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In the
Supreme Court of the United States

MEMORIAL HOSPITAL, HENRY EVARO,

Appellants,

v.

MARICOPA COUNTY and HENRY H. HAWS,
B. W. BURNS and J. ROBERT STARK,
Supervisors,

Appellees.

No. 72-847

Washington, D.C.
November 6, 1973

Pages 1 thru 39

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IN THE SUPREME COURT OF THE UNITED STATES

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MEMORIAL HOSPITAL, HENRY EVARO,	:	
ET AL.,	:	
	:	
Appellants,	:	No. 72-847
	:	
v.	:	
	:	
MARICOPA COUNTY and HENRY H. HAWS,	:	
B. W. BURNS and J. ROBERT STARK,	:	
Supervisors,	:	
	:	
Appellees.	:	
	:	

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Washington, D. C.

Tuesday, November 6, 1973

The above-entitled matter came on for argument at

1:38 p.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
 WILLIAM O. DOUGLAS, Associate Justice
 WILLIAM J. BRENNAN, JR., Associate Justice
 POTTER STEWART, Associate Justice
 BYRON R. WHITE, Associate Justice
 THURGOOD MARSHALL, Associate Justice
 HARRY A. BLACKMUN, Associate Justice
 LEWIS F. POWELL, JR., Associate Justice
 WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

MRS. MARY M. SCHROEDER, ESQ., 100 West Washington
 Street, Phoenix, Arizona 85003, for the Appellants.

WILLIAM J. CARTER, III, ESQ., 1845 East Roosevelt
 Street, Phoenix, Arizona 85006, for the Appellees.

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WILLIAM J. CARTER, III, for the Appellees 25

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear argument next in No. 72-847, Memorial Hospital against Maricopa County.

Mrs. Schroeder, you may proceed whenever you are ready.

ORAL ARGUMENT OF MRS. MARY M. SCHROEDER

ON BEHALF OF THE APPELLANTS

MRS. SCHROEDER: Mr. Chief Justice, and may it please the Court, this case is before you on appeal from the Supreme Court of Arizona. The issue before you is the constitutionality of an Arizona statute that denies medical care at public expense to residents who have not been residents a year. This Court presumably has taken jurisdiction of this case because the decision of the Arizona Supreme Court in upholding the constitutionality of that requirement was in direct conflict with the three-judge district court sitting in Arizona which invalidated the identical provision as a denial of equal protection and infringement on the right to travel.

The decision of the court below is in almost as direct conflict with a determination of this Court in affirming a district court decision in Arizona which invalidated a similar durational residence requirement for mental health care in Arizona.

The case arises here because in 1971 a man named Henry Evaro moved from the State of New Mexico to the State

of Arizona, intending to make Arizona his home and his residence. About six weeks after he moved to Arizona, he became very seriously ill with an acute respiratory illness. He was gasping for breath. It has been stipulated below he clearly required medical attention to restore his health.

He went to his private doctor. His private doctor told him he needed hospitalization and referred him to a private hospital, Memorial Hospital, the appellant here. When he went to Memorial Hospital, the hospital determined that he was indigent and asked under the appropriate procedures that the county hospital either take Mr. Evaro as a patient, give him treatment there, or that the county reimburse Memorial Hospital for the costs which it would expend in giving Mr. Evaro treatment.

The county refused. In doing so it acted in accordance with this statute, which says that unless there is an emergency, and I will discuss that exception in a few moments, if it please the Court. Mr. Evaro was clearly not an emergency case even though he needed care within the meaning of that statute. The county said that in accordance with this statute it could not give him care because he had not been a resident for a year.

QUESTION: Is Memorial -- I know it is nonprofit. Is it a private hospital?

MRS. SCHROEDER: Yes, it is, your Honor. And I am

here representing Mr. Evaro and that hospital because the private hospitals in Arizona have a very real concern in the enforcement of this statute.

QUESTION: And the other case involved Maricopa County Hospital, did it?

MRS. SCHROEDER: Yes.

QUESTION: And that's a public hospital.

MRS. SCHROEDER: That is the county hospital operated at public expense, yes, your Honor.

QUESTION: I suppose what you are saying there is that if the county can't take this indigent patient on, then the private not-for-profit hospital has to because he is not going to be denied health care.

MRS. SCHROEDER: That's true. Out of decency the private hospitals will take on as many patients as they can. They can't handle it all, but they take on what they can. And when they do, the costs have to be borne somewhere and they are passed on to paying patients at a time when it is particularly difficult for them to pay these costs as well.

QUESTION: This is a county measure, is it not? Suppose Mr. Evaro had come into Maricopa County from the adjoining county and this happened, would he be eligible to go to the county hospital facility back in the other county? And if not, why not?

MRS. SCHROEDER: No, your Honor, this is a State

statute which imposes a county residence requirement.

QUESTION: He has to be a resident.

MRS. SCHROEDER: He has to be a resident of the county. So that it bars those like Mr. Evaro who travel from one State to another as well as those who move within the State of Arizona.

The statute itself was passed in the 1930's at a time when the legislature was very much concerned about the tremendous movement of people in the United States and particularly coming into Arizona.

QUESTION: May I ask just one question.

MRS. SCHROEDER: Yes.

QUESTION: If in fact he had been taken in, the expense of his care would not have been borne by the county, would it?

MRS. SCHROEDER: Your Honor, the statute does provide that if the county is unable to provide care at the county hospital, that it can reimburse private hospitals provided that they meet the residence requirement.

When this statute was passed, there was concern. We have appended to our brief the legislative history showing that these durational residence requirements were passed at a time when there was a great deal of movement throughout the country, particularly into Arizona.

QUESTION: The purposes of this case, let me see

if I get it clear. The purposes of your basic issue, it doesn't make any difference, or does it make any difference, whether he was in a private hospital or in the county hospital?

MRS. SCHROEDER: Well, he couldn't have been accepted at the county hospital because he wasn't eligible for treatment at county --

QUESTION: But when the private hospital gets into the picture, it is only/as a surrogate for the county on your theory, is it not, though?

MRS. SCHROEDER: Well, what happened here, Mr. Chief Justice, is that because he did not meet the residence requirement, the private hospital which cared for him was not entitled to reimbursement by the county.

QUESTION: And he first applied to get into a county hospital?

MRS. SCHROEDER: No, he was referred to the private hospital. But if he had gone to the county hospital, the county hospital would have told him that unless you can pay your bill, we can't treat you here, and he would have had to go elsewhere.

QUESTION: All you are trying to show is that it is just as if he had applied to the county hospital and been turned down.

MRS. SCHROEDER: Yes, except that it happened he went to a private hospital which did give him treatment at

considerable expense.

QUESTION: All the question that is addressed, obviously, is the question of State action.

MRS. SCHROEDER: Well, your Honor, I don't think there can be a serious question here with the statute imposing this requirement and enforced in this manner. The statute was, of course, passed when the State was concerned about people coming in. It was passed at the same time that durational residence requirements for public assistance cash welfare benefits were passed. It was in the same period that California enacted its absolute bar to indigents in the State that was struck down a generation ago by this Court in Edwards v. California.

QUESTION: But for the residence requirement, the hospital would have been reimbursed by the county for the services given.

MRS. SCHROEDER: That is correct, your Honor, yes. The sole issue throughout this case has been the constitutionality of that residence restriction.

QUESTION: And in doing that, it would be acting, in effect, as an agent or a surrogate to the State is your theory.

MRS. SCHROEDER: Yes. Certainly. And that is so provided expressly in the statute.

When these durational residence requirements were

enacted, there was, of course, great concern and those back even in the 'thirties realized that this was a direct -- had a penalizing effect on people who were moving.

In the 1930's when Congress first faced this question with respect to public assistance benefits under the Social Security Act, it provided that durational residence requirements in that area under federally funded programs could not exceed a year.

By the time that Congress faced the question of medical care and funding State programs for medical care, the earliest being the Kerr-Mills Act in 1960, Congress expressly declared that no State program under congressional aegis could be accepted if it had any durational residence requirements whatsoever for medical care.

Now, let me point out that that statute doesn't control the action of Arizona here because Arizona is not participating in those programs and the money here is not under those programs. But we do have a square declaration by Congress that these durational requirements for medical care are not sound public policy, and telling those States who do participate in Federal programs that they cannot have them.

This Court first considered, of course, the question of durational residence in the welfare field in the Shapiro v. Thompson case which was decided in 1969. And the Court there held that to the extent that States may enact durational

residence requirements in this field for the purpose of keeping people out, penalizing them once they got there, and encouraging them to leave, that that was simply not^a/permissible purpose for legislation. And it held that absent a compelling State interest, these durational requirements cannot stand.

Now, the Shapiro case, of course, dealt with subsistence cash welfare payments. This is medical care. We think that if there is any distinction between the two, it is that there is even less justification for having these requirements for medical care than to have them in cash assistance.

QUESTION: There is also the difference that Shapiro dealt with travel between States. This is travel within a State between counties, isn't it?

MRS. SCHROEDER: Well, the restriction here is broader than the restriction in Shapiro because it hits at both travel within States and travel from one State to another. This particular case is purely interstate travel.

QUESTION: Intrastate.

MRS. SCHROEDER: Interstate.

QUESTION: Oh, this is interstate.

MRS. SCHROEDER: Yes, because the appellant here moved from New Mexico to Arizona.

QUESTION: I guess you said that earlier.

MRS. SCHROEDER: Now, I think the fundamental

importance of medical care can be seen in the fact that while Congress is willing to tolerate a year residence requirement in the area of cash assistance, it required that they could not stand in the area of medical care. And since this Court's decision in Shapiro, as you can see from a little chart which we have appended to our brief in asking States what they are doing now with residence requirements in the medical field, there are 45 States are not enforcing these requirements at all. There are only a handful of States that are still enforcing them. And the reason for it is clear, both from the decision of this Court in Shapiro and as a simple policy matter that where you say that welfare benefits, cash payments, have to be made to people regardless of the length of time that they have lived in a State, you cannot at the same time, unless there is some compelling justification that is not here, say that the State can withhold medical care which may be necessary to get the people off the relief roles and into functioning members of the society.

QUESTION: Mrs. Schroeder, could Maricopa County impose a simple residence or domicile requirement so as to exclude a transient from coming into Maricopa County Hospital and getting non-emergency medical care, say, for a pre-existing hernia?

MRS. SCHROEDER: Your Honor, that is not this case.

QUESTION: I realize that.

MRS. SCHROEDER: And the similar distinction in classification among residents based on the time they have been there would not be present. So far there has been -- I can only say that that would be the next case. Certainly it is not required by the decisions of this Court.

QUESTION: Under your theory of the law, on which side would that fall?

MRS. SCHROEDER: Well, our position is that you cannot distinguish as between residents based on the length of time that they have resided. We do not go so far as to say that -- and there may certainly be other considerations when dealing with transients who have a place of residence to which they can turn to for care.

QUESTION: How do you distinguish Starns v. Malkerson, that Minnesota resident tuition case?

MRS. SCHROEDER: Well, your Honor, that case -- and there have been several others that have determined that in the area of tuition for higher education, that we are dealing with ^a fundamentally different thing, a luxury perhaps it might be called, but certainly not something that is so essential to human existence as medical care or the kind of assistance payments involved in Shaprio. There may also be in the tuition and other areas to which Shaprio has been applied, there may ^a be different considerations justifying the reason for/residence requirement, administrative concerns, other things which are

not here which certainly were not present in Shapiro.

QUESTION: Could we translate that into the medical arena? Suppose Arizona authorized its county hospitals to charge X dollars to a nonresident and X-Y dollars to a resident, in other words, a discount to a resident. On your theory would this be all right?

MRS. SCHROEDER: That form of discrimination between residents based solely on the fact that they have just moved would be discriminatory and there would have to be a compelling reason for having it.

QUESTION: Of course, in Starns they required a one-year residency requirement before you get resident tuition in Minnesota. I think in Blandis last year a majority of the Court approved that.

MRS. SCHROEDER: Pardon me. Approved the imposition of the requirement?

QUESTION: Yes.

MRS. SCHROEDER: Certainly we recognize this Court has affirmed Starns, but let me, if I may, simply quote to you from what the Starns opinion itself says, which is that in distinguishing the area of fundamental necessities, welfare, medical care, from tuition, it says that Shapiro involved the immediate and pressing need for preservation of life and health of persons unable to live without public assistance. It distinguished that situation from the tuition situation.

And we do here -- the fundamental point here is that we do deal with something that is absolutely fundamental to human existence.

QUESTION: Do you think it was a matter of distinction or an emphasis? I come back to my hypothetical, and all you say is compelling interest. I have never known quite what that means, because I grope for a case where we have ever upheld a statute in the face of a compelling interest standard.

MRS. SCHROEDER: In this particular area it's difficult to think of one. The suggestion has been made, and I believe in the Blandis v. Kline opinion the Court is concerned about possible administrative difficulties in determining when a person is a resident for purposes of tuition because there you have people automatically moving from one family and taking up residence somewhere else. That certainly is not a problem that I find in the areas of welfare assistance.

May I say that to emphasize just how necessary this kind of medical care is, let me turn for a moment to the emergency exception that is urged here to be something which somehow takes this out of the Shapiro orbit. The fact is that in the statute, emergency care is defined as that care which is necessary for the preservation of life or limb. That means by definition that unless death is imminent or amputation is necessary virtually, that care will not be provided.

In the context of this very case we have a situation

where someone obviously needed medical care because he wasn't able to breathe, but he wasn't going to stop breathing altogether, so he was denied it. In other situations, cancer, diagnosed cancer patients have been denied medical care because they did not meet the residence requirements, presumably because although their disease unless treated at an early stage would be fatal eventually, it wasn't going to be fatal right then.

There are situations of very serious burns and disfigurement where care has been denied.

QUESTION: Are you saying that a carcinoma is necessarily always an emergency case?

MRS. SCHROEDER: No, I am saying within this statute, it is not an emergency and therefore care is denied.

QUESTION: Then are you saying that carcinoma is always a non-emergency case?

MRS. SCHROEDER: No, I don't know for what purpose this emergency exception was put in. What the statute says is that if you are an emergency, even if you haven't met the durational requirements, we will treat you. Then we must look to see what an emergency is.

QUESTION: Normally that would be a medical determination, would it not?

MRS. SCHROEDER: It is a medical determination, but it is not always made by medical doctors. That is one of the

problems here. And it is because it is defined in this statute as that treatment necessary for the preservation of life, as it is applied in Arizona, it means that those suffering from cancer are not considered emergencies and are therefore denied treatment until they meet the residence requirements. If that being that treatment is either delayed until it may be too late and treatment is more costly or that the person is made to suffer throughout the waiting period..

QUESTION: What was the statute in Vaughan?

MRS. SCHROEDER: When was -- I'm sorry.

QUESTION: What was the statute in Vaughan? We affirmed here the validation of that statute by a three-judge court. That was a mental health statute.

MRS. SCHROEDER: That was, yes, a mental health statute.

QUESTION: With a residence requirement?

MRS. SCHROEDER: Yes it was. It said that if the patient had not been a resident for a year, then there would be a transfer back to the State that the patient came from.

QUESTION: We affirmed the holding of unconstitutionality.

MRS. SCHROEDER: Yes, you affirmed the district court decision.

QUESTION: Do you feel that that's rather close to this?

MRS. SCHROEDER: I certainly do, yes. I mentioned that at the beginning of my argument. I have heard that is one of the reasons this Court has agreed to hear this one, because there is such a direct conflict.

QUESTION: Did the three-judge court in this statute rely on Vaughan?

MRS. SCHROEDER: They went the other way around. The three-judge court was first. Vaughan was second. The only thing that really troubled Judge Craig in the mental health case was that he was troubled that perhaps mental health wasn't quite as vital to human existence as --

QUESTION: Was the court in Valenciano and in Vaughan the same court, same three judges?

MRS. SCHROEDER: No.

QUESTION: It was a single judge.

MRS. SCHROEDER: It was a single judge in the mental health case and he did not participate in the Valenciano case.

The Court has waived the question of interstate versus intrastate travel.

QUESTION: The Vaughan court was a three-judge court. We affirmed on direct appeal.

QUESTION: It had to have been a three-judge court. It was a different court, though.

MRS. SCHROEDER: It was a different court, yes. Excuse me. We have two three-judge court decisions. I

apologize for it.

As we have seen, we have here a statute which affects people who move not only between States, but also people who move from county to county. The suggestion is made that somehow that lessens the constitutional infirmities. The fact is that here we have purely interstate travel. We have a restriction that is even more severe than the restriction in the Shapiro case.

QUESTION: If this were a county-to-county case, you would still be here.

MRS. SCHROEDER: Yes, we certainly would, and we point out that in Dunn v. Blumstein, the voting rights case, this Court invalidated both a State residence requirement and a local residence requirement for voting. And we believe that --

QUESTION: Both of those could have read on impeding interstate travel.

MRS. SCHROEDER: The local residence requirement?

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QUESTION: Yes. You have/local residence requirement.

And the State may not require anything, but you might have to live in the county for a year.

MRS. SCHROEDER: That's exactly what we have here. It does affect interstate travel.

QUESTION: I know, but -- I understand that. So the case isn't an intrastate travel case at all.

MRS. SCHROEDER: No, it is not.

QUESTION: Necessarily.

MRS. SCHROEDER: It is not, but the Supreme Court of Arizona in its opinion in upholding the statute somehow felt-- and I cannot give it to you in the most coherent terms because I am not sure exactly what they were concerned about, but I think they felt that somehow there was more justification perhaps to hitting at travel between counties within the State than at interstate travel. And we can only say that the right to travel has to be a fundamental precept that applies to anyone traveling in the United States, not only because he happens to cross a State line, but as between counties within the same State.

QUESTION: Are these funds the county's funds?

MRS. SCHROEDER: Yes, they are.

QUESTION: None of them are State funds.

MRS. SCHROEDER: I can't tell you, your Honor, whether there are no State funds, but they are principally raised by county revenue.

QUESTION: Large share of county funds. I suppose the State court was concerned with the intercounty relationships.

MRS. SCHROEDER: That may have been what the concern was, yes. But the effect of statute --

QUESTION: Maricopa County has, what, about half the population of the State?

MRS. SCHROEDER: Yes, that's correct.

QUESTION: About a million people or more in Maricopa County?

MRS. SCHROEDER: Approximately a million and the State has approximately two million total. So that one of the reasons presumably was that Maricopa County -- and they said to this court in their papers to the court that they are concerned about people coming not only from outside the State but from other counties in Arizona to Maricopa County.

QUESTION: How many counties in Arizona?

MRS. SCHROEDER: Oh, ten, fourteen. Fourteen.

QUESTION: Are there any that don't have any hospitals?

MRS. SCHROEDER: Yes, there are. I believe one county has no medical facilities.

What we have here is obviously a serious penalty on those who travel. It's one which can be justified in the opinions of this Court only by a compelling interest.

QUESTION: Mr. Schroeder, I take it from what you just say that the State is not completely disabled from burdening the right to travel, but it depends largely on what interest it advances for doing so.

MRS. SCHROEDER: Yes.

QUESTION: The nature of your argument, then, is based on travel rights stated in Shapiro and it isn't an equal

protection claim.

MRS. SCHROEDER: Well, I think the two have to be read together to a certain extent, because in Shapiro the Court said that because the classification was such that it discriminated against those who had only recently come into the State as opposed to those who had been there longer, that that kind of a classification could be justified only on the basis of a compelling interest. I said that we meet the equal protection point of what is their reason for making this distinction.

And what the Court said in Shapiro was that to the extent that the justification is that we want to keep people out or to encourage them to move once they get here, that this is not a permissible justification at all.

QUESTION: Suppose he was not an indigent here? Would you still be here?

MRS. SCHROEDER: If we had a non-indigent?

QUESTION: Non-indigent.

MRS. SCHROEDER: You mean seeking medical care, I presume.

QUESTION: Does this statute preclude them from taking a non-indigent?

MRS. SCHROEDER: We are here because this statute classifies indigents into two categories, those who have been in the State more than a year and those who have been in the

State less than a year. We would be here on a different case.

QUESTION: Are there facilities available to non-indigents at all?

QUESTION: If somebody came in from California and wanted to go to Maricopa Hospital.

MRS. SCHROEDER: The county hospital?

QUESTION: Yes.

MRS. SCHROEDER: I believe that there are facilities, yes, if they would pay the cost of the care.

QUESTION: And even if I hadn't been/a resident of Arizona for a certain length of time, if I could pay, I could get into the county hospital and pay for some special treatment or something?

MRS. SCHROEDER: I believe that that is true. You may want to direct that question to the counsel for the county. I believe that if you are willing to pay, the county makes these facilities available to those who live without the State. And I believe that in the abortion decisions, I believe that this Court clearly held that a State couldn't limit its facilities only to residents of the State.

QUESTION: I gather looking at the statute on its face this applies, this residence requirement, applies only to indigents, because --

MRS. SCHROEDER: Yes, yes. The residence requirement is only for indigents. It is a clear statement that for those

indigents who have lived for longer than a year, free care will be available, and for those who have not --

QUESTION: My question is to the non-indigent. You wouldn't be here.

MRS. SCHROEDER: We wouldn't be here in this case, that's true.

QUESTION: Let's see just how far this goes. Suppose a patient is diagnosed as having lung disease, tuberculosis up in Toronto, Canada. The doctor says what you need is a warm climate, dry climate, dry air, so Arizona is the place for you to go. So he flies from Toronto down to Phoenix and comes in under this statute. What about that?

MRS. SCHROEDER: Mr. Chief Justice, the answer has to be that if a person moves to the State of Arizona, makes that his residence, then he cannot be denied the care simply because he only recently moved, regardless of whether he was motivated there for his health or whether he moved to visit his family, or for whatever reason.

In this case we have to have a compelling interest to justify this classification. We don't have it. We have the county saying, first, that we need this statute in order to keep people from flooding in. This is precisely what the Court held in Shaprio was not a legitimate purpose at all.

QUESTION: Mrs. Schroeder, I take it that perhaps one might assume that the man lived in Toronto, he was not a

citizen of the United States. Would that make any difference?

QUESTION: Or would it make a difference if he were a resident of the State of Washington?

MRS. SCHROEDER: As this statute is drawn, I believe that it is not limited to people who come from outside the United States to the United States.

QUESTION: Would it make any difference to the man's constitutional rights. Your client came from New Mexico, so clearly he has the right to travel. Does that same right extend to people who are not citizens, but simply come from Canada?

MRS. SCHROEDER: No, that right wouldn't extend, But so long as the county makes its facilities available to residents who have moved from Canada there more than a year, then it shouldn't deny them because they have been there less than a year.

QUESTION: If Mr. -- going back to my hypothetical, if Mr. Evaro were a resident of a State outside Arizona, went down there for a vacation, would you be here?

MRS. SCHROEDER: No.

QUESTION: You wouldn't at all? You would say that the State could draw the distinction between a resident and a non-resident so far as its facilities are concerned?

MRS. SCHROEDER: I don't have to answer that in this case because we have a resident. We do not assert that the

county must make all its facilities available to everyone regardless of where they live, because in the situation of a transient, as you posit it, someone coming from the State of Washington to Arizona, he can go back to Washington and get the care. For someone who comes to Maricopa County, moves there to live there, he has no place else where he can return to.

QUESTION: Then your client is willing to take on the out-of-State indigents without complaint?

MRS. SCHROEDER: Well, there are problems in treating the indigents. We recognize it. But we are not there yet in this case. We are not at this point raising that case. And the opinions of this Court have not indicated that these welfare assistance programs must be available to everyone regardless of their residence.

QUESTION: Doesn't that also impinge upon the right to travel?

MRS. SCHROEDER: Yes, it does, and we recognize and we have stated in our brief many of the considerations here apply equally to transients as well as to residents. But we are not asserting in this case that the facilities must be open to that extent. But they certainly must be open to residents on an equal basis, and the only justification from the county that we have is that it's going to be more costly. This is precisely what was held in Shapiro to be not a

compelling interest, not one which can justify a statute like this.

Let me simply say in conclusion that the opinion of the Arizona Supreme Court is virtually the only decision in the welfare field which sustained the validity of the durational requirements like this. We think it should be the last. The discrimination here is insidious. The suffering that the people have who have to meet these requirements is real. The effect of this statute is to delay treatment until it is more costly and until it may be too late altogether, and it is to transfer a burden from the taxpayer base as a whole to paying patients at hospitals at a time when they can least afford to pay that cost. And we respectfully submit that the decision below should be reversed.

Thank you.

MR. CHIEF JUSTICE BURGER: Mr. Carter.

ORAL ARGUMENT OF WILLIAM J. CARTER, III

ON BEHALF OF THE APPELLEES

MR. CARTER: Mr. Chief Justice, and may it please the Court, I represent Maricopa County, which is a territorial subdivision of the State of Arizona that includes the city of Phoenix and roughly half the population of the State. This will be relevant as I get into the argument.

The county maintains a large, modern hospital, approximately 500 beds, and a large outpatient clinic department,

because it has a statutory duty to provide medical care for the indigent who reside in the county.

The issue before this Court which I agree with Mrs. Schroeder is simply whether or not a 12-month durational residence requirement for eligibility for medical care at county expense violates the United States Constitution. I think it's a relatively simple issue. And it breaks down into two components:

One, does this residency requirement in any way penalize the right of interstate travel?

And, two, if so, is there a compelling State interest to be protected by imposing the penalty?

Taking the last first, I will state to the Court as candidly as I can that the interest which I suggest is compelling is money. We estimated in our brief that the cost of providing medical care to indigent residents who had not lived in the county for one year would be approximately 13 percent of the budgeted sums for medical care.

QUESTION: If we were to agree with this argument, would we have to depart or retreat from something we said in Shapiro?

MR. CARTER: No, your Honor, I don't believe that is necessary, because as I read Shapiro, you said that there must be a compelling State interest to justify the imposition of a penalty, and you went on to say that for the purpose of

general welfare, that fiscal convenience, or some words to that effect, was not compelling. In Shapiro you were dealing with a life-or-death matter. If a person does not receive food, clothing, and shelter, he will die. We are not dealing with that in this case. I would agree that the State may not withhold emergency medical care on the basis of a durational residence requirement for that very reason. If we attempted to do that, we would indeed be conflicting with your holding in Shapiro.

QUESTION: You are, however, conceding that the applicable standard is that of a compelling State interest?

MR. CARTER: No, your Honor, I am not. My argument is alternative, first, that there is no penalty, and, second, that if there is, the interest is compelling. My primary argument is that this residence requirement does not constitute a penalty.

QUESTION: You say this is more like this welfare benefits, it's just a rational basis test, until the medical need becomes acute.

MR. CARTER: Yes, that the test to be applied first is whether or not the durational residence requirement constitutes a penalty on the exercise of the right of interstate travel. I think that this is the test that you said was in Dunn v. Blumstein. And it has to be examined from that point of view.

If you take the major durational residence requirements which have been struck down by this Court, all of those cases can be reconciled with Starns v. Malkerson in which you upheld a durational residence requirement for university tuition and with this case. In the Shapiro case, the person involved was threatened with the denial of an absolute necessity of life. If you do not receive clothing, if you don't receive food, even in Arizona, if you don't receive shelter, you are very likely to die. That is not the case in this statute that is involved here. If you do find yourself with a medical condition which puts you in that situation, then you are entitled to receive medical care at public expense, provided you are a resident, regardless of the term of your residence.

QUESTION: That 13 percent cost. You mean someone has calculated that the non-residents, that is, persons you regard as ineligible for this care, if embraced in the program, would raise the cost 13 percent? Or is the 13 percent the total of all indigent care of those entitled to it in your view and those not?

MR. CARTER: Mr. Chief Justice, at the time that the brief was filed, we calculated that the cost of furnishing non-emergency medical care to residents of the State who were indigent but had not resided in the State for one year would be 13 percent of the amounts presently budgeted for furnishing medical care to the indigents who have lived in the State for

one year. Since that time our estimates have been revised, and it is now closer to 10 percent.

QUESTION: How do those figures compare with the additional cost in Shapiro?

MR. CARTER: I don't know, Mr. Justice.

QUESTION: Because, if I remember, the same argument was made, wasn't it?

MR. CARTER: Mr. Justice Marshall, I don't know whether they are larger or smaller, but I think that the standard against which they have to be measured is different. In Rivera v. Dunn you upheld a decision which struck down a durational residence requirement for general welfare because -- and in the Dunn case the only justification offered was the cost, but the durational residence requirement has to be, the penalty has to be measured, if any, must be measured against the benefit to be derived.

I would not, for example -- well, in Maricopa County, we are talking about roughly \$2.5 million a year at present rates of inflation and growth. I would not, for example, argue that this is a compelling State reason to seize private property without due process of law or abolish the courts to save the expense of affording due process before you incarcerate a person who has committed a crime. I think that the penalty, if any, must be weighed against -- that the interest to be protected must be weighed against the advantage. And here I

an offering for your consideration that \$2.5 million does as a consideration outweigh the interest in non-emergency medical care. I am not offering money as --

QUESTION: Is cancer non-emergency?

MR. CARTER: Mr. Justice Marshall, what is an emergency and what isn't is defined in the statute as a condition threatening life or limb. But in practical application, an emergency is whatever the doctor in the emergency receiving room wants to call it. The only way that I know of to determine whether any medical condition is an emergency is to have the person examined by a doctor, and for that reason --

QUESTION: Can a doctor, if you are a resident, can a doctor say you don't need treatment and not treat you?

MR. CARTER: Mr. Justice Marshall, we operate as a part of the hospital an emergency receiving room which is open without question to anybody who comes in regardless of any condition of residence.

QUESTION: What I am talking about is those that the doctor says, "I think this patient should be hospitalized." Does the hospital have any discretion as to taking that patient or not?

MR. CARTER: The doctor is an employee of the hospital, and therefore the hospital on a simple theory of agency would be bound by his decision.

QUESTION: You mean all the physicians are members

of the hospital staff? I am talking about a private physician.

MR. CARTER: Oh, no, your Honor. We would not be bound by the determination of a private physician.

QUESTION: You would decide whether they needed treatment or not?

MR. CARTER: Our own doctors would, that's correct, our hospital employees. The normal route for requesting admission would be the emergency room, and if the doctor there thought that the patient had a life-threatening condition, he would be admitted.

QUESTION: I just have a grave problem of finding the difference between the horrible things you said were involved in Shapiro and cancer.

MR. CARTER: Well, I understand what you are saying. There is no question that early medical treatment, non-emergency medical treatment is a benefit, and I am sure there is no question that there are gray areas where you can pin someone down, especially a person like me without any medical background. But the principle that I am asserting is that if the condition is life-threatening, then it is of necessity an emergency, and the method of evaluating that condition is an emergency room with a doctor in charge who would rather keep people alive than let them die. So it is much less inhumane than has been suggested.

There has been a great deal of emphasis on the case in Vaughan v. Bower in which this Court upheld a decision striking down a durational residence requirement for treatment at the Arizona State hospital. But that statute contained another provision which was such a flagrant invasion of the right of interstate travel that the case striking it down is not really applicable.

QUESTION: The same three-judge court that decided that case decided Valenciano and thought that Vaughan was controlling.

MR. CARTER: Mr. Justice White, I don't know whether the exact three judges were the same three that tried Valenciano.

QUESTION: It was.

QUESTION: We just looked at it, it is the same three judges.

MR. CARTER: I agree that Valenciano is directly contrary to the holding of the court on appeal here.

QUESTION: That court thought that their own previous decision was controlling, after our affirmance was noted in their opinion in Valenciano.

MR. CARTER: I would still offer to the Court the fact that in the Vaughan case the statute empowered the superintendent of the State hospital to take the recently arrived patient in his hospital and put him or her on a public conveyance back to the State that he came from. This

is a float, it's a forceable expulsion of a person from the State who has recently arrived, and it puts the entire statute in a completely different situation. I wouldn't for a moment argue that Maricopa County can expel anyone.

QUESTION: This doesn't interfere with his right to travel; it compels him to travel.

MR. CARTER: Well, they put him on a railroad train and shipped him out of town. It is a direct physical invasion of his individual autonomy.

There is no statistical evidence that the durational residence requirement in this case has deterred anyone. In fact, all of the statistical evidence would tend to suggest that there has been no deterrence because Arizona has enjoyed or suffered an extraordinarily high rate of growth relative to other States in the Union. So it is necessary in looking at this to speak conjecturally, to examine the statute and conjecture whether or not it does constitute a penalty on the exercise of the right of interstate travel. And I would suggest that the penalty, if any, that it imposes is identical or of like degree to the one that the Court upheld in Starns and spoke more specifically of in Blandis v. Kline.

If you intend to live in a --

QUESTION: Starns is a little different, at least as explained in Blandis v. Kline, was it not? That because of the ambiguous situation of university students, college and

university students from out of State as from the ambiguity of whether or not they were or were not residents that a State university could have a one-year residence requirement, to determine that issue. As I understand this case, there is no argument about the fact that Mr. Henry Evaro is or was a resident of Maricopa County, is there?

MR. CARTER: No, there is none whatsoever.

In Starns there were several reasons advanced. One of them was the difficulty of ascertaining the bona fides of the residence. But another one offered, and the one that I would offer in this case, is simply a determination that in this rather more limited benefit, the State could reasonably decide to extend it to those who had already contributed to the economy of the State by paying taxes and living there.

And I would like to emphasize to the Court that indigents are taxpayers. So an indigent who has lived in the State for one year, of necessity, both indirectly and directly has contributed a substantial amount to the tax revenues of the State.

The argument offered in Starns was that with this rather limited benefit, not a life-threatening or life-giving benefit, that it could be extended only -- the legislature could reasonably decide to extend it only to those who had made a contribution of some kind by their presence and activity to the State.

There is no question that a one-year durational residence requirement is valuable in determining the bona fides of residence. I hesitate to offer it to this Court because you didn't think much of it in Shapiro or Dunn, but there is no question that it is valuable.

QUESTION: Under Shapiro and perhaps some other cases, it wouldn't make any difference whether it were one year or 30 days, would it, on the principles enunciated?

MR. CARTER: That's correct. As I --

QUESTION: No time factor to test the good faith element is found permissible.

MR. CARTER: As I read Shapiro, the State is entitled to find out -- or may be entitled to find out whether a person is in fact a resident, but it may not impose a durational residence requirement which could threaten his existence as a means.

QUESTION: Or impose a fixed arbitrary time for the purpose of that determination.

MR. CARTER: I am not offering, because of Shapiro and Because of Dunn, I am not offering the convenience of ascertaining residence as a justification for the statute in this case. I recognize that the Court has already taken care of that argument for me.

Apropos of the justification that I did offer, I would like to describe to the Court what the financing of the

county hospital is. It is financed principally, approximately 90 percent, by ad valorem taxes, ad valorem property taxes. There are other financing devices, but they are minor. The ad valorem property taxes to finance it are imposed strictly on property within the jurisdiction that supports the hospital.

QUESTION: You don't get any Federal money?

MR. CARTER: Mr. Justice Marshall, we get a great deal of Federal money for our health services department, but most of it is earmarked for specialized programs which do not have a durational residence requirement. I am referring to programs like tuberculosis control, VD, things like that.

That is the essence of my argument, that if the Court matches Starns against Shapiro, it is going to have to find some basis for distinguishing between the two, because on the one hand, you struck down a durational residence requirement as a condition of receiving a benefit which the State extended to its citizens, and in the other you upheld it. I think if you examine those cases, that the only distinction which can be made between the two is that in the case of Shapiro and in the other cases, like Dunn, that there was either a life-threatening condition or an invasion of a fundamental right of citizenship, such as voting, or in the -- Here there is none. The condition is not life-threatening, and there is no invasion of a fundamental right of citizenship.

Therefore, it very closely resembles the durational residence requirement in Starns. I am not for a moment going to suggest that this benefit which is withheld is of little value, but the same is true of reduced tuition. It is an extremely valuable benefit, but it is not a life-giving benefit.

QUESTION: Mr. Carter, am I correct, however, in saying that the practical result of your position is that the care of Mr. Evaro and others like him is placed upon the private nonprofit facilities?

MR. CARTER: The practical result of my position is hard to measure, Mr. Justice Blackmun, because it varies with the facility that a particular county has. In Maricopa County Hospital, roughly 40 percent of our patients are legally indigent. Approximately an equal number are not legally indigent, however, they are so poor that they cannot pay their hospital bill. So we go through the --

QUESTION: That could be true no matter how much money you get these days.

MR. CARTER: Mr. Evaro could have been admitted to the hospital, but he would have got a bill. He wouldn't have been admitted in the capacity of indigent.

QUESTION: But it does mean that the Memorial Hospital has to take care of Mr. Evaro free of charge.

MR. CARTER: It does mean that there are some cases where the voluntary hospitals are extending care to

people who would be eligible but for the durational residence requirement, yes.

QUESTION: Does it not then have a destructive effect upon the financial integrity of these institutions?

MR. CARTER: To the extent that this occurs, it causes the cost of that to be passed on to the private patient.

QUESTION: I suppose some of those hospitals, or most of them, are required to do some indigency work or they lose their status, their tax status?

MR. CARTER: Well, they are required, most of them have received a substantial amount of Hill-Burton funds, Federal funds for their construction, which requires that they do some indigent work.

QUESTION: Yes.

MR. CARTER: I would also like to point out that the county hospital, rather than the voluntary hospital in Maricopa County takes the bulk of the people who are ineligible but can't pay. They are almost half our hospital population.

If the Court has no further questions, that concludes my argument.

QUESTION: Let me follow through. They would also have to take all the indigents in Arizona that are not residents of Arizona, the private hospital would?

MR. CARTER: Well, Mr. Justice Blackmun, if you are sick and broke, somebody has got to take care of you. And in

Phoenix it's the county hospital that usually does.

QUESTION: It's better for the municipal facility to do this than for the private facility which has other indigent claims upon them if it's worth its salt.

MR. CARTER: I agree, and in practice this is what occurs. We have an awful lot of uncollected bills.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Carter.
Thank you, Mrs. Schroeder.

This case is submitted.

(Whereupon, at 2:33 p.m., the oral argument in the above-entitled matter was concluded.)