

N.D.A.G. Letter to Gathman (Oct 5, 1992)

October 5, 1992

Mr. Frank E. Gathman
Commandant
North Dakota Veterans' Home
Box 673
Lisbon, ND 58054-0673

Dear Mr. Gathman:

Thank you for your May 14, 1992, letter requesting an opinion whether North Dakota Century Code (N.D.C.C.) § 37-15-10(1), which provides a one-year durational residency requirement as a prerequisite to apply to be admitted to the North Dakota veterans' home, is constitutional. I apologize for the delay in responding.

Our state constitution provides for the location of "[a] soldiers' home . . . at the city of Lisbon, in the county of Ransom." N.D. Const. art. IX, § 13. In 1985 the soldiers' home was renamed the veterans' home. 1985 N.D. Sess. Laws ch. 397, § 8. The purpose of the veterans' home is to provide domiciliary care for certain qualified veterans and their spouses. Domiciliary care is defined as "providing shelter, food, and necessary medical care on an ambulatory self-care basis to assist eligible individuals who are not in need of hospitalization or skilled nursing care services." N.D.C.C. § 37-15-00.1. N.D.C.C. § 37-15-10(1) provides that "[n]o applicant may be admitted to the veterans' home unless the applicant has been a bona fide resident of this state for at least one year next preceding the applicant's application for admission thereto."

"[F]reedom to travel throughout the United States has long been recognized as a basic right under the Constitution." Dunn v. Blumstein, 405 U.S. 330, 338 (1972) (quoting United States v. Guest, 383 U.S. 745, 758 (1966)). In Shapiro v. Thompson, 394 U.S. 618, 627 (1969), the Court held that state and District of Columbia statutory provisions denying welfare benefits to individuals who had resided in the administering jurisdictions less than one year created classifications which denied equal protection of the laws because the interests allegedly served by the classifications "either may not constitutionally be promoted by government or are not compelling governmental interests." The Court also stated that such denial would operate impermissibly to impinge the guarantee implicit in the constitution that "all citizens be free to travel throughout the length and breadth of our land. . . ." Id. at 629. The Court explicitly stated that the right to travel was a constitutionally protected right and that "any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional." Id. at 634.

In Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974), the Court held unconstitutional a state statute requiring a year's residence in a county before an indigent

could receive non-emergency medical care at county expense. The Court stated that "the right of interstate travel must be seen as insuring new residents the same right to vital government benefits and privileges in the States to which they migrate as are enjoyed by other residents." Id. at 261. In Memorial Hospital, the Court, characterizing the penalty inflicted as severe, commented:

To allow a serious illness to go untreated until it requires emergency hospitalization is to subject the sufferer to the danger of a substantial and irrevocable deterioration in his health. Cancer, heart disease, or respiratory illness, if untreated for a year, may become all but irreversible paths to pain, disability, and even loss of life. The denial of medical care is all the more cruel in this context, falling as it does on indigents who are often without the means to obtain alternative treatment.

Id. at 250. The Court also noted that less drastic means which did not impinge on the right to travel, such as a mere residency requirement, were available "to accomplish the objective of limiting the use of public medical facilities to bona fide residents . . . without sweeping within its prohibitions those bona fide residents who had moved into the state within the qualifying period." Id. at 267.

Not all durational residency requirements have been found unconstitutional however. The United States Supreme Court in 1971 upheld a state university regulation conditioning student eligibility for resident tuition on acquiring a bona fide domicile of a year's duration. Starns v. Malkerson, 401 U.S. 985 (1971), summarily aff'g 326 F.Supp. 234 (D. Minn. 1970). The Court has also sustained the constitutionality of a state statute conditioning a petition for divorce upon satisfaction of a one-year residency requirement. Sosna v. Iowa, 419 U.S. 393 (1975).

A distinction based on the severity of the penalty inflicted can be drawn between these cases and the cases discussed earlier in which the durational residency requirements were struck down. For example, in Starns the lower court stated that there was no showing "that the one-year waiting period has an unconstitutional chilling effect on the assertion of the constitutional right to travel," nor was there a showing of "any dire effects on the nonresident student equivalent to those noted in Shapiro." Starns v. Malkerson, 329 F. Supp. 234, 238 (1970). Nor was the prospective divorce petitioner in Sosna "irretrievably foreclosed from obtaining some part of what she sought, as was the case . . . in Shapiro, . . . in Dunn, or . . . in Maricopa County." Sosna, 419 U.S. at 410.

Applying this approach to the one-year durational residency requirement of N.D.C.C. § 37-15-10(1) leads me to a determination that the requirement is constitutional. The durational residency requirement does not "irretrievably foreclose" an applicant the opportunity to apply for admission to the veterans' home. Nor is there any showing of "dire effects" on the nonresident applicant equivalent to those noted in Shapiro. In this fashion, the penalty inflicted is similar to that considered in Starns and Sosna. Thus it is my opinion that the one-year residency requirement is reasonable because it ensures a limited state benefit is only awarded to those North Dakota residents who merit admission to the veterans' home.

Based on the foregoing, it is my opinion that N.D.C.C. § 37-15-10(1), which provides a one-year durational residency requirement as a prerequisite to apply to be admitted to the North Dakota veterans' home, is constitutional.

Sincerely,

Nicholas J. Spaeth

dec/vkk