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THE SUPREME COURT OF THE UNITED STATES

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DKT/CASE NO. 84-231

TITLE ALVIN D. HOOPER AND MARY N. HOOPER, Appellants v.
BERNALILLO COUNTY ASSESSOR

PLACE Washington, D. C.

DATE February 20, 1985

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IN THE SUPREME COURT OF THE UNITED STATES

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ALVIN D. HOOPER AND :
MARY N. HOOPER, :
Appellants :
v. :
BERNALILLO COUNTY ASSESSOR :
- - - - - x

No. 84-231

Washington, D.C.

Wednesday, February 20, 1985

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 12:59 o'clock p.m.

APPEARANCES:

ALVIN D. HOOPER, ESQ., Albuquerque, New Mexico;
on behalf of the Appellants.

H. BARTOW FARR, III, ESQ., Washington, D.C.;
on behalf of the Appellee.

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P R O C E E D I N G S

CHIEF JUSTICE BURGER: We will hear arguments next in Hooper against County Assessor.

Mr. Hooper, you may proceed whenever you are ready.

ORAL ARGUMENT OF ALVIN D. HOOPER, ESQ.

ON BEHALF OF THE APPELLANTS

MR. HOOPER: Mr. Chief Justice, and may it please the Court:

Appellant Alvin Hooper has been permanently denied a veterans property tax exemption which is given to other similarly situated veterans in New Mexico solely because he did not establish residence in that state prior to May 8, 1976. The issue in this case is whether that denial by the Appellee Assessor denies his constitutional rights of state citizenship, equal protection, and his fundamental right of interstate migration.

The Court of Appeals from New Mexico held that the denial by the Assessor did not violate those rights and the Supreme Court of New Mexico refused to review that decision and the case is now before this Court on appeal.

The facts of the case can be briefly stated. New Mexico Constitution authorizes a veteran's property tax exemption in the amount of \$2,000 and that exemption is implemented through New Mexico Statute 737-5, which

1 is the statute involved in this case.

2 In order to qualify for the exemption, the statute
3 requires that the Claimant actually be a veteran. Secondly,
4 that the veteran be a bona fide resident at the time of
5 claiming the exemption, and, thirdly, that the veteran had
6 served on active duty for 90 days during a period of armed
7 conflict.

8 There is no question about Appellant Hooper
9 meeting those qualifications and those are not an issue
10 in this case.

11 However, this statute goes on to add another
12 durational type residential requirement which requires that
13 a Vietnam-era veteran claiming the exemption must have been
14 a resident of the state prior to May 8, 1976 in order to
15 qualify for the exemption. And, it is the validity of this
16 additional residency requirement that is in issue in this
17 case.

18 The Appellants believe this case is controlled
19 by Zobel v. Williams and under that case the residency
20 requirement is invalid.

21 QUESTION: I take it the law doesn't require that
22 the person be a resident of New Mexico at some point during
23 his service.

24 MR. HOOPER: No, Your Honor, and that is one of
25 the main reasons I contend this statute has no -- the

1 residency requirement has not rational basis. There is
2 no coincidence of military service and residence required.

3 Like Zobel, this case involves permanent and
4 retrospective classifications of residents in which the
5 newer arriving residents are never able to achieve equality
6 with the earlier arriving residents.

7 Now, only two alleged purposes have been set forth
8 by the state and by the Assessor which were accepted by
9 the Court below as purposes for this statute. One of those
10 purposes is to express gratitude and to reward New Mexico's
11 veterans and to ease their return to civilian life at the
12 end of their military service.

13 However, this statute has a problem in that regard.
14 If New Mexico's intent was to reward veterans who were residents
15 at the time the exemption was given, then they have failed
16 to do that. The statute is under-inclusive because it did
17 not include bona fide resident veterans such as Appellant
18 and all other residents who had moved to the state since
19 May 8, 1976.

20 QUESTION: Mr. Hooper, in your view, would the
21 statute be valid if it were limited in granting the
22 exemption only to veterans who were inducted while they
23 were living in New Mexico and returned or discharged to
24 New Mexico?

25 MR. HOOPER: That is certainly a very substantial

1 factor which is not present in this case. However --

2 QUESTION: Would it be valid though in your view
3 if it were so limited?

4 MR. HOOPER: I do not believe it would be for
5 this reason. Service in the military is really in the
6 national interest and a veteran has served New Mexico whether
7 or not he entered the service from New Mexico.

8 QUESTION: Well, there were a couple of cases,
9 weren't there, from New York which had to do with a statute
10 much like that and I guess this Court affirmed at least
11 one of those cases.

12 MR. HOOPER: This Court summarily affirmed one
13 of those --

14 QUESTION: And, you think that was wrong then?

15 MR. HOOPER: I believe that distinction is wrong
16 because really all that boils down to is the fact that the
17 veteran is being rewarded for prior residency, not for prior
18 service, because I served New Mexico equally even though
19 I was not a resident at the time of the military service.
20 A person that enters service does that because of a national
21 interest and serves any state equally and I --

22 QUESTION: Do you think it is not a legitimate
23 purpose for a state to be concerned about the dislocation
24 that the draft into military service imposes on those
25 drafted?

1 MR. HOOPER: I think it is.

2 QUESTION: From within their state?

3 MR. HOOPER: I think it most certainly is for
4 those resident at the time. But, once again, I say this
5 statute does not require that kind of coincidence, so
6 that issue --

7 QUESTION: Well, yes, except you were telling
8 me that you think even one drafted differently may also
9 be invalid.

10 MR. HOOPER: That is right. And, the question
11 presented by the Assessor in their brief, in fact, relies
12 on that and indicates the fundamental misunderstanding of
13 this statute because it is based entirely on a coincidence
14 of miliarty service and residency which is not required
15 by this statute.

16 The other --

17 QUESTION: Mr. Hooper, are you a resident of New
18 Mexico now?

19 MR. HOOPER: Yes, Your Honor, I have been a resident
20 since August of '81.

21 QUESTION: I notice you had your certificate here
22 issued to you as of North Carolina.

23 MR. HOOPER: I have moved around so much I am
24 admitted in a number of states and North Carolina just
25 happens to be my home state and that was the reason I

1 requested admission from North Carolina. I am still a member
2 of the North Carolina Bar as well.

3 QUESTION: But this is within the year.

4 MR. HOOPER: Yes, Your Honor. I believe admission
5 only requires that you be a member of any highest -- the
6 court of any --

7 QUESTION: I am not making any question about
8 that. I am just curious that you had your certificate issued
9 as though you were of North Carolina.

10 MR. HOOPER: It only requires you to be admitted
11 to a Bar. You don't have to be admitted to the Bar --

12 QUESTION: It has nothing to do with a Bar. It
13 has -- The inquiry is how do you want your certificate issued,
14 so it is issued to you of North Carolina.

15 MR. HOOPER: Well, that is not based on legal
16 residency though. I interpret that requirement as only
17 being where I want the certificate to show I was admitted
18 is the way I believe that is interpreted.

19 The second --

20 QUESTION: Mr. Hooper, may I inquire also, how
21 much in terms of dollars in Bernalillo County in 1983 would
22 the \$2,000 property exemption have been worth? What are
23 we talking about in dollars?

24 MR. HOOPER: It would be somewhere between \$100
25 and \$200 annually is what we are talking about, but I believe

1 this involves a fundamental principle and dollar value cannot
2 be attached to it.

3 However, I would remind the Court that in the
4 Zobel case the dividend involved there was a very nominal
5 dollar amount but yet five concurring Justices in that case
6 indicated that that scheme, even though it involved a nominal
7 amount of money, clearly impacted the right to travel even
8 though that issue did not have to be addressed in that case.

9 QUESTION: Is that what you claim is violated
10 here, Mr. Hooper, your right to travel?

11 MR. HOOPER: I believe this classification will
12 not pass the rational basis test, however --

13 QUESTION: Well, I asked you, what constitutional
14 right is it that you claim was violated?

15 MR. HOOPER: My constitutional right to be treated
16 equally with other citizen residents of the State of New
17 Mexico.

18 QUESTION: Well then it is not a right to travel,
19 it is equal protection?

20 MR. HOOPER: It is both, Your Honor. It is equal
21 protection and also a right to travel. I consider those --
22 Now the right to travel has been analyzed in equal protection
23 terms but both aspects are involved in this case.

24 QUESTION: And you think that people are deterred
25 from moving to New Mexico by the fact that if they are a

1 Vietnam veteran that they won't get a property tax waiver?

2 MR. HOOPER: This Court has specifically ruled
3 that deterrence is not required, Your Honor.

4 QUESTION: I was asking you a question.

5 MR. HOOPER: No, I don't believe people are
6 necessarily deterred, but I don't believe -- Whether they
7 consider the exemption as part of their decision to move
8 to New Mexico, I don't believe that is --

9 QUESTION: You say that shouldn't make any difference.

10 MR. HOOPER: I don't believe it should, Your Honor.

11 QUESTION: Is there a similar exemption for veterans
12 of other wars?

13 MR. HOOPER: Yes, Your Honor, there is. In fact,
14 there is an exemption for -- Each one of them has their
15 own specified residency. For the First World War veterans
16 it is some date in 1934; for the Second World War it is
17 January of '47, I believe; and for the Korean War it is
18 February of '55. But, nevertheless, I believe that all
19 of those classifications are suspect under the same --

20 QUESTION: Have they been challenged?

21 MR. HOOPER: No, Your Honor, these have never
22 been challenged in the state court.

23 QUESTION: Of course, New Mexico, even if you
24 won, New Mexico could satisfy you by just not giving the
25 break to anybody.

1 MR. HOOPER: Well, that certainly is one possibility,
2 Your Honor, but I am hoping that the residency requirement
3 will simply be severed from the remainder of the statute
4 and the exemption given to everyone. But, certainly that
5 is my concern, that this statute differentiates improperly
6 between those who were residents before an arbitrary date
7 and those who became residents after that date.

8 The second thing that --

9 QUESTION: May I ask before you go on, Mr. Hooper,
10 would your point be exactly the same if instead of a tax
11 exemption they had given a cash bonus?

12 MR. HOOPER: It is essentially the same thing,
13 Your Honor. In fact --

14 QUESTION: So, under your view if they gave a
15 cash bonus limited in time and I move to Arizona I could
16 pick up the bonus?

17 MR. HOOPER: Well, now the bonus -- There is one
18 difference. The bonus is a one-shot kind of deal. This
19 has a year after year implication.

20 QUESTION: I understand that. But, your rationale
21 seems to me would apply to both.

22 MR. HOOPER: Well, if it is a one-shot deal for
23 a bonus -- In other words, if in 1983 they had said we are
24 going to give a bonus to people who are resident at this
25 time for 1983, I have no problem with that. But, this was

1 retrospective. It was enacted in 1983 but went back to
2 '76 and then it is a continuing lifetime benefit and that
3 is where the problem is. It has both a long-term, year
4 after year impact and it also has a retrospective feature.
5 When it was enacted in 1983, it was differentiating between
6 those veterans who were residents of the state at that time.
7 If it had been enacted prospectively only or enacted in
8 1983 only for 1983, I would assume all who were residents
9 at that time would have gotten it.

10 QUESTION: How many people qualify for the benefit,
11 do you know?

12 MR. HOOPER: That is not in the record, but it
13 my understanding that there are about 130,000 potentially
14 qualified veterans in the state and only less than half
15 of those actually qualify for the bonus because of these
16 various requirements placed on them.

17 QUESTION: By the date requirement?

18 MR. HOOPER: Yes, sir.

19 QUESTION: Cuts off about half of them?

20 MR. HOOPER: Yes, Your Honor.

21 The second alleged purpose of this statute is
22 to encourage veterans to settle in New Mexico. Well, I
23 believe the Assessor himself has even abandoned that
24 argument before this Court, because, as was pointed out
25 in Appellants' brief, that purpose is an impossibility.

1 It is impossible to enact a reward in 1983 to encourage
2 veterans to settle in New Mexico before 1976. It is
3 impossible to encourage to do something seven years after
4 a date that is already passed.

5 We believe that the requirement of residency is
6 not rationally related to these alleged purposes of the
7 statute and there are really four basic factors which go
8 into that position. The first factor is, as we have briefly
9 pointed out, there is no nexus between the veteran and New
10 Mexico based on a coincidence of military service and
11 residency. The prior residency has absolutely nothing to
12 do with the military service.

13 So, it really boils down to the fact that New
14 Mexico is essentially simply rewarding its veterans for
15 prior residency only and I do not believe under the holdings
16 of this Court that that is a legitimate state purpose.

17 The second factor --

18 QUESTION: Would it be legitimate in your view
19 to limit the tax exemption to residents of New Mexico at
20 all?

21 MR. HOOPER: Oh, yes, Your Honor, I certainly
22 believe it is legitimate to limit it that way. And, in
23 fact, the implication in the Assessor's brief seem to be
24 that I was challenging residency requirements per se and
25 also challenging classifications of veterans as opposed

1 to non-veterans per se. That is not the issue here. It
2 is conceded that I am a bona fide veteran and I am a bona
3 fide resident, so those are not in issue. This is an
4 additional requirement over and above that.

5 QUESTION: Why under -- Supposing you were still
6 living in Tuckasegee, North Carolina, and simply owned real
7 property in Bernalillo County? Couldn't you then make the
8 argument that any sort of residency requirement was violative
9 of your equal rights?

10 MR. HOOPER: I think the term "residency" as used
11 in there, which is not in issue here, is synomous with domicile.
12 You have to physically live there with intent to remain
13 there.

14 QUESTION: Well, why, under you line of argument,
15 may the state require domicile?

16 MR. HOOPER: Because I think this Court has clearly
17 held that you can apportion benefits between residents and
18 non-residents and that is not the issue here at all.

19 QUESTION: If you are right on your right-to-travel
20 argument, it would defeat that kind of a statute as well.

21 MR. HOOPER: I am not sure that I understand your
22 comment.

23 QUESTION: Well, one of your arguments I thought
24 was to require a different level of scrutiny because this
25 statute violates the right to travel.

1 MR. HOOPER: Yes, ma'am.

2 QUESTION: And, if it were limited just to residents
3 of any duration you would have the same problem.

4 MR. HOOPER: Well, my argument is that it will
5 not pass a rational basis test. However, if this Court
6 should determine that it should pass that test, then it
7 should apply the strict scrutiny test because of the impact
8 on the right to travel. I don't really believe you need
9 to get to the strict scrutiny test in the same way that
10 you did not get to it in the Zobel case. That case was
11 decided on simply a rational basis ground and I believe
12 that is adequate in this case. But, as five concurring
13 Justices indicated in that case, if it had been necessary,
14 the strict scrutiny would have been applied to invalid that
15 statute. That is my position here.

16 We have absolutely no quarrel with a residency
17 requirement per se.

18 The second factor that I wanted to mention was
19 the retrospective nature of this requirement. As I mentioned,
20 it was enacted in 1983, seven years after the date had passed.
21 This is very analogous to the retrospective feature in the
22 Zobel statute which this Court invalidated.

23 Now, the Assessor has contended that this
24 residency requirement is somehow tied to enable veterans
25 to make the transition from military life back to civilian

1 life. Well, in 1983 when it was enacted they had already
2 had eight years in which to readjust to civilian life and
3 it doesn't make sense then to come along and say, well,
4 eight years after the fact we still have a concern about
5 your readjustment to civilian life, therefore, we are going
6 to give you this veteran's exemption.

7 QUESTION: Well, what if in 1983 the New Mexico
8 Legislature had enacted a statute saying that all Vietnam
9 veterans who resided in New Mexico at the time of their
10 entering the service shall now get a \$2,000 exemption?

11 MR. HOOPER: That is essentially the same question
12 that Justice O'Connor, I believe, asked. That is a different
13 situation here and certainly residency at the time of enter-
14 ing service, that special nexus between the veteran and
15 the state at that time is a substantial factor. I personally
16 don't believe it is adequate -- it is still adequate to
17 be valid, but it is certainly a very substantial factor
18 which is not present in this case.

19 QUESTION: Well, if retrospective as you put it
20 is bad, certainly that is retrospective. I mean, the statute
21 looks back to another time.

22 MR. HOOPER: It is retrospective in a sense.
23 As I say, I don't believe that statute itself would be valid,
24 but it at least has some rationality to it in that there
25 may be some rational basis for saying a state has more

1 interest in its veterans who were veterans at a particular
2 time during their military service. This retrospective
3 feature that we are complaining of, a veteran did not even
4 have to be a resident on May 8, 1976 in order to claim this.
5 It just simply picked that day out of thin air. It is com-
6 pletely arbitrary. The veteran had to have lived in New
7 Mexico one day as an infant in 1920 and moved away from
8 the state and never come back to New Mexico until he retired
9 at age 65 in 1985 and he would immediately get this
10 exemption. That is how that statute is worded. It has
11 no rational basis whatsoever.

12 So, it is not tied to any -- This May 8th date
13 is completely pulled out of thin air. It has no connection
14 to anything.

15 The Assessor and the Court below indicated that
16 it was somehow related to the cessation of hostilities in
17 Vietnam. In fact, they specifically mention in two places
18 that it was one year after the cessation of hostilities.
19 Well, it clearly is not. The cessation of hostilities and
20 the Peace Treaty occurred in January of 1973, more than
21 three years before this date was chosen and not one year
22 after the fact as was indicated by the Assessor.

23 QUESTION: What would you say about a statute
24 of the state which had been enacted at the beginning of
25 the war and followed the pattern of the Civil War bonuses

1 and provided that every resident -- every person domiciled
2 in the state who entered the military service would receive
3 a bonus of \$1,000? They hand it to him when he comes back
4 from the recruiting station.

5 MR. HOOPER: That is certainly much more legitimate
6 than this is. I have no problem with that.

7 QUESTION: Would you have any claim?

8 MR. HOOPER: No, Your Honor, I would not, because
9 I was not a resident at the time. And, if New Mexico had
10 given a bonus during the war to those who were residents
11 at that time, I would have no claim to that and that is
12 not what I am claiming at all. I am claiming that here
13 they are giving an on-going, year-after-year exemption based
14 solely on an arbitrary date of residency which is not tied
15 to anything.

16 I believe that classifying similarly situated
17 veterans into permanent classes -- and this is a permanent
18 classification -- people who came after 1976 are forever
19 barred from achieving equality with those who came before.
20 I believe that that kind of classification creates a seniority
21 system of state citizens in which the earlier arriving
22 residents are more worthy or more equal in a sense than
23 those who arrived later.

24 I believe this Court's decisions have clearly
25 indicated that those kinds of seniority systems based on

1 duration of residency or length of residency are invalid.
2 And by the same rationale, this residency requirement is
3 invalid. In fact, it is hard to separate date of residency
4 from length of residency. They are exactly the same thing
5 unless there has been some discontinuity in the residency
6 at some place along the line.

7 This is essentially the same as -- In 1983 when
8 New Mexico enacted this statute, they said to their veterans,
9 in order to get this benefit you must have lived in New
10 Mexico for the last seven years. That is essentially what
11 it boils down to. And, that, to me, is clearly not
12 permissible in view of this Court's many holdings regarding
13 durational residency requirements.

14 I believe the 1982 Zobel v. Williams case really
15 controls this case. The Court below really dismissed that
16 case with a wave of a hand and simply said that -- for two
17 reasons -- that that involved a tax legislation -- this
18 involves tax legislation where Zobel did not and, secondly,
19 that for some reason it was not applicable to this case
20 because Zobel apportioned a benefit rather than denying
21 the entire benefit. To me, it would appear much worse to
22 deny the benefit entirely than it would be to apportion
23 it based on residency.

24 I believe the residency requirement here is very
25 analogous to that in Zobel because that involved a

1 retrospective feature. It also involved permanent classi-
2 fications or distinctions between citizens.

3 The Citizenship Clause of the Fourteenth Amendment
4 equates state citizenship with simply residency and that
5 clause does not provide for and does not permit degrees
6 of citizenship. And, that is exactly what is happening
7 here in New Mexico. They are creating degrees of citizenship
8 in which those who arrived after May 8, 1976 have a second
9 class citizenship status.

10 As I indicated, this residency requirement is
11 essentially the same as a durational residency requirement
12 in that it divides residents into those who came at an earlier
13 time and those who came after May 8, 1976. The waiting
14 period for equality under this statute for a veteran who
15 came after May 8, 1976 is forever. One could live in New
16 Mexico forever, even though he established residency on
17 May 9, 1976 and he never would get this benefit, whereas,
18 a veteran living in that state for one day at any time prior
19 to that date would be provided the benefit.

20 Even if this Court should agree that this
21 residency requirement passes the rational basis test, I
22 believe it should go further and subject it to strict scurtiny
23 because of its impact on the fundamental right to travel.
24 The Court has indicated that the fundamental right to travel
25 prohibits a state from putting newer residents at a

1 disadvantage or otherwise treating them differently from
2 earlier residents.

3 Under that reasoning, it does not appear permissible
4 for New Mexico to penalize those who exercise their funda-
5 mental right to migrate to that state after May 8, 1976.

6 The Court in the Shapiro case indicated that any
7 classification which penalizes that right must be subjected
8 to strict scrutiny and will not survive unless it is found
9 necessary to promote a compelling state interest. New Mexico
10 clearly has not shown any compelling interest for this
11 classification. In fact, there isn't even a rational basis
12 for it much less a compelling interest.

13 The Court below seemed to feel that the only kind
14 of right that -- the denial of which would create an impact
15 on the fundamental right to travel were those rights which
16 would deter migration if they, in fact, were denied. This
17 Court has clearly indicated that actual deterrent is not
18 required in order to create an impact on the fundamental
19 right. And, I would point out, this right here is actually
20 very synonymous to the right involved in the Zobel case and
21 the concurring members of this Court clearly believed that
22 that was sufficient impact to create an invalid -- That
23 created an invalid impact on the fundamental right to travel.

24 Furthermore, this tax exemption is authorized
25 in the New Mexico Constitution and certainly for New Mexico

1 residents it is considered a very important benefit.

2 The fact that the residency requirement itself --
3 I mean the tax exemption statute itself serves generally
4 legitimate purposes is not adequate. The residency require-
5 ment itself must satisfy the legitimate purpose and there
6 is no evidence whatsoever of any legitimate purpose here
7 associated with this statute.

8 I would like to reserve the remainder of my time.

9 CHIEF JUSTICE BURGER: Mr. Farr?

10 ORAL ARGUMENT OF H. BARTOW FARR, III, ESQ.

11 ON BEHALF OF THE APPELLEE

12 MR. FARR: Thank you, Mr. Chief Justice, and may
13 it please the Court:

14 The issue in this case is whether New Mexico,
15 in awarding a modest benefit for service during the Vietnam
16 War, may impose a condition of bona fide residency at the
17 time of the war. In our view, it clearly may.

18 Now, it is important to understand just how the
19 statute works. In giving a benefit for service during the
20 Vietnam War, New Mexico has created two classes based upon
21 residency at that time.

22 The first class and one that admittedly is not
23 mathematically exact, consists mainly of persons leaving
24 New Mexico for the war and persons coming back and settling
25 in New Mexico within a year after the war's end. That class

1 New Mexico regards as its citizens at the time of the war
2 and they get a modest reduction in their property valuation.

3 The second class consists of people who left from
4 other states, came back and settled in other states, and
5 had no ties whatsoever to New Mexico at any time during
6 the Vietnam War. That group may have gotten bonuses and
7 other benefits from their home states at the time of the
8 war but they do not qualify for the New Mexico benefit.

9 Now, Appellant's argument depends essentially
10 on compressing two separate time periods into one. Looked
11 at closely, his claim to the New Mexico benefit says, first,
12 that 20 or so years ago he served during the Vietnam War.
13 Then he says four years ago he came to New Mexico and became
14 a resident and is now a resident of New Mexico. Thus, he
15 says, he is both a soldier and a resident indistinguishable
16 from other soldiers and residents who get the benefit.

17 QUESTION: Mr. Farr, what is precisely the purpose
18 of this tax exemption?

19 MR. FARR: The tax exemption, I think, has several
20 purposes. First of all, I think the state legitimately
21 wants to reward the people from that state who went into
22 the service and I think that is the purpose.

23 QUESTION: No. If that is the purpose, this is
24 kind of a peculiar date to impose, isn't it?

25 MR. FARR: That is one of the purposes. I think

1 there are several groups that fall within the class.

2 QUESTION: Because it picks up people who were
3 not residents either at the time they were drafted or when
4 they were discharged.

5 MR. FARR: I think if you look at the class that
6 it does pick up the people who were residents at the time
7 they went in. They certainly fit within the class. It
8 also picks up people who came back --

9 QUESTION: Well, it doesn't if they don't come
10 back to New Mexico and they aren't there today. They have
11 to come back and be there today.

12 MR. FARR: That is right.

13 QUESTION: But, I guess the war ended in what
14 date, the Vietnam War?

15 MR. FARR: The official date that Congress has
16 given for the end of the Vietnam era is May 7, 1975 which
17 is the date put in this statute in 1981 and then there was
18 an additional year's grace period provided.

19 QUESTION: Now it is '76.

20 MR. FARR: That is correct.

21 MR. FARR: So, it does pick up, however, assuming
22 they are residents now, the people who left from Vietnam
23 and went to the war. It also picks up anyone who came back
24 and settled in New Mexico during the period of the war which
25 is the time presumably that New Mexico can recognize as

1 one of significant adjustment back to civilian life. There
2 may not be an exact time period between the two, but I think
3 again generally it serves that.

4 The person that Appellant keeps relying on who
5 is within the class but admittedly doesn't exactly fit these
6 purposes is someone who had to have been in New Mexico long
7 ago. He then had to have left before the war started, other-
8 wise, of course, he is within the class we are trying to
9 benefit, then he has to not come back to New Mexico or
10 otherwise again he would be within the class. But then
11 he does have to come back later and claim the benefit.

12 I don't think New Mexico has to draft a statute
13 that knocks him out in order to uphold the rest.

14 QUESTION: Mr. Farr, I may have misunderstood
15 the statute, but did I correctly understand you to say that
16 he had to enlist from New Mexico?

17 MR. FARR: No, no, no, I am sorry. What I am
18 saying is people who do enlist from New Mexico are within
19 the class benefit. There is no question about that. What
20 I am saying is that the person that Appellant is talking
21 about who doesn't really fit within this purpose at all
22 but who gets the benefit, in fact, has to do the opposite.
23 He has to have lived in New Mexico before the war, then
24 not enlisted from New Mexico, not come back to New Mexico
25 after the war, but then later come back afterwards.

1 QUESTION: But does he even have to come back?
2 Couldn't you presumably --

3 MR. FARR: He has to be a resident now, yes.

4 QUESTION: Why does he have to be a resident now?

5 MR. FARR: That is a separate requirement of the
6 statute.

7 QUESTION: Oh, is it? I didn't realize that.

8 MR. FARR: Yes, it is.

9 On the subject of rewarding residents but not
10 non-residents at the time of the war, I submit that there
11 is nothing unconstitutional or even unusual about it, although
12 this obviously is not dispositive.

13 QUESTION: Would you see any problem, Mr. Farr,
14 if they had this same kind of a plan in the state from which
15 he moved so that he got a bonus back at the hometown and
16 then got one here?

17 MR. FARR: No. In fact, New Mexico is unusually
18 generous in that it is not a state that would deprive a
19 veteran who had moved, for example, before May 7, 1976,
20 of the exemption simply because he received a bonus somewhere
21 else. Other states that have similar arrangements do have
22 a specific limitation that says essentially one bite at
23 the apple. If you got one somewhere else, then you can't
24 come here and claim another one. New Mexico does not do
25 that.

1 QUESTION: You intimate that they could con-
2 stitutionally do that.

3 MR. FARR: I believe they probably could
4 constitutionally do that, but, as I say, they don't.

5 QUESTION: But, if they have got a tax exemption
6 back in the home state, then they would just be continuing
7 their tax exempt status in your group here.

8 MR. FARR: Well, the fact is though that -- I
9 think again it depends. If they satisfy the conditions
10 of this statute -- In other words, if they are within the
11 group that New Mexico rightfully considers its citizens
12 at the time of the war, then it seems to me that they should
13 be able to get the benefit and New Mexico wants them to
14 have the benefit whether or not they have gotten the benefit
15 from some place else. I think they could perhaps cut that
16 class more narrowly. But, I think it is to their credit
17 they haven't. I don't think it makes the statute more
18 constitutional.

19 Now, in connection with pure residency requirements
20 at the time of service as opposed to durational residency
21 requirements, every court that has ever considered that
22 has upheld it. In fact, one court recently, the Supreme
23 Court of Maine, upheld a requirement at the time of service --
24 in that case the statute was you had to be a resident at
25 the time you went into the service -- at the same time it

1 struck down a durational residency requirement. And, as
2 Justice O'Connor noted earlier, the Federal District Court
3 in August versus Bronstein upheld the New York employment
4 preference to veterans who were New York residents when
5 they entered the service and this Court summarily affirmed
6 that decision.

7 QUESTION: Of course, this case is a little
8 different because the New Mexico statute doesn't really
9 require that.

10 MR. FARR: It seems to me that the New Mexico
11 statute is, in fact, more generous than the New York statute
12 at issue in August versus Bronstein and, indeed, more
13 generous than almost any other statute, in fact, perhaps
14 any other statute that does give bonuses or other benefits.
15 New Mexico originally had a statute which -- for the Vietnam
16 War which conditioned the benefit on entry into the service
17 from New Mexico. What they did in 1981 and then again in --
18 by adding a year in 1983 was to expand that class of
19 beneficiaries so they didn't cut out people who came back
20 and settled during the time of the war. I think that makes
21 the statute better rather than worse from a constitutional
22 standpoint.

23 Appellant makes two attacks on the means used
24 by New Mexico to serve its purpose. First he says that the
25 date of May 7, 1976, described by the Court of Appeals as

1 one year after the final U.S. troop withdrawal, is, in fact --
2 I think that is phrased correctly -- pulled out of thin
3 air and bears no relation to the Vietnam War at all. This
4 argument is simply incorrect. In Title 38, Section 101
5 of the U.S. Code, Congress has specifically provided in
6 defining those eligible for federal veterans' benefits that
7 the Vietnam era ended on May 7, 1975. That date is precisely
8 the date that New Mexico chose in 1981 when it first enlarged
9 the statute before it added on another year's grace period
10 in 1983.

11 Now, Appellant's other argument is even if New
12 Mexico could have declared a benefit for all its resident
13 veterans on May 7, 1976 it could not grant a retroactive
14 benefit to exactly the same class in 1981 or 1983. Now,
15 in my view, this is really Appellant's main argument just
16 stated another way. If there was a rational basis for
17 awarding New Mexico soldiers a benefit on May 7, 1976 because
18 they had particular ties to New Mexico at the time of the
19 war, which is what we submit, that basis does not disappear
20 simply because the war is over.

21 For example, if New Mexico had granted a benefit
22 to its veterans on May 7, 1976 on the basis of those special
23 ties, Appellant clearly would not have been able to claim
24 the same benefit simply by showing up five years later.
25 Yet, the basis of the benefit and Appellant's lack of the

1 necessary ties is exactly the same in 1981 and, in fact,
2 it is exactly the same right now.

3 This case thus is very, very --

4 QUESTION: What about those people in that extended
5 period, that year's grace period? I know you call it a
6 grace period, but it is still after the war is over even
7 by congressional terms.

8 MR. FARR: Well, I think again the fact that they
9 give the extra year in my view doesn't make the thing --
10 constitutionally more infirm. But, particularly if you
11 look at --

12 QUESTION: What if they had said we are going
13 to give five years' grace period?

14 MR. FARR: In one sense I think that the state
15 is entitled to determine how long they think a reasonable
16 readjustment period after a war would be. I don't think
17 it has to be precisely the date Congress picks at the end
18 of the war and I think a year is all right. I think five
19 years might get out toward the edge, but the fact is,
20 particularly if you look at the conditions in Vietnam --

21 QUESTION: You are saying these people who get
22 the exemption have a substantial connection residence in
23 New Mexico during a period that the Vietnam War had some
24 substantial impact on people generally?

25 MR. FARR: That is correct. And, I think

1 unfortunately, of course, people coming back from the Vietnam
2 War, unlike people coming back from other previous wars,
3 the readjustment period I think is generally seen to be
4 much longer. I think for a state to say we still think
5 there may be people coming back by May 7, 1976, a year after
6 the end of the era, who we feel a special solicitude for,
7 I think that is entirely proper.

8 I would also like to point out that if the retro-
9 active part --

10 QUESTION: Why should the exemption go on forever?

11 MR. FARR: In terms of the tax exemption?

12 QUESTION: Yes.

13 MR. FARR: I think that is simply a matter of
14 how New Mexico chooses to --

15 QUESTION: But you were going to say that the
16 readjustment period lasts for a length of time but not forever.
17 You would think that when the readjustment period is over
18 so would the tax exemption disappear.

19 MR. FARR: Well, I certainly don't think
20 New Mexico would be prohibited from ending the tax exemption
21 but I don't think there is any requirement that they have
22 to continue. If it fits its purposes initially, it seems
23 to me that a state can say rather than to have a period
24 of time where we say, okay, you don't need any more help,
25 we are still thankful for what you did. We feel that the

1 help we gave you was useful and we will continue it.

2 QUESTION: I know, but if you are not basing it
3 on a necessity for readjustment, it seems to me to give
4 a life-long exemption rather exceeds the speed limit.

5 MR. FARR: I think it is essentially just a matter
6 of state generosity. I mean, again I think that a state
7 doesn't have to say --

8 QUESTION: Which it refuses to other people.

9 MR. FARR: Pardon me?

10 QUESTION: Which is refuses to other people.

11 MR. FARR: That is correct, because they are not
12 within the class of people that New Mexico feels had the
13 special ties at the time of what you are getting the benefit
14 for. That is simply a matter of classification. Exactly
15 how you pay out the benefit, what the particular dollar
16 amount is, whether you pay it in a lump sum or pay it out
17 over time, seems to me essentially doesn't change the
18 constitutional picture if the class that is getting it is
19 properly deserving. I think they are.

20 I would like to point out too, as Justice O'Connor
21 was talking about earlier, they did -- New Mexico had a
22 statute in 1976. We are talking about the retroactivity
23 problem. What they did in 1981 was simply try to expand
24 this, not just generally but to give to Vietnam veterans
25 the same sort of benefit that they had given to the veterans

1 of every other war. Up until 1981 the Vietnam veterans
2 in New Mexico stood on a lesser footing than World War I
3 veterans, World War II veterans and Korean War veterans.
4 So that there effort in 1981 was, in fact, to give the same
5 sort of classification to Vietnam veterans that they had
6 given for other wars.

7 QUESTION: Mr. Farr, if your opponent is right,
8 and I don't say whether he is or not, all that means is --
9 He says they are all unconstitutional and the fact that
10 they follow an unconstitutional pattern after every war
11 doesn't add any force to this one.

12 MR. FARR: I understand that. But at least in
13 terms of the retroactivity the point I want to make is that
14 if, in fact, a state is prohibited by the Constitution from
15 going back and adjusting a statute after the event for which --
16 at which the statute is being directed, then it would prevent
17 them from -- Let's say, for example, in an earlier situation
18 they had a perfectly legitimate statute and they simply
19 wanted to conform this to that without any question about
20 it. Presumably Appellant's argument would prevent them
21 from doing that too and that is simply the point I am trying
22 to make.

23 I would like to point out that in my view this
24 case is completely different in both time and degree from
25 Zobel versus Williams. New Mexico has not decided that

1 long-term residents simply by virtue of their residence
2 are somehow more deserving than other residents. Residence
3 itself doesn't give anybody a right to this benefit and
4 many, if not most, long-time residents of New Mexico don't
5 get it.

6 Nor is New Mexico trying to reward citizens after
7 the fact simply for having done what is normally expected
8 of citizens as state citizens. What New Mexico has done
9 is to recognize that some people while as residents did
10 something extra and deserve an extra measure of thanks and
11 help. That judgment simply doesn't create the sort of
12 second class citizenship that was at issue in Zobel.

13 QUESTION: Well, but it does of course give the
14 tax exemption, for example, to someone who had never lived
15 in New Mexico until, let's say, May 6, 1976, and who moves
16 there that date but would deny it to somebody who came there
17 May 9th.

18 MR. FARR: That is correct. But, I don't think --
19 If that is --

20 QUESTION: And, that is the difficulty when you
21 look at Zobel, I suppose.

22 MR. FARR: Well, I don't regard it as the same
23 though for a couple of reasons. In the first place, that
24 is true of any statute that draws a line. You look at someone
25 just on one side and someone just on the other and you say

1 that, boy, they look a lot alike. So, I don't think there
2 is anything unique about this statute. In the Zobel situation
3 though the purpose of simply to reward citizens generally
4 for the generalized notion that they had been citizens through
5 a period of time doing what is normally expected of citizens,
6 nothing unusual. I think the Court correctly said in Zobel
7 that purpose is impermissible, it opens up an endless amount
8 of doors that could lead to real second-class citizenship.
9 But here I think they are just simply saying this is the
10 line we are drawing for the end of a particular event that
11 we are rewarding by giving special help for and I think
12 it is a completely different kind of line.

13 Now, I would like to spend just a few minutes
14 on the question of right to travel. Appellant has said
15 that even if the statute is perfectly rational, it still
16 must be struck down because it burdens the right to travel.
17 I think the argument is wrong for several reasons.

18 First of all, this case doesn't really involve
19 the right to travel in the usual sense. As I have said,
20 what this case is really about is a bona fide residency
21 requirement at the time of the war. In cases involving
22 the question of residency at the time of a particular event
23 as opposed to over a length of time, I think the proper
24 focus should be on barriers to residency at the time of
25 the event.

1 New Mexico did not put up any barriers to Appellant
2 coming to New Mexico during the time of the war. This is
3 not a situation, for example, where Appellant is saying
4 I was there on May 1, 1976, but there was a requirement
5 that I had to have been there six months before May 6, 1976
6 and, therefore, I haven't gotten the bonus. What he is
7 simply saying is I came later and, therefore, didn't get
8 into the class. I think that is a very different kind of
9 inquiry from the right-to-travel inquiry than the Court
10 is normally engaged in.

11 But, even if you look at the situation in 1981
12 when Appellant came or if you look at it now, I still think
13 that there isn't any real burden on the right to travel.
14 This is not a case, for example, where the state has
15 deliberately sought to keep out any particular residents
16 or new residents generally, therefore, for example, it is
17 completely different from Shapiro where there was an
18 impermissible purpose very obvious from the statute to keep
19 indigents out of the state. Nor does it present any concern
20 about a state trying to wall itself off from national
21 concerns. To the contrary actually, New Mexico is rewarding
22 a national service in this situation.

23 There is also no intolerable penalty. Again,
24 this is not a case where the state is depriving new residents
25 of welfare benefits or medical care or something of that

1 nature. Even if those -- Even if denial of those benefits
2 is intended to keep people from traveling, I think the Court
3 has recognized that it will make people realistically think
4 twice, some class of people, and if they come anyway may
5 cause a serious hardship.

6 But, we are talking essentially here about a tax
7 exemption of \$100 or so to someone who has to be a property
8 owner in the first place and I don't think it in any way
9 amounts to that sort of penalty.

10 So, our position in short is that the statute
11 does not infringe the right to travel. New Mexico has made
12 a rational decision to confer a special benefit on those
13 veterans who were its residents at the time of the war and
14 it has defined that class not in a mathematically precise
15 manner but in a perfectly rational manner and equal protection
16 requires nothing more.

17 Thank you.

18 QUESTION: Anything further, Mr. Hooper?

19 MR. HOOPER: Yes, Your Honor, just a couple of
20 comments.

21 ORAL ARGUMENT OF ALVIN D. HOOPER, ESQ.

22 ON BEHALF OF THE APPELLANT -- REBUTTAL

23 MR. HOOPER: I note that the Assessor persists
24 in categorizing this statute as requiring a coincidence
25 of military service and residency and that is clearly not

1 the case here. The statute, until its amendment in 1981,
2 did require that, but obviously the Legislature had something
3 in mind when they --

4 QUESTION: Mr. Hooper, you rely heavily on the
5 one-year grace period you might call it. Do you agree the
6 statute would be all right if there were not the one-year
7 period?

8 MR. HOOPER: No, Your Honor, I do not agree that
9 it would be all right.

10 QUESTION: Even then, of course, you would have
11 the coincidence of residence and military service.

12 MR. HOOPER: Well, not necessarily, because even
13 if they had said you had to be a resident on May 8, 1975,
14 for example, the Vietnam service could have occurred in
15 1963 or 1964 and you still wouldn't have the coincidence
16 of service. The person could have moved to the state after
17 the service and they rely exclusively on a coincidence of
18 military service and residency and that is nowhere required
19 in the statute. In fact, it was taken out of the statute
20 specifically in 1981.

21 QUESTION: What if they were to adopt a theory
22 that they require a person to have been a resident or to
23 have made up his mind to become a resident when he was in
24 the service?

25 MR. HOOPER: Well, that certainly is a much more

1 significant factor than what is involved in here.

2 QUESTION: If they could do that, couldn't they
3 adopt a short-hand proxy and we will presume that everybody
4 who got here within the period it takes to get demobilized
5 and transported back from the Far East and all the rest
6 presumably made up his mind to come here while he was in
7 Vietnam?

8 MR. HOOPER: But, that is not the situation.
9 The example that I gave, the veteran having served in 1963
10 and he doesn't show up until 12 years later. Now, are you
11 going to presume a 12-year intent? Or even the person who
12 lived in New Mexico many years ago and then served from
13 another state --

14 QUESTION: Of course, the Vietnam War is a little
15 different, but you said this case is really like all the
16 others. In wars service really doesn't end until the hostilities
17 end. So, normally there isn't that gap between possibly
18 being discharged a couple of years before the end of
19 hostilities.

20 But, you rely on the unique circumstances of the
21 Vietnam War then?

22 MR. HOOPER: Well, in all these other -- In fact,
23 the Assessor mentioned that this simply made the residency
24 requirement for Vietnam synonymous with the other wars. That
25 is not the case. The residency requirement for those other

1 wars was added substantially contemporaneously with the
2 date itself. It was only prospective kind of application.

3 QUESTION: They all had a period of grace after
4 them, didn't they, each of those?

5 MR. HOOPER: But here we are going back eight
6 years prospectively in picking up -- and in the meantime
7 a large number of residents such as Appellants in this case
8 moved to the state. And, at the time the residency requirement
9 was enacted, then they are discriminating against those
10 residents. Whereas, in the other cases, they were not.

11 One other thing that the Assessor mentioned was
12 the unusual generosity of New Mexico. Whether a state gives
13 a benefit or not is not controlling here, it is how it
14 apportions that benefit regardless of how generous it may
15 be in the benefit. I am not complaining about whether they
16 give a generous benefit or not. You cannot escape the
17 prohibitions against discrimination.

18 QUESTION: You want them to be generous to you?

19 MR. HOOPER: I want them to treat me equally with
20 all the others is my contention in this case.

21 It doesn't matter whether they give the benefit
22 in the first place or not, but once they decide to give
23 it, the generosity to a select few is what creates the problem
24 in this case.

25 QUESTION: Well, you are saying, I suppose, that

1 if New Mexico is giving -- in 1985 giving a tax exemption
2 for war service prior to 1975 --

3 MR. HOOPER: 1976, Your Honor.

4 QUESTION: -- 1976 and it is going to go on forever,
5 other people who have war service and move to New Mexico
6 ought to get the same break.

7 MR. HOOPER: That is exactly right. If you allow
8 this tax exemption in this case, you are indirectly --

9 QUESTION: If it had been in a lump sum you wouldn't
10 be arguing that.

11 MR. HOOPER: A one-shot deal would not be the
12 same, but if you allow --

13 QUESTION: Well, it not only wouldn't be the same,
14 but --

15 MR. HOOPER: I wouldn't be qualified for it.

16 QUESTION: Yes.

17 MR. HOOPER: But, if you allow the exemption in
18 this case, you are also allowing New Mexico to have a
19 different income tax system for those who arrived before
20 1976 and those who arrived thereafter or charge a different
21 sales tax rate or what would prevent the state in 1983 from
22 saying welfare benefits such as involved in Shapiro will
23 only be available to those who are residents of the state
24 prior to May 8, 1976. That is exactly what this statute --

25 QUESTION: This sounds to me a little bit more,

1 Mr. Hooper, like privileges and immunities argument than
2 a right to travel argument.

3 MR. HOOPER: This case is not distinguishable
4 from the Zobel case on the privileges and immunities issue.

5 QUESTION: Well, Zobel turned on --

6 MR. HOOPER: Zobel, to me, turned on a theory
7 of equality of citizenship and equal protection.

8 QUESTION: Equal protection clause, but not on
9 the privileges and immunities.

10 MR. HOOPER: But, this case is indistinguishable
11 from Zobel on the privileges and immunities.

12 QUESTION: You are saying that we could not decide
13 this case or should not decide it under the privileges and
14 immunities clause?

15 MR. HOOPER: You did not decide Zobel on that
16 basis and I would suggest that Zobel controls this case.

17 QUESTION: Very well.

18 CHIEF JUSTICE BURGER: Thank you, gentlemen, the
19 case is submitted.

20 (Whereupon, at 1:50 p.m., the case in the above-
21 entitled matter was submitted.)
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23
24
25

CERTIFICATION

Anderson Reporting Company, Inc., hereby certifies that the attached pages represents an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of The United States in the Matter of:

#84-231 - ALVIN D. HOOPER AND MARY N. HOOPER, Appellants v.

BERNALILLO COUNTY ASSESSOR

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