

SUPREME COURT OF NEW JERSEY
DOCKET NO. 46,538

NEW JERSEY DEPARTMENT OF
HUMAN SERVICES

Petitioner-Appellee,

vs.

DIANA SANCHEZ

Respondent-Appellant

Civil Action

PETITION FOR CERTIFICATION

CERTIFICATION SOUGHT FROM:

Opinion and Judgment entered
July 8, 1998 by the
Appellate Division in Docket
No. A-466-97T1F. The
Honorable William A Drier,
Paul A. Levy and Barbara
Byrd Wecker, Sitting Below.

BRIEF OF DIANA SANCHEZ, RESPONDENT-APPELLANT, IN OPPOSITION
TO PETITION FOR CERTIFICATION

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PRELIMINARY STATEMENT

Petitioner seeks certification to reverse a unanimous Appellate Division decision striking down a New Jersey welfare statute limiting benefits payable to new state residents to the dollar level they would have received in their prior state of residence, if that state's levels were lower than New Jersey's. This Court should deny certification because the overwhelming weight of national judicial authority, beginning with and following a seminal 1969 decision of the United States Supreme Court,¹ holds that such "durational residency" requirements or "two-tier" benefit schemes for welfare benefits are unconstitutional², concurring with a written opinion from New Jersey's own Attorney General.³ There is thus no pressing need for the

¹ Shapiro v. Thompson, 394 U.S. 618.

² In addition to the cases cited in the briefs below the following recent cases have invalidated durational residency requirements similar to the statute in question in this case. Maldonado v. Houstoun, 1998 WL 569359 (3rd Cir. Pa.); Roe v. Anderson, 134 F. 3d 1400 (9th Cir. 1998); Westenfelder v. Ferguson, 998 F. Supp. 146 (D.R.I. 1998); Warrick v. Snider, 2 F. Supp. 2d 720 (W.D. Pa. 1997); Hicks v. Peters, 1998 WL 424176 (N.D. Ill.).

³ Based on the negative opinion of the Attorney General as to constitutionality, the Petitioner Department of Human Services withdrew a residency requirement it had proposed for another program. The requirement was less restrictive (90 days), than the statute at issue in this case. 27 N.J.R. 1998 May 15, 1995, quoted in Appellant's Brief In Support of Motion For Emergent Relief, p. 27.

New Jersey Supreme Court to rule on the matter: no further guidance is required at this time, and no conflicts between lower courts need to be resolved. Moreover, the reasons advanced by petitioner in an effort to overturn this entire weight of authority and overrule both the Appellate Division and the opinion of the Attorney General have been considered extensively both by the court below and courts in many other states and federal districts and circuits.⁴

Strict scrutiny under the federal constitution applies because the challenged statute both in fact imposes a penalty on protected travel, and because it is intended to deter such travel. Under a strict scrutiny analysis, no compelling state interest exists to save this statute. Furthermore, even under a rational basis analysis, the section must fall because it has no rational relationship to any legitimate government interest.

⁴ The Supreme Court granted certiorari in a durational residency case, but later vacated the decision as unripe. Green v. Anderson, 811 F. Supp. 516 (E.D. Cal. 1993), aff'd, 26 F. 3d 95 (9th Cir. 1994), vacated as unripe, 513 U.S. 557 (per curiam). The history of the case is set forth in Roe v. Anderson, supra at 1403, n. 3. The State of California is now seeking certiorari to review the decision of the court in Roe v. Anderson, supra.

POINT I

STRICT SCRUTINY APPLIES, AS THE STATUTE PLAINLY PENALIZES THE RIGHT TO TRAVEL, AND THE PURPOSE OF THE STATUTE IS TO DETERMINE MIGRATION AND TRAVEL. THERE IS NO COMPELLING JUSTIFICATION FOR THE TWO-TIER BENEFIT STATUTE.

A. Strict scrutiny applies since the two-tier benefit statute penalizes the right to travel.

The Appellate Division held that strict scrutiny applies, as the residency requirement constitutes a penalty on the right to migrate and travel. Sanchez v. Department of Human Services, Dkt. No. A-466-97T1F, pp. 12-15. It concluded that there are two ways in which the statute burdens the right to travel:

1. it provides a reduced level of assistance, which deprives plaintiff of very important benefits and rights, Sanchez, supra at pp. 14-15.
2. the statute treats some newcomers to the state significantly differently than long term residents, and thus indirectly burdens the right to migrate between states. Sanchez, supra at p. 12.

Petitioner ignores both holdings. Instead, it argues that there is no penalty because plaintiff is receiving the same amount of benefits that she would have received in Puerto Rico, her prior state of residence (Petition, pp. 17-18). Settled law demonstrates that this is not the correct constitutional test.

Petitioner relies on a trial court decision in Maldonado v. Houstoun, supra, which struck down Pennsylvania's two-tier statute under a rational basis standard, after concluding that it could not apply strict scrutiny because there was not a sufficiently clear penalty on travel and migration. Unfortunately for petitioner's claim, the United States Court of Appeals for the Third Circuit has just reversed on this point, holding that the two-tier benefit statute "plainly penalizes" the right to travel. Maldonado v. Houstoun, supra at p. 8. The Third Circuit held that: "Pennsylvania benefits, based solely on [plaintiff's] newly arrived status amounts to a 64% reduction in cash benefits and plainly penalizes them for having exercised their right to migrate into the State." (Ibid.) Specifically rejecting petitioner's argument, the court stated that: "(f)rom a constitutional viewpoint, the level of benefits available to the claimants in the State of their prior residence is irrelevant." (Ibid.) Similarly, the United States Court of Appeals for the Ninth Circuit stated that in "case after case the Supreme Court has determined that the appropriate comparison is between the treatment of recent residents (of a state) and other residents of (the state) and not a comparison of recent residents (of the state) to residents of other states."

Roe v. Anderson, supra at 1405.⁵ The constitutional right to travel and migrate "protects residents of a State from being disadvantaged, or from being treated differently, simply because of the timing of their migration, from other similarly situated residents." Id. at 1404.⁶

Petitioner seeks to distinguish Shapiro v. Thompson, supra, and Memorial Hospital v. Maricopa, 415 U.S. 250, on the grounds that the plaintiffs there lost benefits previously enjoyed in the prior state of residence. (Petition, p. 17) The court below rejected the state's argument on this point and is consistent with virtually every other court which has considered the issue. "(R)eductions in AFDC benefits, even reductions of a relatively small magnitude, impose irreparable harm on recipient families." Roe v. Anderson, supra at 1404. In

⁵ The Court cited Attorney General of New York v. Soto-Lopez, 476 U.S. 898, 904 (1986), Hooper v. Bernalillo County Assessor, 472 U.S. 612, 623 (1985), and Zobel v. Williams, 457 U.S. 55, 58-59. See also: Westenfelder, supra at 154.

⁶ Compare however, Hicks v. Peters, supra at 4. In Hicks the Court invalidated a two-tier benefit scheme holding that it was not rationally related to a legitimate governmental purpose. However the court rejected a strict scrutiny analysis, holding that the scheme did not penalize the right to travel. In so doing, however, the Court ignored the relevant comparison of new residents to longer term residents of the same state, and is thus at odds with the weight of authority.

Westenfelder, supra at 157-158, the court held unconstitutional a residency requirement which reduced benefits by 30% for the first year. In finding that there was irreparable harm, the court noted that plaintiffs are on the "economic precipice," that welfare recipients are not the "average citizens but rather those who are in the grip of poverty," and that "(f)or people at the economic margin of existence, the loss of \$172/month and perhaps some medical care cannot be later made up by entry of a money judgment." Similarly, other courts have held that a partial reduction in benefits impedes the ability to secure the "basic necessities of life," Green v. Anderson, supra, 811 F. Supp. at 521, Mitchell v. Stephen, 504 N.W. 2d 198, 202 S. Ct. Minn. 1993); Aumick v. Bane, 612 N.Y.S. 2d 766 (S. Ct. 1994); Brown v. Wing, 649 N.Y.S. 2d 988, 994 (S. Ct. 1996).⁷ See also Warrick v. Snider, supra at 729 (denial of cash assistance for 60 days "run(s) the very real risk of (plaintiffs) being homeless and without sufficient food or other basic necessities.")

⁷ Compare Hicks v. Peters, supra at p. 4, which, citing the district court opinion in Maldonado, held that a partial reduction in welfare benefits did not deprive the newcomers of basic necessities of life and was therefore not a penalty, but also held that this reduction in benefits would cause "irreparable harm."

Recent arrivals in New Jersey face the same harsh reality: lower benefit levels mean denial of some of life's critical necessities. Back in late 1990, the State of New Jersey conducted a cost of living study in response to a mandate of this Court,⁸ later capturing the results in a regulatory standard of need "to maintain a safe and decent life" N.J.A.C. 10:82-1.1A. For a family of four the amount was \$1,127 per month. Similarly the 1997 federal poverty guideline for a family of four is \$1,337/month.⁹ The current welfare grant for a family of four in New Jersey is \$488/month. This is just 43% of the 1992 State standard of need, a standard which should be at least 20% higher because of inflationary increases in the cost of living since 1990, and just 36% of the 1997 federal poverty income guideline.

Under New Jersey's two-tier welfare benefit statute, however, Ms. Sanchez would not receive the full amount of even this inadequate welfare grant. Her reduced grant of \$204 per month is a 58% reduction from the normal grant of \$488 per month. The reduced grant is only 18% of the 1992 New Jersey standard of need, and 15% of the 1997 federal

⁸ In re Opinion 544, 103 N.J. 399 (1986).

⁹ Sanchez v. Department of Human Services, supra at p. 14, n. 2.

poverty income guideline. There is no question that the reduction limits her ability to secure the basic necessities of life, deprives her of vital governmental benefits, and has penalized her because of her recent travel to New Jersey. The State has offered no constitutionally rational basis for this kind of harsh discrimination, let alone the compelling governmental interest that strict scrutiny requires.¹⁰

B. Strict scrutiny applies since the primary objective of the statute in question is to impede travel and discourage welfare recipients from entering the state.

In addition to the foregoing penalty analysis, strict scrutiny will also be applied when impeding travel is the primary objective of a statute. Sanchez v. Department of Human Services, supra at 11, , citing Attorney General of

¹⁰ Petitioner also mischaracterizes both the test for determining whether there is a penalty, and the Appellate Division's holding on the issue. Thus petitioner argues that in order to constitute a penalty, the statute must have an impact on an "individual's decision to leave one state and travel and migrate to New Jersey." (Petition p. 16) The test, however, is whether the person who actually moves is penalized, either through loss of important benefits, or through unequal treatment with similarly situated residents of the new state.

In the same vein, petitioner contends that the court below erred in holding that the statute discourages persons from moving to New Jersey. (Petition, p. 16) There is no such holding.

New York v. Soto-Lopez, supra at 903. Further, the United States Supreme Court has repeatedly recognized that a law enacted for the purpose of inhibiting migration into the State is virtually per se unconstitutional. Hooper v. Bernalillo County Assessor, supra at 620, n.9.; Zobel v. Williams, supra at 62, n.9; Memorial Hospital, supra at 263-264; Shapiro v. Thompson, supra at 629, 631; Green v. Anderson, supra, 811 F. Supp. at 522.

The self-evident and only logical, purpose of the specific portion of the statute invalidated in this case is to deter migration, and a combination of factors compel this conclusion. Petitioner has alluded to a desire to conserve welfare costs.¹¹ The two-tier benefit statute does this by seeking to discourage newcomers from entering the state and receiving welfare. Courts have recognized the purpose of deterring migration is "inherent in a two-tier benefit structure," which "affects only the benefits of new residents" Westenfelder v. Ferguson, supra at 155; Green v. Anderson, supra, 811 F. Supp. at 522, n. 14. "Stripped of the unconstitutional purpose of deterring migration, the measure lacks a rational design." Green v. Anderson, supra, 811 F. Supp. at 522-523. Similarly, the

¹¹ Petition, pp. 19-20

court below stated that it suspected that "the two-tier statute could bear a rational relationship only to one governmental purpose, and that purpose is itself impermissible - the anti-magnet goal." Sanchez v. Department of Human Services, supra at p. 22. The Attorney General of the State of New Jersey has recognized this as the purpose of a proposed virtually identical statute: "(o)f significance, the Supreme Court in Shapiro v. Thompson held that 'the purpose of inhibiting migration by needy persons into the State is constitutionally impermissible,' 395 U.S. at 633."¹² Finally, and most telling, state officials have confirmed that this was the purpose of the statute,¹³ and this Court should so find.¹⁴

¹² See Pa11 to Appellant's Brief In Support of Motion For Emergent Relief.

¹³ Sanchez v. Department of Human Services, supra at 11; See Appellant's Reply Brief in the Appellate Division, p. 4, and Appendix A to the Reply Brief.

¹⁴ The Court below stated that the statements of state officials created an inference that the purpose was to deter migration, but did not so conclude. The court stated that "(i)n light of the purposes set forth in N.J.S.A. 44:10-56, the quoted statement alone is insufficient to establish" the anti-magnet purpose. Sanchez v. Department of Human Services, supra at 12. However, the Court was referring to the general purposes of the Work First New Jersey statute, which do not constitute the specific purpose of the residency requirement (Ibid.) Indeed the Court below held that the residency requirement is not even rationally related to the general Work First purposes. In

POINT II

THE NEW ALLEGED PURPOSES OF THE STATUTE SET FORTH BY THE STATE, TAKING CARE OF "ONE'S OWN" AND SAVING MONEY, ARE NOT RATIONALLY RELATED TO A VALID GOVERNMENTAL OBJECTIVE

Before the Appellate Division the Department of Human Services argued that the purpose of the residency requirement was to "encourage new residents to aggressively take part in the [Work First New Jersey] work readiness activities . . . in order to become a self-sufficient resident of New Jersey." "By limiting the cash assistance . . . (the State) provide(s) an incentive for the individual to participate in the work and education programs" ¹⁵ Encouraging people to work was "even more imperative," since in order to be entitled to the full amount of its block grant, a certain percentage of welfare recipients had to be engaged in work programs. *Id.* at pp. 22-23. The court below rejected this argument, ¹⁶ as have

addition the statement of the state official does not stand alone as the sole factor. It is coupled with the inherent purpose of the statute, that the only logical explanation is deter migration, and the weakness, and changing nature of the other unconstitutional purposes offered by the state, which combine to demonstrate that the purpose of the statute is to deter migration. But see, Maldonado v. Houstoun, supra at p. 6; Warrick v. Snider, supra at 724-725; Hicks v. Peters, supra at p. 4.

¹⁵ Respondent's Brief in Reply to Appellant's Request for Relief, pp. 20-21; Pa 24-25.

other courts which have considered the issue.¹⁷ In its petition the state states that the "true legislative intent set forth in the statute" (included, among other purposes) (is) "to encourage work and the earning of income in order to benefit families and children." (emphasis in the original)¹⁸ While this indeed appears to be an overall purpose of the general Work First welfare reform statute, nowhere does the state argue, in its petition, that the specific traveling-penalizing portions of the section under challenge are rationally related or necessary to this general purpose, or any of the other general purposes of the Work First statute. (Petition, pp. 19-20). In short, it has understandably abandoned this argument.

¹⁶ Sanchez v. Department of Human Services, supra at pp. 19-22; Pa50-53.

¹⁷ Shapiro v. Thompson, supra at 637-38 ("(a) state purpose to encourage employment provides no rational basis for imposing a one-year waiting-period restriction on new residents only."); Maldonado v. Houstoun, supra at p. 9, 8, ("no rational reason . . . to assume that only new residents . . . need 'encouragement' to seek work and self sufficiency," and the "legislative scheme is not narrowly drawn to achieve that goal."); Westenfelder v. Ferguson, supra at 155 ("(t)his Court cannot fathom how the act of providing full cash assistance to . . . residents with 12 months' tenure, while denying it to those without, is narrowly tailored toward encouraging welfare recipients to find work and achieve self-sufficiency."); Warrick v. Snider, supra at 729-30; Hicks v. Peters, supra at p. 3.

¹⁸ Petition, p. 14.

Instead the state argues for the first time two new "rational" purposes for the statute in question. The first characterization is that "due to the state's limited available resources, the state desires to ensure that before it fully funds cash benefits to welfare recipients that such individuals intend to reside in the state for more than a year." Aside from the purpose of saving some money, the State has not explained the reason or value of this discriminatory treatment of newcomers, and there appears to be none. The petition also asserts that this "helps ensure that New Jersey will continue to have adequate resources to meet the demand for welfare benefits by current residents as well as for all future residents." (Petition, pp. 19-20).¹⁹ Unfortunately for the state's arguments, the record is completely devoid of any legislative history substantiating these new attributions of purpose. Moreover, in any event, the conservation of public funds cannot justify a durational residence

¹⁹ The fact that the State is arguing new purposes for the statute for the first time undercuts its argument. The state did not make these arguments below. It merely stated that "(t)here is undeniably a fiscal responsibility element in New Jersey's Welfare reform program (T)he states must now utilize a limited resource via block grant to promote the primary objective . . . to move people off the welfare rolls. . . ." Pa23-24 to petition for certification.

requirement. Sanchez v. Department of Human Services, supra at p. 19, citing Shapiro v. Thompson, supra at 633; Memorial Hospital v. Maricopa, supra at 263. ("The conservation of the taxpayers' purse is simply not a sufficient state interest to sustain a durational residence requirement . . ."); Maldonado v. Houstoun, supra at p. 10. Similarly, conserving state funds in order to take care of "ones own," is unconstitutional. Sanchez v. Department of Human Services, supra at p. 19 citing Hooper v. Bernalillo County Assessor, supra at 623;²⁰ Green v. Anderson, supra, 811 F. Supp. at 518-519. As similarly stated by the Attorney General of New Jersey: "conservation of welfare funds or protection of the public fisc was inadequate to justify the disparate treatment of newly arrived indigents at issue in those cases, Shapiro, 394 U.S. at 633; Maricopa 415 U.S. at 263." See Appellant's Brief in Support of

²⁰ The United States Supreme Court in Hooper stated:

[t]he State may not favor established residents over new residents based on the view that the State may take care of "its own," if such is defined by prior residence. Newcomers, by establishing bona fide residence in the State, become the State's 'own' and may not be discriminated against solely on the basis of their arrival in the State after [a fixed date].

See also: Maldonado v. Houstoun, supra at p. 8.

Motion For Emergent Relief, p. 26; Pa11 to Appellant's
Brief in Support of Emergent Relief.

POINT III

APPELLANT HAS BEEN DENIED THE EQUAL PROTECTION OF
THE LAWS GUARANTEED BY THE NEW JERSEY
CONSTITUTION

The court below correctly held that the statute denies
equal protection under the New Jersey Constitution. This
is an important independent ground to invalidate the two-
tier scheme. It is well settled that the protections under
the New Jersey State Constitution can in some situations be
distinct from, and more expansive than, the right under the
federal constitution. See Appellant's Brief on Appeal at
pp. 22-23; State v. Hunt, 91 N.J. 338, 358 (1982). See
concurring opinion of Justice Handler.

CONCLUSION

For the reasons submitted, plaintiff prays that the
petition for certification should be denied. Should the
Court grant certification, plaintiff requests that the
decision of the Court below be summarily affirmed.

LEGAL SERVICES OF NEW JERSEY

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