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CASES

STATUTES

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 813

BERNARD SHAPIRO, Welfare Commissioner of Connecticut,
Appellant,

vs.

VIVIAN THOMPSON,
Appellee.

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

BRIEF OF THE STATE OF IOWA AS AMICUS CURIAE ON BEHALF OF APPELLANT

INTEREST OF THE STATE OF IOWA

The Iowa Statute providing Aid to Dependent Children has an eligibility requirement of one year's residence in the state. Those persons, however, once eligible and receiving Aid to Dependent Children assistance, continue to receive assistance even after they have moved from the state for a period not to exceed one year.[1]

1. Appendix A.

The Iowa Statute authorizes the State Treasurer to accept federal funds appropriated "for expenditures upon authorization of the state board.[2] The State and Counties share equally in providing state matching funds for Aid to Dependent Children grants.[3]

The appropriations from the general fund of the State of Iowa are fixed-dollar amounts[4] and not "open-end" depending upon increased demands. Appropriations are set biannually by the General Assembly from projected budgets as required by statute. These are based upon past case load experience.

At the present time there is pending in the United States District Court for the Northern District of Iowa (Eastern Division) a case challenging the constitutionality of an Iowa Statute, which contains a residence requirement to qualify for Old-Age Assistance. In that case, *Mary L. Sheard* v. *Department of Social Welfare*[5] it is urged, as in the instant case, that the resident requirement violates the provisions of the Fourteenth Amendment of the Federal Constitution.

If, for no other reason, the residency law in Iowa is necessary in the long-range planning for legislative appropriations. It also assures those receiving Aid to Dependent Children assistance that they can expect that there will be no substantial decreases in their individual grants, since

2. Currently, the funds are apportioned as follows: approximately 60 per cent from federal government to State Treasurer; approximately 20 per cent from State Treasury and 20 per cent from county appropriations.

3. Appendix B and C.

4. Appendix B.

5. *Mary L. Sheard, plaintiff* v. *Department of Social Welfare,* Civil Case No. 67-C-521-EC. Pre-trial conferences have been held; Ruling on Motion to Dismiss reserved until trial date (Probably May or June, 1968).

they are included in the calculations upon which the legislature based its appropriations.

The State of Iowa does not believe its statute to be unconstitutional and although its law differs somewhat, it joins with the State of Connecticut in its contention that its law does not offend the provisions of the Federal constitution.

ARGUMENT

This court has long recognized a distinction in an inherent or natural right, which is also sometimes referred to as a constitutional right, as distinguished from a statutory right created by the law-making body. This was pointed out in *Madden* v. *Commonwealth of Kentucky*,[6] in which we read:

> "The court has consistently refused to list completely the rights which are covered by the clause, though it has pointed out the type of rights, protected.[21]"

In the footnote 21, we read:

> "They have been described as 'privileges and immunities arising out of the nature and essential character of the national government and granted or secured by the constitution of the United States. *In re Kemmler*, 136 U.S. 436 . . ."

This court further said in that case:

> "We think it quite clear that the right to carry out an incident to a trade, business or calling . . . is not a privilege of national citizenship."

The reason the distinction thus made is important to note is the difference in the degree of discretion reposed in a

6. *Madden* v. *Commonwealth of Kentucky et al.*, 60 S. Ct. 406, 410, 309 U.S. 83.

law-making body to provide certain classifications as to "statutory rights."

The humanitarian act of a state legislature enacting laws which provide financial assistance to residents who cannot earn sufficient wages by their labors within that community, creates a statutory right. It does not concern the natural or constitutional rights guaranteed by the Constitution nor is being a beneficiary under such law a privilege of national citizenship. Nor, does it take from those providing funds for welfare purposes, their property without due process of law.

When laws have been under attack as taking property without due process of law, this court has time and time again disposed of the matter by recognizing the wide discretion vested in the law-making branch of the government. "Whether the present expenditure serves a public purpose is a practical question addressed to the law-making department, and it would require a plain case of departure from every public purpose which could reasonably be conceived to justify the intervention of a court . . ." was the language used in the *Carmichael* v. *Southern Coal and Coke Co.,* case[7] and these words we read in *United States* v. *Realty Co.:*[8]

> ". . . claims founded upon equitable and moral considerations and grounded upon principles of right and justice, we think that generally such questions must in its nature be one for Congress to decide for itself. Its decision recognizing such a claim and appropriating money for its payment can rarely, if ever, be the subject of review by the judicial branch of the government."

7. *Carmichael et al.* v. *Southern Coal & Coke Co.,* 57 S. Ct. 868, 875; 301 U.S. 495.

8. *United States* v. *Realty Co.,* 163 U.S. 427, 443.

In the *Green* v. *Frazier case*,[9] this court again pointed out that "questions of policy are not submitted to judicial determination, and the courts have no general authority of supervision over the exercise of discretion which under our system is reposed in the people or other departments of government." Repeatedly, this court has recognized the wide discretion of a law-making body concerning fiscal matters.

In the *Allied Stores of Ohio case*,[10] this court said:

> "The States have a very wide discretion in the laying of their taxes. When dealing with their proper domestic concerns, and not trenching upon the prerogatives of the National Government or violating the guaranties of the Federal Constitution, the States have the attribute of sovereign powers in devising their fiscal systems to ensure revenue and foster their local interest . . .
>
> ". . . if the selection or classification is neither capricious nor arbitrary, and rests upon some reasonable consideration of dfference or policy, there is no denial of the equal protection of the law. (Citations)
>
> ". . . Similarly, it has long been settled that a classification, though discriminatory, is not arbitrary nor violative of the equal protection clause of the fourteenth amendment if any state of facts reasonably can be conceived that would sustain it. *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61, 78, 31 Sup. Ct. 337, 340 . . . (other citations)."

And as to classifications

> "grant government the right to select the differences upon which the classification shall be based, and they

9. *Green et al.* v. *Frazier, Governor, et al.*, 40 S. Ct. 499, 502, 253 U.S. 233.

10. *Allied Stores of Ohio, Inc.* v. *Bowers*, 79 S. Ct. 437, 440, 358 U.S. 522.

> need not be great or conspicuous. *Keeney* v. *New York*, 222 U.S. 536, 56 L. Ed. 305, 38 L.R.A. (N.S.) 1139, 32 Sup. Ct. Rep. 105. The state is not bound by any rigid equality. This is the rule; its limitation is that it must not be exercised in 'clear and hostile discriminations between particular persons and classes'."[11]

Again, this court in *Bell* v. *Commonwealth*[12] said:

> "We think that we are safe in saying that the fourteenth amendment was not intended to compel the states to adopt an iron rule of equal taxation."

The classification respecting beneficiaries of tax funds has also been before this court. In *Carmichael* v. *Southern Coal & Coke Co.*[13] we find these words:

> "This Court has long and consistently recognized that the public purposes of a state, for which it may raise funds by taxation, embrace expenditures for its general welfare (Citations) . . .
>
> ". . . What we have said as to the validity of the choice of the subjects of the tax is applicable in large measure to the choice of beneficiaries of the relief. In establishing a system of unemployment benefits the legislature is not bound to occupy the whole field. It may strike at the evil where it is most felt. (Citations)"

Courts have frequently advanced some theories as to the legislative intent although recognizing that the "special reasons, motives or policies" of the legislature for adopting the questioned law is not important nor are they required to make such inquiry.[14] Nevertheless, it has been said ". . .

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11. *Citizens' Telephone Company, Appt.* v. *Oramel B. Fuller, Auditor General of the State of Michigan,* 33 S. Ct. 833, 836, 229 U.S. 332.

12. *Bell's Gap R. Co.* v. *Commonwealth of Pennsylvania,* 10 S. Ct. 533, 535, 16 Atl. Rep. 593.

13. *Carmichael et al.* v. *Southern Coal & Coke Co.,* 57 S. Ct. 868, 875, 877, 301 U.S. 495.

14. *Southwestern Oil Co.* v. *State of Texas,* 126 S. Ct. 496, 500, 217 U.S. 114.

it may reasonably have been the purpose and the policy of the State Legislature, in adopting the proviso, to encourage the construction or leasing and operation of warehouses[15] . . ."; ". . . that the opportunity to secure and maintain homes would promote the general welfare[16] . . .". "We are not convinced the legislature might not fairly conclude this law in its practical operation will both benefit and encourage agriculture."[17] At page 418 we read:

> "At least there is room for argument that both agriculture and the reorganization of our school districts will be encouraged as contributions to the welfare of the state as a whole. At best the question is not beyond the zone of doubt in which the legislative determination is conclusive on the courts."[18]

It might here be appropriate to suggest that perhaps the Connecticut legislature had no evil intention in enacting this law. Perhaps the law as worded was to encourage a newcomer to join the labor market of the community with the assurance that, if after obtaining employment he for some reason is disappointed in his hopes to be gainfully employed, he may share in welfare programs. Such encouragement could not be said to be an undesirable goal and one which would promote the general welfare of the entire state.

It appears that there is at least sufficient doubt as to the legislative intent in inserting this proviso as to overcome the presumption long recognized by this court.

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15. *Allied Stores of Ohio, Inc.* v. *Bowers,* 79 S. Ct. 437, 442, 358 U.S. 522.

16. *Green* v. *Frazier,* 40 S. Ct. 499, 502, 253 U.S. 233.

17. *Dickinson* v. *Porter,* 35 N.W.2d 66, 240 Iowa 393, 409, Appeal dismissed 70 S. Ct. 88, 338 U.S. 843, 94 L. Ed. 515.

18. *Dickinson* v. *Porter,* 35 N.W.2d 66, 240 Iowa 393, 418, Appeal dismissed 70 S. Ct. 88, 338 U.S. 843, 94 L. Ed. 515.

This court in *Corporation Commission* v. *Lowe*[19] said:

> "It is to be presumed that the state in enforcing its local policies will conform its requirements to the federal guaranties. Doubts on this point are to be resolved in favor of, and not against, the state."

To say it another way as did Mr. Justice Douglas who delivered the opinion for the court in *Federal Housing Administration* v. *Darlington, Inc.*[20] quoting from the Sinking Fund cases[21]:

> " 'Every possible presumption is in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt.' "

This court in *Green* v. *Frazier*[22] further recognized the presumption in these words:

> "When the constituted authority of the state undertakes to exert the taxing power, and the question of the validity of its action is brought before this court, every presumption in its favor is indulged, and only clear and demonstrated usurpation of power will authorize judicial interference with legislative action.
>
> ". . . With the wisdom of such legislation, and the soundness of the economic policy involved we are not concerned. Whether it will result in ultimate good or harm it is not within our province to inquire."

And, again in the *Madden* case,[23] this court said:

> "The burden is on the one attacking the legislative arrangement to negative every conceivable basis which

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19. *Corporation Commission of Oklahoma et al.* v. *Lowe,* 50 S. Ct. 397, 399, 281 U.S. 431

20. *Federal Housing Administration* v. *Darlington, Inc.,* 79 S. Ct. 141, 358 U.S. 80.

21. *Sinking Fund cases,* 99 U.S. 700, 718, 25 L.Ed. 496.

22. *Green et al.* v. *Frazier,* 40 S. Ct. 499, 501, 502, 253 U.S. 233.

23. *Madden* v. *Commonwealth of Kentucky et al.,* 60 S. Ct. 406, 408, 309 U.S. 83.

might support it. *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U.S. 61, 78, 79, 31 S. Ct. 337, 340, 55 L.Ed. 369, Ann. Cas. 1912C, 160."

As to the specific Aid to Dependent Children statutes of Iowa, it is obvious that there was no intention on the part of the legislature to discriminate against non-residents. This is demonstrated by the provisions of the statute which permit those who had been included within the projected budget for appropriations to continue to receive their grants if needed for as long as one year after they have moved from the State of Iowa.[24] One obvious reason for residency requirements in Iowa is necessary because the statutes require long-range planning for appropriations. Those already receiving assistance should be assured between legislative sessions that their Aid to Dependent Children grants will not be substantially reduced by an influx of new residents whose presence could not have been calculated. And, those who were included but moved can continue to receive their same grants. "The courts will assume that the legislative arm of the government considered the interests of the whole people in enacting a statute providing for a classification . . ."[25]

The lower court likens the Connecticut statute designating beneficiaries of Aid to Dependent Children grants to the California statute which prevented freedom of movement and held unconstitutional in the *Edwards* case.[26]

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24. Appendix A.

25. *Iowa Motor Vehicle Association et al.* v. *Board of Railroad Commissioners,* Decree affirmed per curiam 50 S. Ct. 151, 280 U.S. 529, Decision below 207 Iowa 461, 221 N.W. 364.

26. *Edwards* v. *California,* 314 U.S. 160.

It is difficult to see the relationship between the two laws. The welfare statute does not wall off the State of Connecticut from free ingress or egress of all citizens of the United States, whether they be rich, poor, potential Aid to Dependent Children recipients or otherwise. The freedom of movement right, which we all agree exists, and is a valued right incident to national citizenship, is one thing. And, a statute which creates a right to participate in welfare is another. For example, a mother who is receiving Aid to Dependent Children assistance in Iowa, when she moves to Connecticut, continues to receive the assistance until she qualifies for Aid to Dependent Children from Connecticut. She is not prohibited from moving into Connecticut because she is receiving Aid to Dependent Children assistance. Likewise, the Iowa Aid to Dependent Children statute, in classifying beneficiaries (which parallels the residency classification permitted in the Federal Act[27] providing matching funds), does not prohibit any citizen of the United States from taking up residency within its boundaries—whomever or for whatever purpose.

Respectfully submitted,

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February 27, 1968

27. 42 U.S.C. §602(b) (1959). See Appendix D.

APPENDIX

Pertinent Statutory Provisions and Regulations

A. 1966 Code of Iowa

Chapter 239 Aid to Dependent Children Assistance

239.2. "Assistance granted under this chapter to any needy child who: . . . Has resided in the state for one year immediately preceding the application for such assistance; or was born within the state within one year immediately preceding the application; if the mother has resided in the state for one year immediately preceding the birth of said child, without regard to the residence of the person or persons with whom said child is living."

239.8. 1966 Code of Iowa, *as amended by Senate File 551,*[1] *62nd General Assembly.* ". . . if the removal is out of state, assistance shall be continued as long as the child remains otherwise eligible for assistance under this chapter until he becomes eligible for assistance in the state to which he has moved, but in no case may assistance payments from this state be received for more than one (1) year. . ."

State Statutes Re: Appropriations for Aid to Dependent Children

8.23. "Biennial departmental estimates. On, or before, September 1, next prior to each biennial legislative session, all departments and establishments of the government shall transmit to the state comptroller . . . estimates of their expenditure requirements . . ."

1. IOWA LEGISLATIVE SERVICE—Supplementing IOWA CODE ANNOTATED, 1967 Acts and Resolutions 62nd General Assembly, page 90. West Publishing Co., St. Paul, Minnesota.

B. State Appropriations for Years 1967-1968

H.F. 687, 62nd General Assembly

"An Act to appropriate from the general fund of the State of Iowa for the biennium beginning July 1, 1967 and ending June 30, 1969 . . .

For Aid to Dependent Children fund . . . . $7,035,000.00 . . ."

C. County's Share of Appropriations

239.11. 1966 Code of Iowa. "The county board of supervisors in each county in this state shall appropriate annually . . . such sums . . ."

D. Federal Social Security Act

Title 42, U.S.C.A., §602(b), State Plans for Aid to Dependent Children

"(b) The secretary shall approve any [state] plan which fulfills the conditions specified in subsection (a), except that he shall not approve any plan which imposes as a condition of eligibility for aid to dependent children, a residence requirement which denies aid with respect to any child residing in the State (1) who has resided in the State for one year immediately preceding the application for such aid, or (2) who was born within one year immediately preceding the application, if the parent or other relative with whom the child is living has resided in the State for one year immediately preceding the birth."