



STATE OF VERMONT

MEMORANDUM

To: House Committee on Human Services
From: Katie M. McLinn, Legislative Counsel
Date: January 24, 2024
Subject: Durational residency requirements for State benefits

This memorandum addresses whether Vermont may impose durational residency requirements on citizens prior to enabling citizens to receive welfare- and health-related benefits. Durational residency requirements stipulate that an individual be a state resident for a set period of time, such as one year, prior to exercising a certain right or privilege.

A durational residency requirement as a condition for obtaining a benefit that is a necessity of life violates a citizen's constitutional right to travel and the Equal Protection Clause of the 14th Amendment, unless there is a compelling state interest for imposing the requirement. To date, no case reviewed by the U.S. Supreme Court involving welfare- and health-related benefits conditioned on durational residency requirements has identified a compelling government interest.

The remainder of this memorandum will discuss benefits that provide a life necessity and government claims of compelling state interests.

Benefits Providing a Life Necessity

The U.S. Supreme Court has issued opinions on durational residency requirements in the context of Aid to Families with Dependent Children (AFDC), Temporary Assistance to Needy Families (TANF), and free nonemergency medical care. These opinions all held that imposing a durational residency requirement on citizens seeking welfare- and health-related benefits that address basic necessities of life does not pass constitutional muster unless a compelling government interest exists.

A leading case on this matter, *Shapiro v. Thompson*, involved a number of consolidated cases in which applicants were denied AFDC assistance by their new state of residence for failure to reside in that state for the requisite time period prior to submitting an application for benefits.¹ The *Shapiro* Court held that the states' durational residency requirements created "two classes of needy resident families" that "constitute[d] an invidious discrimination denying them equal protection of the laws."² In the absence of a compelling government interest, the requirement creating this classification was deemed an infringement of the Equal Protection Clause of the 14th Amendment to the U.S. Constitution and citizens' right to travel as guaranteed by the 14th Amendment because it deprived individuals of a necessity of life, such as food or shelter.

¹ *Shapiro v. Thompson*, 394 U.S. 618 (1969).

² *Id.* at 627.

Similarly, the Court in *Saenz v. Roe* overturned a California statute that imposed a durational residency requirement limiting TANF benefits to the amount recipients would have received in their prior state of residency through the recipients' first year of residency in California.³ The Court reaffirmed "that a classification that had the effect of imposing a penalty on the exercise of the right to travel violated the Equal Protection Clause 'unless shown to be necessary to promote a *compelling* governmental interest.'"⁴ It further asserted that the right to travel embraces "the right of the newly arrived citizen to the same privileges and immunities enjoyed by other citizens of the same State."⁵

The U.S. Supreme Court addressed the imposition of a durational residency requirement prior to receipt of health-related benefits in *Memorial Hospital v. Maricopa County*.⁶ In that case, the Court overturned an Arizona statute that required citizens to reside in a county for a year as a condition for receiving nonemergency hospitalization or medical care at the expense of the county. It held that "medical care is as much 'a basic necessity of life' to an indigent as welfare assistance."⁷ Therefore, barring a compelling state interest, a classification that penalizes persons exercising their constitutional right to interstate migration by imposing limits on access to basic necessities could not be justified.

Compelling Government Interest

In evaluating whether an instance of governmental discrimination is permissible under the Constitution, a court will use the strict scrutiny standard of review, which requires the governmental entity creating the discrimination to articulate a "compelling government interest" for establishing the law or policy and be able to demonstrate that the law or policy is narrowly tailored to achieve that interest. Only where the government's interest is sufficiently compelling will the law or policy be upheld by a court.

The state interests offered to justify residency-based classifications and waiting periods in *Shapiro*, *Saenz*, and *Memorial Hospital* were not deemed sufficiently compelling to withstand strict scrutiny upon constitutional review. The *Shapiro* Court rejected state arguments that the durational residency requirement was necessary for planning the welfare budget, creating an objective residency test, minimizing fraud, and encouraging new residents to quickly enter the labor force.⁸ Similarly, the *Saenz* and *Memorial Hospital* Courts held that discouraging the migration of indigent citizens into the state and sustaining political viability for state programs did not justify an infringement of citizens' 14th Amendment rights.⁹

However, where a benefit is portable, the Court has found that states may impose durational residency requirements as a means of ensuring that newcomers are not entering the state just long enough to acquire some benefit, such as a divorce or public college education, which will be used upon returning to the individual's previous state of residency.¹⁰ Here the Court has made a distinction between benefits of life necessity and so-called portable benefits.

³ *Saenz v. Roe*, 526 U.S. 489 (1999).

⁴ *Id.* at 499 (quoting *Shapiro*, *supra* note 1, at 634) (emphasis in original).

⁵ *Id.* at 502.

⁶ *Memorial Hosp. v. Maricopa County*, 415 U.S. 250 (1974).

⁷ *Id.* at 259.

⁸ *Shapiro*, *supra* note 1, at 634.

⁹ See *Saenz*, *supra* note 3, at 504-08; *Memorial Hosp.*, *supra* note 6, at 263-66.

¹⁰ *Vlandis v. Kline*, 412 U.S. 441 (1973); *Sosna v. Iowa*, 419 U.S. 393 (1975).