal government nor a state may deny such assistance solely on the grounds of less than one year's residence.

Therefore, pursuant to Rule 42 of the Rules of this Court, the Corporation Counsel, on behalf of the City of New York appears as *amicus curiae* in support of appellees'

contention that the durational residence requirements in question violate the right of appellees under the Due Process and Equal Protection clauses of the Constitution.

POINT I

It is an invidious discrimination and, therefore, a violation of the Due Process clause of the Fifth Amendment for Congress to so limit or to allow the States to impose up to a one-year residence requirement on the distribution of funds furnished by the Federal Government for persons who are in need of the very essentials of life for survival.

Congress has determined that certain persons, not able to care for themselves, may receive from the state in which they live and shall receive from the federal government, subject to durational residence requirements, if any, of the states, at least sufficient aid to assure their survival. Such persons are defined in broad terms as the dependent children of needy families. These purposes and classifications are found in the preliminary statements of the appropriate sub-chapters of the Public Health and Welfare Law, 42 U. S. C., *e.g.* §§301, 601.

The federal government undertook the responsibility, through the Social Security Act, to aid these categories of needy persons. In establishing the AFDC program and in similar provisions, Congress decreed that, in every state participating in the program, poor persons of the described classes had a federal right to receive certain minimum assistance. Having assumed that obligation, neither the federal government nor the participating states may unreasonably deprive any member of such defined classes of those benefits. *Sherbert* v. *Verner,* 374 U. S. 398, 404 (1963). The arbitrary denial of such federal or state statutory

benefits by the states' durational residence requirements constitutes a denial of due process and the equal protection of the laws guaranteed by the Fifth Amendment and the Fourteenth Amendment. *Carrington* v. *Rash,* 380 U. S. 89 (1965). Similarly, denial by the federal government directly through its legislation or indirectly by permitting the states to withhold those benefits, in combination with federal assistance, is a denial of due process of the law. *Bolling* v. *Sharpe,* 347 U. S. 497 (1954). Nor could congressional approval validate such an unconstitutional state legislative act. *Reynolds* v. *Sims,* 377 U. S. 533, 582 (1964).

Although appellants have argued that there are sound reasons for discriminating between long time residents and recent arrivals in bestowing benefits under federally-aided welfare programs, counsel for the appellees have vigorously demonstrated, not only that the stated purposes of the durational residence laws are unreasonable and unlawful, but that the states with such laws have failed to accomplish their objectives though persisting in their unreasonable discriminatory methods. See Supplemental Brief for Appellees at pages 22-42. For example, a 1959 study revealed that several states with durational residence requirements had higher increases in their AFDC caseloads than did New York City, during the same period. DUMPSON, *Are Residence Laws Necessary?* Minnesota Welfare 1-14 (Vol. II, No. 4, Winter 1959).

The New York City experience indicates further, the extent to which exclusionary devices like residence requirements fail to accomplish their aims. Three provisions of the New York Social Services Law set forth alleged safeguards against abuse of the state welfare laws. Section 139-a provides that a person becomes ineligible if local welfare office believes that the person in the State for six months or less has come to the State for the sole purpose of getting aid and an investigation confirms this suspicion.

Section 149 makes it a misdemeanor to bring an indigent person into New York State in order to make him a public charge. Finally, Section 121 says that, if a recipient has out of state relatives, he may be sent to join them if the "interest of the State and welfare of such person will be thereby promoted." The infrequency with which these statutes are invoked and the negligible number of cases, in comparison with the size of the program, in which the findings of violation are upheld indicate both the inadequacy of such laws in determining immigration of the needy and the relatively small number of persons coming to New York solely for its welfare benefits. See Office of Social Research and Statistics, New York State Department of Social Welfare (now Department of Social Services), Summary of operations under the "Anti-Abuse Law" (Research Brief #4, June 14, 1965); District of Columbia Brief for Appellees, pp. 49-51, n. 70; *Amicus* Brief, Center on Social Welfare Policy and Law, pp. 24-30.

It has been the policy of this Court in its recent decisions to dispose of legal distinctions that deprive persons of their constitutional rights. In scrutinizing the premises upon which such distinctions were built, this Court has not hesitated to look beyond stated purposes and rationale to see the real right or interest that the constitutional provision seeks to protect. This has been true in recent cases dealing with the Fourth Amendment right to be secure from unreasonable searches and seizures. The Court has dissolved the forty year old distinction between trespassory and non-trespassory intrusions in order to take account of modern, sophisticated methods of effecting a constitutionally unreasonable seizure. *Berger* v. *New York,* 388 U. S. 41 (1967); *Katz* v. *United States,* 389 U. S. 347 (1967). This Court has also sought to remove artificial distinctions applied to those places which are or are not protected from unreasonable searches. *Camara* v.

Municipal Court, 387 U. S. 523 (1967); *See* v. *City of Seattle,* 387 U. S. 541 (1967).

Similarly, in determining whether a particular class of persons is protected under the due process and equal protection clauses, this Court will take account of today's reality. The federal statutes and the policy of Congress underlying the various Social Security laws must be viewed in relation to a period of geographic and economic mobility unparalleled in our history. See *Amicus* Brief, Center on Social Welfare Policy and Law, *supra* at p. 23. Can it seriously be argued that Congress intended to exclude large numbers of Americans from participating in this mobility via an archaic poor law concept derived from Elizabethan times? *Id.,* at pp. 10-13 and appendix A; District of Columbia Brief for Appellees, nn. 59, 60. Furthermore, modern studies of population trends have disproved the historic justification for discrimination based on length of residence. See *Amicus* Brief, Center on Social Welfare Policy and Law, pp. 24-30; Connecticut Brief for Appellees, pp. 8-9.

The notion of length of residence as a condition is no longer considered consistent with the rights and privileges sought to be protected by social welfare laws. Nor is it congruent with the unlimited availability of other municipal services such as fire and police protection, medical and hospital care, mental treatment and hospitalization and subsidized housing. Equally important, such a notion is not consistent with more recent trends in federal legislation in this field.

State plans which include such arbitrarily administered durational residence laws specifically conflict with the requirements of recent amendments to the Social Security Act. For example in 42 U. S. C. §1396 there is provision for federal grants to the states for the purpose of provid-

ing medical assistance to needy families with dependent children and to the aged, blind or permanently disabled who are unable to afford medical services. Section 1396a (b) (3) specifically provides that the Secretary shall *not* approve any state plan under this program which imposes "any residence requirement which excludes any individual who resides in the State." How can this Court perpetuate an unconstitutional dichotomy in the same federal social welfare statute by permitting a factor totally unrelated to the purpose of that law to deprive a poor person of the minimum public assistance necessary for survival, but which then offers medical assistance to the poor unfortunate after the original denial of aid takes its toll on his health? It is against just such a confused and contradictory result that the due process and equal protection clauses were intended to guard. See *E.g., Rinaldi* v. *Yeager,* 384 U. S. 305 (1966); *McLaughlin* v. *Florida,* 379 U. S. 184 (1964). See also *Carrington* v. *Rash* and *Bolling* v. *Sharpe, supra.*

POINT II

It is a violation of the Due Process clause of the Fifth Amendment for Congress to provide for or to authorize the States to impose a durational residence requirement on the distribution of funds furnished by the federal government for the needy and thereby restrict or prohibit the travel of the poor to any part of the United States.

Not only do states with durational residence laws fail to accomplish their assigned purposes, but they are responsible for imposing a greater burden on states like New York which have no such laws. Insofar as residence laws are a deterrent to free choice in determining where to live, many poor persons are prevented, in effect, from moving

to the place of their first choice or to one which would otherwise afford them the greatest opportunity. For this reason such a person may settle in New York, or decide not to leave New York, even though he would have preferred to live somewhere else. This does not mean that such persons have come to New York just to be able to receive generous public assistance immediately. Rather, it indicates that a poor person usually must protect himself against the event that his job offer may fail to work out, that relatives may not be able to give promised assistance or that an unforeseen calamity may occur. The promise implicit in the Social Security Act is that, under such circumstances, he will be granted assistance. This promise remains unfulfilled because the federal government permits the states in a combined effort to deny this aid for up to a year.

The logic of the situation is borne out by the studies cited by appellees showing that a vast majority of persons applying for assistance within the first year of residence are those who did so only after a period of several months or who had not been receiving public assistance in the state from which they came. In other words, their situations had changed and, while they did not move in anticipation of becoming public charges, later events caused them to become such dependents.

To the extent that the federal government permits an unconstitutional condition such as a durational residence requirement to attach to its statutory grants of funds to the states, it helps to defeat the two principal objectives of the public assistance program. That assistance is intended to help a needy person survive until he can become self-sustaining and to permit the rehabilitation of the poor by providing aid while they learn a trade, go to school or overcome a temporary setback.

In a nation which has elevated the privilege to move freely throughout the land to a constitutional right of

national citizenship, it is unthinkable that the policy of the federal government continues to be responsible for limiting this freedom. See *Crandall* v. *Nevada,* 73 U. S. 35 (1867); *Edwards* v. *California,* 314 U. S. 160 (1941). Congress has wisely enacted legislation to enable the poor to share in the rights and privileges of other citizens, but it is incredible that it should permit federal funds granted for this purpose to be used so as to limit the right to move freely from one state to another.

As the experience of most states indicates, it is not unreasonable to expect that a person, especially if he has limited resources, will be deterred from going to a state which presents the greatest opportunity to him if he fears that, for up to a year, he may be without help should circumstances make it necessary for him to seek it. Such a possibility is no less remote than the one in which this Court said *Dombrowski* v. *Pfister,* 380 U. S. 479, 486 (1965):

> "A criminal prosecution under a statute regulating expression usually involves imponderables and contingencies that themselves may inhibit the full exercise of First Amendment freedoms . . . . When the statutes also have an overbroad sweep, as is here alleged, the hazard of loss or substantial impairment of those precious rights may be critical. For in such cases, the statutes lend themselves too readily to denial of those rights."

The distortion of the national patterns of population movement and of mobility of persons in our country, the threat to the future of millions of persons, the denial of equal protection and due process caused as they are by overly broad and oppressive state legislation combined with federal permissiveness in the use of federal funds in support of such action, are no less threats to be pro-

tected against than the "chilling effect" on the exercise of First Amendment freedoms in *Dombrowski.*

If the federal government is going to use the states as instruments for disbursing federal revenues for the benefit of people of the United States, it is intolerable that the federal government can permit the states to discriminate unreasonably among persons in the class of those which it intended to help. Just as the states are prohibited by the Equal Protection Clause from denying to persons on the arbitrary basis of length of residence, a statutory right, the federal government is similarly prohibited. This Court has held that federal action which results in the unreasonable deprivation of an individual's rights is in contravention of the due process clause of the Fifth Amendment. This was so determined because that clause is derived from the same basic concepts which prevent discriminatory state action. *Bolling* v. *Sharpe, supra.*

The federal program favors those states which participate in invidious discrimination against the poor by their durational residence requirements in the allocation of federal funds. Such states are permitted to thwart the primary purpose of the federal statute, shift part of their responsibilities to other states, deny basic rights to many of their underprivileged citizens through unconstitutional restrictions, and still obtain the benefits of federal monies.

The only adequate and complete solution to both the legal and social problems created by a welfare program that perpetuates unconstitutional devices like durational residence requirements, must be provided by the Congress, not this Court. Such a statutory resolution of a problem which is now of national, rather than local scope, may at some time include the elements recommended by the National Advisory Commission on Civil Disorders of:

a. Minimum, uniform standards of eligibility for, and amount of, assistance.

b. Variations in payments, above the minimum based on local cost of living factors, or higher state funding for other reasons satisfactory to the state involved.

c. Full funding by the federal government.

d. Elimination of unreasonable classifications and categories of assistance.

Report of the National Advisory Commission on Civil Disorders, pp. 461-467.

However, in the interim this Court can require the elimination of the unconstitutional elements of the present federally aided welfare programs. The decision in *Smith* v. *King,* 277 F. Supp. 31 (D. Ct., Ala. 1967), represents one such action. Striking down unconstitutional durational residence laws or the federal laws permitting such discrimination, especially in combination with the use of federal funds, is another.

CONCLUSION

The judgments of the Courts below should be affirmed.

October 8, 1968.

Respectfully submitted,

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