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# "California Dreamin'": May a State Limit Its Welfare Benefits Based on Length of Residency?

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*by Jay. E. Grenig*

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## EDITOR'S NOTE:

The Supreme Court is considering another case involving California's payment of benefits under its Aid to Families with Dependent Children program. *See Anderson and Gould v. Edwards* at page 197 for the case analysis.

## ISSUE

May a state temporarily limit a new resident's welfare benefits to the level of benefits the resident received, or would have received, if that person were still living in his or her former state of residence?

## FACTS

Aid to Families with Dependent Children ("AFDC") is a welfare program created in 1935 by the Social Security Act. 42 U.S.C. §§ 601-687 (1988 and Supp. IV 1992). AFDC benefits are financed jointly by the federal government and participating states. The program is administered by each participating state under a plan drafted by the state and approved by the United States Secretary of Health and Human Services. Subject to certain limitations in federal law, participating states have the flexibility to set the standard of need and the level of benefits.

On December 1, 1992, California began a five-year experimental project known as the Assistance Payments Demonstration Project (the "Demonstration Project"). Among other things, the Demonstration Project limits the amount of AFDC benefits available to an applicant who has not resided in California for a period of at least one year (the "one-year residency requirement" or the "residency requirement"). Specifically, the Demonstration Project's one-year residency requirement provides that

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*ELOISE ANDERSON, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS DIRECTOR OF THE CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; AND RUSSELL GOULD, DIRECTOR OF THE CALIFORNIA DEPARTMENT OF FINANCE V. DESHAWN GREEN, DEBBY VENTURELLA, AND DIANA P. BERTOLLT, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED*

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FROM: THE NINTH CIRCUIT

# Case at a Glance

In 1992 California enacted a statute providing that new residents applying for Aid to Families with Dependent Children would receive the level of benefits they had received, or would have received, in their home states for the first year of their California residency. In this case, the Supreme Court is asked to determine if California's one-year residency requirement unconstitutionally discriminates against new residents.

during the first year of California residency, a new resident seeking AFDC benefits is eligible only for the level of benefits that he or she received, or would have received, before moving to the State.

The California Legislature enacted the one-year residency requirement as a means of reducing welfare expenditures. There is also some evidence that the one-year residency requirement was enacted to discourage indigent families from moving to California. For example, the California Department of Finance estimated that the residency requirement would save $8.4 million in the State's 1992-93 fiscal year and $22.5 million in its 1993-94 fiscal year.

Deshawn Green and her two children moved from Louisiana to California in 1992. At that time, the full monthly California AFDC grant for a family of three was $624. Under California's one-year residency requirement for AFDC benefits, Green and her family would receive only $190 a month during their first year of California residency, i.e., the amount the family would have received if they had remained in Louisiana.

Debby Venturella came to California from Oklahoma in 1992. At the time Venturella relocated, she had one child and was pregnant with another but was not receiving AFDC benefits. Under California's one-year residency requirement, Venturella and her two children would receive $341 a month in AFDC benefits during their first year of California residency, i.e., the Oklahoma level of AFDC benefits for a family of three.

Diana Bertollt moved to California from Colorado. She had one child and, for the family's first year of California residency, would receive $280 a month in AFDC beneifts — the Colorado benefit level for a family of two -- not the full California benefit level of $504.

These three individuals filed suit in the United States District Court for the Eastern District of California on behalf of themselves and the class of California residents who had not resided in the State for at least 12 consecutive months and who had applied, or were going to apply, for AFDC benefits after the effective date of the one-year residency requirement (the "Green Class" or the "Class"). The Green Class alleged that at least some of its members had moved to California to escape abusive domestic circumstances, not to seek higher welfare grants. The Class further alleged that it had suffered irreparable injury because, under the one-year residency requirement, its members would not receive the same AFDC benefits that they would have received if they had resided in California for the preceding year. The Class asked for a preliminary injunction barring the State from implementing its one-year residency requirement.

The district court, after a hearing, issued a preliminary injunction, enjoining implementation of the one-year residency requirement. 811 F.Supp. 516 (E.D. Cal. 1993). The court found that the residency requirement implicated the constitutional right to migrate which, under Supreme Court precedent as interpreted by the district court, is subject to strict judicial scrutiny. (Under strict scrutiny, California is required to advance a compelling interest to be served by the one-year residency requirement and also is required to establish that the residency requirement is a narrowly tailored means to achieve its compelling interest.)

The district court determined that California's one-year residency requirement penalizes interstate migration and implicates the Equal Protection Clause. Applying strict scrutiny, the court concluded that California had not established a compelling interest for the residency requirement, notwithstanding the State's legitimate interest in conserving its limited pool of welfare funds. The court also noted that a state may not favor established residents over new residents based on the view that the state should take care of its own first. The court then concluded that the Green Class had demonstrated that its members would suffer irreparable injury if the State were allowed to implement the residency requirement and, accordingly, enjoined its implementation.

The Ninth Circuit affirmed. 26 F.3d 95 (9th Cir. 1994). The case is now before the Supreme Court, which granted the petition of the California officials for a writ of certiorari. 115 S. Ct. 306 (1994).

## Case Analysis

This case calls on the Supreme Court to revisit a 25-year line of cases that began in 1969 with *Shapiro v. Thompson,* 394 U.S. 618 (1969). In *Shapiro,* the Court applied a strict scrutiny analysis and struck down three statutes that prevented a newcomer from receiving AFDC benefits or diability assistance for the first 12 months of his or her new residency. The Court explained that such provisions discriminate invidiously by creating two classes of needy, bona fide residents that were indistinguishable from each other except that one class was composed of needy persons who had resided in the jurisdiction for more than a year while the second class was composed of needy persons who had not.

The *Shapiro* Court refused to accept as a compelling interest for the one-year waiting period that it would deter the migration of poor people into the affected jurisdictions, declaring that such reasoning was directly at odds with the constitutional right to move from state to state. The Court also said that it was irrelevant that a person migrating to a particular state did so in search of higher assistance payments or did so for other reasons. On that point, the Court concluded that a state had no more right to deter a person from moving there because of greater welfare assistance than it had to deter a person who moved there because of better educational opportunities.

The Court also rejected the defense that the one-year ban on welfare benefits merely took into account the differential tax contributions made by long- and short-term residents. On that point, the Court opined that such reasoning logically permitted a state to bar new residents from schools, parks, and libraries or deprive them of police and fire protection. Finally, the Court held that a state's concern for its fiscal integrity, while legitimate, was not compelling and, thus, could not justify discrimination against new residents.

The Supreme Court followed *Shapiro* in *Memorial Hospital v. Maricopa County,* 415 U.S. 250 (1974), invalidating an Arizona statute that required a year's residence in a county as a condition of receiving nonemergency medical care at county expense. *See also Dunn v. Blumstein,* 405 U.S. 330 (1972) (invalidating a one-year residency requirement before a new resident could vote).

In *Maricopa County,* the Court framed the issue as whether or not Arizona's one-year residency requirement on the provision of nonemergency medical services penalized persons who had recently migrated there. If there were such a penalty, the Court, applying strict scrutiny, observed that the requirement would be unconstitutional unless supported by a compelling governmental interest. The Court went on to conclude that Arizona's one-year denial of nonemergency medical services penalized new residents in the same way and to the same extent as the one-year denial of the necessities of life in *Shapiro* operated to penalize new residents in those jurisdictions. In so holding, the Court ruled the Arizona's interest in protecting its financial stability was not a compelling interest and, hence, could not justify its discrimination against newcomers. The Court observed that conservation of the taxpayers' purse simply is not a sufficient state interest to sustain a durational residency requirement, which, in effect, severely penalizes an individual who chooses to exercise his or her right to move to another state.

In three more recent cases, the Supreme Court has expanded the equality principle announced in *Shapiro*. In *Zobel v. Williams,* 457 U.S. 55 (1982), the Court invalidated an Alaska statute that provided for payments from oil revenues to all residents but used length of residency as the basis for calculating the size of the payments. *In Hooper v. Bernalillo County Assessor,* 472 U.S. 612(1985), the Court invalidated a property tax exemption based on residency before a specified date. And, in *State Attorney General of New York v. Soto-Lopez,* 476 U.S. 898 (1986), the Court invalidated New York's veterans-preference provisions that limited benefits to veterans who had been state residents prior to a specified date or who had entered the military while a New York State resident.

However, on at least one occasion, the Supreme Court has upheld a durational residency requirement. In *Sosna v. Iowa,* 419 U.S. 393 (1975), the Court upheld Iowa's one-year residency requirement for filing for divorce. Distinguishing *Sosna* from *Shapiro, Maricopa County,* and *Dunn,* the Court noted that a state's interest in regulating domestic relations and protecting its divorce decrees from collateral attack was materially greater than the budgetary and recordkeeping interests advanced in the prior cases.

In this case, California argues that its one-year residency requirement differs in material respects from the statutes at issue in *Shapiro* and *Maricopa County.* In this regard, California seeks to distinguish *Shapiro* and *Maricopa County* from this case by stressing that a new resident in those cases irretrievably lost his or her eligibility for public assistance for a period of time solely because of a move to a new state.

California points out that no such extreme consequence befalls a newcomer to its State. The State stresses repeatedly that no member of the Green Class has lost the eligibility for public assistance that was enjoyed in his or her home state. According to the State, members of the Class are limited, but only temporarily, to the level of AFDC benefits payable in their home states.

California asks the Court to determine if the relevant comparison for constitutional purposes is between newcomers to California and residents of other states or between newcomers and existing California residents in deciding whether or not new residents suffer any detriment because of the residency requirement. On this point, the district court held that the proper

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comparison for constitutional purposes is between California residents of less than one year and all other California residents.

If the Court accepts California's position and determines that the relevant comparison is between new California residents and nonresidents, the Court could conclude that newcomers to California have not sustained any detriment to their interests. In other words, the Court could hold that newcomers to California receive AFDC benefits in the same amount they received, or would have received, in their home states.

The Green Class responds by arguing that the Court has made it clear that the constitutionally-grounded rights to migrate and to equal treatment do not permit significant distinctions between new and old residents based on the duration or incipiency of residency. Relying on Court cases that have held that the relevant comparison in residency cases is not between new residents of a state and residents of other states but between new residents and existing residents of the same state, the Class asserts California's position is flawed. According to the Green Class, the issue in this case is whether or not California's one-year residency requirement treats needy newcomers to the State differently than it treats other needy California residents. To the Green Class the answer is obvious — with respect to AFDC benefits, California treats recent and existing needy residents differently to the detriment of the former.

The Green Class also disagrees with California's argument that the Court's residency cases all considered statutes or administrative provisions that wholly eliminated, rather than reduced, welfare benefits to new state residents. Here, the Class asserts that providing partial benefits to new residents rather than full benefits is a distinction without a constitutional difference. In the case of both full and partial reduction of welfare benefits based on length of residency, the right to migrate and the right to equal treatment are violated without serving any compelling governmental interest.

## SIGNIFICANCE

The 1994 mid-term elections suggest that welfare reform is the political watchword for the remainder of the 1990s. Accordingly, this case will provide guidance as to what states can and cannot do, consistent with the Constitution, to control welfare costs. More specifically, the Court has the opportunity to determine if its decision in *Shapiro* should be applied to situations in which a state does not deny benefits to a newcomer, but temporarily limits the amount of benefits.

Should the Court apply the reasonable basis or rationality test to California's one-year residency requirement, as urged by the State, instead of strict scrutiny, as urged by the Green Class, California could prevail since it is easier to advance a legitimate or rational interest for a law than it is to advance a compelling one. But, even if the Court agrees with California as to the appropriate test to be applied to its one-year residency requirement, it remains to be seen if the requirement actually advances a legitimate interest. The Court could decide this issue if the record is sufficiently complete on this point, or it could send the case back to the lower courts to make this determination in the first instance.

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## Arguments

**For Eloise Anderson, individually and in her official capacity as Director of the California Department of Social Services; California Department of Social Services; and Russell Gould, Director of the California Department of Finance** (Counsel of Record: Theodore Garelis, Deputy Attorney General of the State of California; P.O. Box 944255, Sacramento, CA 94244-2550; (916) 445-0767):

1. California's one-year residency requirement does not operate as a penalty on migration because it does not deny newcomers any assistance, but simply denies temporarily an increase in assistance.
2. Even if the statute operates as a penalty on migration, the impact of the penalty is remote and incidental.
3. California's interest in reducing welfare costs is sufficient to justify the use of a two-tier system of distributing benefits under its Aid to Families with Dependent Children program.

**For Deshawn Green, Debby Venturella, and Diana P. Bertollt, on behalf of themselves and all others similarly situated** (Counsel of Record: Sarah E. Kurtz; Legal Aid Society of San Mateo County; 298 Fuller Street, Redwood City, CA 94063; (415) 365-8411):

1. The right to interstate migration has been long recognized as essential.
2. California's one-year residency requirement deprives newly-arrived residents of the ability to obtain basic necessities of life, including shelter, medical care, and clothing, solely because the new residents have recently exercised their right to interstate migration.
3. The right of interstate migration must be seen as ensuring new residents the same right to vital government benefits and privileges in the states to which they migrate as are enjoyed by other residents.

## Amicus Briefs

**In support of Eloise Anderson *et al.***

Joint brief of the States of Minnesota, Florida, Hawaii, and Pennsylvania (Counsel of Record: Jocelyn F. Olson, Assistant Attorney General of the State of Minnesota; 445 Minnesota Street, Suite 900, St. Paul, MN 55101-2127; (612) 296-7703);

Joint brief of the Mountain States Legal Foundation, the Howard Jarvis Taxpayers Association, and the Alliance for America (Counsel of Record: William Perry Pendley; Mountain States Legal Foundation; 1660 Lincoln Street, Suite 2300; Denver CO 80264; (303) 861-0244);

Pacific Legal Foundation (Counsel of Record: Deborah J. La Fetra; Pacific Legal Foundation; 2151 River Plaza Drive, Suite 305, Sacramento, CA 95833; (916) 641-8888);

Joint brief of the Washington Legal Foundation and various United States representatives and California legislators (Counsel of Record: David A. Price; Washington Legal Foundation; 2009 Massachusetts Avenue, NW, Washington, DC 20036; (202) 588-0302).

**For Deshawn Green, Debby Venturella, and Diana P. Bertollt, on behalf of themselves and all others similarly situated**

The American Bar Association (Counsel of Record: George E. Bushnell, Jr., President, American Bar Association; 750 North Lake Shore Drive, Chicago, IL 60611; (312) 988-5215);

Joint brief of Catholic Charities U.S.A., National Council of Churches in Christ in the U.S.A., and the American Jewish Congress (Counsel of Record: Daniel Marcus; Wilmer, Cutler & Pickering; 2445 M Street, NW, Washington, DC 20037; (202) 663-6000);

Law Professors (Counsel of Record: Jonathan D. Varat; UCLA School of Law; 405 Hilgard Avenue; Los Angeles, CA 90024; (310) 825-1994);

National Welfare Rights and Reform Union (Counsel of Record: Timothy J. Casey; Center on Welfare Policy and Law; 275 7th Avenue; New York, NY 10001; (212) 633-6967);

NOW Legal Defense and Education Fund and 18 other organizations (Counsel of Record: Martha F. Davis; NOW Legal Defense and Education Fund; 99 Hudson Street, 12th Floor, New York, NY 10013; (212) 925-6635).