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Constitutional Law-Durational Residency Requirement For Divorce Held Not to Violate Fourteenth Amendment

Constitutional Law—DURATIONAL RESIDENCY REQUIREMENT FOR DIVORCE HELD NOT TO VIOLATE FOURTEENTH AMENDMENT—*Sosna v. Iowa*, 419 U.S. 393 (1975).

One of the legacies of the Warren era was the development of a strict standard of judicial review in certain cases brought under the equal protection clause of the fourteenth amendment.[1] Once the Court determined that a fundamental interest had been infringed or denied, the new equal protection analysis required that the challenged statute pass a "compelling interest" test,[2] or be found in violation of the fourteenth amendment. Various interests have been recognized as fundamental and afforded special protection by the Court.[3]

A fundamental interest which extended into many areas of the law was the right to interstate travel.[4] In *Shapiro v. Thompson*,[5] the Court declared that any statutory classification which penalized the right to travel, unless shown necessary to promote a compelling state interest, was unconstitutional.[6] Thus, durational residency requirements for welfare assistance were struck down as unjustified restrains on the right to interstate

1. "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV.

2. *See, e.g.*, Comment, *Developments in the Law—Equal Protection*, 82 HARV. L. REV. 1065 (1969). The "compelling interest" or strict scrutiny test presumes a challenged statute unconstitutional for infringing upon a protected right. Thus, the burden of proof rests with the state and the Court utilizes a thorough means-end analysis. The end of the legislation must not only be legitimate, but must promote a compelling state interest. In addition, the means must be the least drastic method of promoting the end.

3. Shapiro v. Thompson, 394 U.S. 618 (1969) (right to interstate travel); Harper v. Virginia State Bd. of Elections, 383 U.S. 663 (1966) (right to vote); Douglas v. California, 372 U.S. 353 (1963) and Griffin v. Illinois, 351 U.S. 12 (1956) (right to an appeal in the criminal process); Skinner v. Oklahoma, 316 U.S. 535 (1942) (right to procreate).

4. The constitutional right to travel from one state to another . . . occupies a position fundamental to the concept of our Federal Union . . . . Although there have been recurring differences in emphasis within the Court as to the source of the constitutional right . . . [a]ll have agreed that the right exists. United States v. Guest, 383 U.S. 745, 757, 759 (1966).

While the Court has not cited specific constitutional authority for the right to interstate travel, Chief Justice Warren has said it is based on the commerce clause. Shapiro v. Thompson, 394 U.S. 618, 648 (1969) (Warren, C.J., dissenting). However, Justice Harlan postulated the right was based on the due process clause of the fifth amendment. *Id.* at 671 (Harlan, J., dissenting).

5. 394 U.S. 618 (1969).

6. *Id.* at 634. In *Shapiro*, the Supreme Court first declared that a classification based on old and new residents should be analyzed under the "compelling interest" equal protection test. *See also* Oregon v. Mitchell, 400 U.S. 112, 229 (1970) (opinion of Brennan, White & Marshall, JJ.); Note, *Shapiro v. Thompson: Travel, Welfare and the Constitution*, 44 N.Y.U.L. REV. 989 (1969).

travel. The next major application of this right came in *Dunn v. Blumstein*,[7] where a state residency requirement for voting was held violative of equal protection.[8] A durational residency requirement for nonemergency medical care for indigents was held unconstitutional as restricting the right to "migrate, 'with intent to settle and abide' " in *Memorial Hospital v. Maricopa County*.[9]

These decisions led to confusion over the legality of various state residency laws, including those concerning divorce. Over a century ago, the Supreme Court declared the states the exclusive regulators of domestic relations.[10] However, the Court remained sensitive to state interference with the marital relationship—"one of the vital personal rights essential to the orderly pursuit of happiness by free men."[11] State residency requirements for divorce were increasingly challenged as violative of equal protection and due process in that they penalized the right to travel and foreclosed access to the courts.[12] State and federal courts were reaching varying

7. 405 U.S. 330 (1972).

8. The fundamental right to vote was also involved in this case. *Id.* at 336.

9. 415 U.S. 250, 255 (1974), *quoting from* Cole v. Housing Authority, 435 F.2d 807, 811 (1st Cir. 1970). It should be noted that the general trend in Burger Court decisions has been to narrow and confine the fundamental interests of the Warren Court era. *See, e.g.*, San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1 (1973) (wealth not a suspect classification, education not a fundamental interest); Lindsey v. Normet, 405 U.S. 56 (1972) (housing not a fundamental interest); Dandridge v. Williams, 397 U.S. 471 (1970) (welfare not a fundamental right). *See generally* Gunther, *Foreword: In Search of Evolving Doctrine on a Changing Court: A Model For a Newer Equal Protection*, 86 HARV. L. REV. 1 (1972).

10. "We disclaim altogether any jurisdiction in the courts of the United States upon the subject of divorce . . . ." Barber v. Barber, 62 U.S. (21 How.) 186, 187 (1859). "The State, for example, has absolute right to prescribe the conditions upon which the marriage relation between its own citizens shall be created, and the causes for which it may be dissolved." Pennoyer v. Neff, 95 U.S. 714, 734-35 (1877). *See also* Meyer v. Nebraska, 262 U.S. 390, 399 (1923) (dictum); Andrews v. Andrews, 188 U.S. 14 (1903); Simms v. Simms, 175 U.S. 162 (1899); Maynard v. Hill, 125 U.S. 190 (1888).

11. Loving v. Virginia, 388 U.S. 1, 12 (1967). The Court first recognized marriage as an important, basic right reserved to the people in Skinner v. Oklahoma, 316 U.S. 535 (1942). "We are dealing here with legislation which involves one of the basic civil rights of man. Marriage and procreation are fundamental to the very existence and survival of the race." *Id.* at 541.

12. *See* McCay v. South Dakota, 366 F. Supp. 1244 (D.S.D. 1973); Larsen v. Gallogly, 361 F. Supp. 305 (D.R.I. 1973); Mon Chi Heung Au v. Lum, 360 F. Supp. 219 (D. Hawaii 1973); Shiffman v. Askew, 359 F. Supp. 1225 (M.D. Fla. 1973), *aff'd sub nom.*, Makres v. Askew, 500 F.2d 577 (5th Cir. 1974); Wymelenberg v. Syman, 328 F. Supp. 1353 (E.D. Wis. 1971); Whitehead v. Whitehead, 53 Hawaii 302, 492 P.2d 939 (1972); Porter v. Porter, 112 N.H. 403, 296 A.2d 900 (1972); Sternschuss v. Sternschuss, 71 Misc. 2d 552, 336 N.Y.S.2d 586 (Sup. Ct. 1972); Coleman v. Coleman, 32 Ohio St. 2d 155, 291 N.E.2d 530 (1972); Stottlemyer v. Stottlemyer, 224 Pa. Super. 123, 302 A.2d 830 (1973) (dissenting opinion); Place v. Place, 129 Vt. 326, 278 A.2d 710 (1971).

conclusions,[13] based on different interpretations of *Shapiro, Dunn* and *Maricopa County*. The Supreme Court had expressly left the issue open by its statements in *Shapiro*.[14]

In *Sosna v. Iowa*,[15] the Supreme Court was asked to decide whether a state's denial of a divorce to a recent interstate traveler fell within the prohibitory scope of *Shapiro* and its progeny. The case was of further interest since the Court had shown sensitivity towards certain aspects of the marital relationship.[16] The plaintiff, Carol Sosna, moved from New York to Iowa with her three children in August of 1972, after being separated from her husband for a year.[17] She petitioned for divorce one month later in the District Court of Jackson County, Iowa.[18] The court dismissed the petition for lack of jurisdiction, since neither party had been a resident of Iowa for one year prior to filing, a statutory requirement in the state.[19]

Mrs. Sosna then brought a class action[20] in federal district court, seeking declaratory and injunctive relief.[21] The petitioner contended that Iowa's

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13. A trend developed, with state courts tending to uphold residency requirements and federal courts tending to strike them down. *See* 43 FORD. L. REV. 857 (1975); 52 N.C.L. REV. 1279 (1974).

14. We imply no view of the validity of waiting-period *or* residence requirements determining eligibility to vote, eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and so forth. Such requirements may promote compelling state interests on the one hand, or, on the other hand, may not be penalties upon the exercise of the constitutional right of interstate travel. 394 U.S. at 638 n.21.

15. 419 U.S. 393 (1975).

16. *See, e.g.*, Loving v. Virginia, 388 U.S. 1 (1967); Griswold v. Connecticut, 381 U.S. 479 (1965); Skinner v. Oklahoma, 316 U.S. 535 (1942).

17. 419 U.S. at 395.

18. *Id.*

19. IOWA CODE ANN. § 598.6 (Cum. Supp. 1975) provides:

> Except where the respondent is a resident of this state and is served by personal service, the petition for dissolution of marriage, in addition to setting forth the information required by section 598.5, must state that the petitioner has been for the last year a resident of the state, specifying the county in which the petitioner has resided, and the length of such residence therein after deducting all absences from the state; and that the maintenance of the residence has been in good faith and not for the purpose of obtaining a marriage dissolution only.

IOWA CODE ANN. § 598.9 (Cum. Supp. 1975) provides that "[i]f the averments as to residence are not fully proved, the hearing shall proceed no further, and the action be dismissed by the court."

20. *See* FED. R. CIV. P. 23. Mrs. Sosna was representing the

> class of those residents of the State of Iowa who have resided therein for a period of less than one year and who desire to initiate actions for dissolution of marriage or legal separation, and who are barred from doing so by the one-year durational residency requirement embodied in Section 598.6 and 598.9 of the Code of Iowa. 419 U.S. at 397.

21. 419 U.S. at 396.

durational residency requirement established two classes of persons, and violated the fourteenth amendment because there was no compelling state interest for the discrimination against her class, *i.e.*, those who had recently exercised their right to interstate travel.[22] Further, she claimed Iowa's irrebuttable presumption against the bona fides of her residency violated the due process clause by denying her an opportunity in court to overcome the presumption.[23] A three judge court[24] upheld the constitutionality of the Iowa statute.[25]

On appeal, the Supreme Court, in an opinion written by Justice Rehnquist, found that the residency requirement did not conflict with the Constitution.[26] Before discussing the merits, the Court addressed the issue of whether the appellant's case should be declared moot and dismissed because it no longer presented a case or controversy.[27] Since article III of the Constitution limits federal jurisdiction to "cases" and "controversies,"[28] this determination was crucial.[29] The Court concluded Mrs. Sosna did have standing, even though her particular case was moot, because the district court had certified her case as a class action[30] and she remained an adequate class representative.[31] The appellant had fulfilled Iowa's jurisdictional requirement and, further, had obtained a divorce in New York.[32]

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22. *Id.* at 405.

23. *Id.*

24. Under 28 U.S.C. §§ 2281, 2284 (1970), a three judge panel must be convened to decide whether enforcement of a state statute should be enjoined.

25. 360 F. Supp. 1182 (N.D. Iowa 1973).

26. 419 U.S. at 396.

27. The mootness issue has arisen in several interesting contexts and has been an important threshold determination in recent years. *See* Richardson v. Ramirez, 418 U.S. 24 (1974) (voting rights); DeFunis v. Odegaard, 416 U.S. 312 (1974) (school admissions requirements); Doe v. Bolton, 410 U.S. 179 (1973) (abortion); Roe v. Wade, 410 U.S. 13 (1973) (abortion); Indiana Employment Security Div. v. Burney, 409 U.S. 540 (1973) (unemployment benefits); SEC v. Medical Comm. for Human Rights, 404 U.S. 403 (1972) (corporate proxy ballots); Hall v. Beals, 396 U.S. 45 (1969) (voting); Moore v. Ogilvie, 394 U.S. 814 (1969) (ballot qualifications).

28. U.S. CONST. art. III, § 2.

29. Mootness is one of several doctrines the Supreme Court has developed to determine whether the case fulfills the case and controversy requirement. *See, e.g.*, Flast v. Cohen, 392 U.S. 83, 94-95 (1968); 13 C. WRIGHT, A. MILLER & E. COOPER, FEDERAL PRACTICE AND PROCEDURE, §§ 3529-36 (1975); Scott, *Standing in the Supreme Court - A Functional Analysis*, 86 HARV. L. REV. 645 (1973).

30. *But cf.* DeFunis v. Odegaard, 416 U.S. 312 (1974).

31. *See* FED. R. CIV. P. 23(a)(4).

32. 419 U.S. at 399. The issue remained a live controversy for the appellant's class because "state officials will undoubtedly continue to enforce the challenged statute and yet, because of the passage of time, no single challenger will remain subject to its restrictions for the period necessary to see such a lawsuit to its conclusion." *Id.* at 400. *See also* Dunn v. Blumstein,

Addressing the equal protection issue, the Court utilized the "rational basis" test characteristic of the older, more deferential form of equal protection inquiry.[33] The residency requirement was found to be rationally related to two valid state interests and thus its constitutionality was affirmed. First, since a divorce decree involves many parties and a variety of issues, Iowa had a legitimate interest in insuring that divorce petitioners had a "modicum of attachment to the State."[34] Second, was "the State's parallel interests in both avoiding officious intermeddling in matters in which another State has a paramount interest, and in minimizing the susceptibility of its own decrees to collateral attack."[35] Justice Rehnquist found a clear distinction between Iowa's divorce statute and the statutes in *Shapiro, Dunn* and *Maricopa County*. The residency requirements in the latter three cases had been struck down because the budgetary and record-keeping interests advanced by the state did not outweigh the individual rights asserted.[36] However, in *Sosna,* valid state interests were found and the individual rights claimed were merely incidentally infringed.

Justice Marshall, the author of *Dunn* and *Maricopa County,* joined by Justice Brennan, the author of *Shapiro,* severely criticized the majority's approach. He felt the residency requirement was accorded undue deference instead of being subjected to the strict judicial scrutiny of prior cases.[37]

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405 U.S. 330 (1972); 43 FORD. L. REV. 857 (1975). Justice White strongly objected to this aspect of the case without commenting on the merits:

> In reality, there is no longer a named plaintiff in the case, no member of the class before the Court . . . . [T]his case has become one-sided and has lost the adversary quality necessary to satisfy the constitutional 'case or controversy' requirement . . . . The Court thus dilutes the jurisdictional command of art. III to a mere prudential guideline. 419 U.S. at 412 (White, J., dissenting).

33. The underlying theme of the "rational basis" test is that people similarly situated should be treated in a similar fashion. Thus, states are prohibited from treating people differently unless the statutory criteria are rational and the classifications are related to a permissible object of regulation. The Court has used four canons of construction which give statutory schemes wide discretion and presume that they are constitutional. "The equal protection clause of the Fourteenth Amendment does not take from the State the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary." Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78 (1911). *See also* Flemming v. Nestor, 363 U.S. 603 (1960).

34. 419 U.S. at 407. The opinion identified marital status, property rights, custody and support matters as the important issues usually settled through divorce proceedings.

35. *Id.* Justice Rehnquist elaborated, "A State such as Iowa may quite reasonably decide that it does not wish to become a divorce mill for unhappy spouses who have lived there as short a time as appellant . . . ." *Id.*

36. *Id.* at 406.

37. As we have made clear in *Shapiro* and subsequent cases, any classification that penalizes exercise of the constitutional right to travel is invalid unless it is justified

According to Justice Marshall's analysis, divorce was of sufficient importance to justify application of the "compelling interest" test due to the penalty on interstate travel.[38]

Regarding the appellant's due process allegation, the crucial factor in determining the Court's holding was that the "[a]ppellant was not irretrievably foreclosed from obtaining some part of what she sought . . . . Iowa's requirement delayed her access to the courts, but, by fulfilling it, a petitioner could ultimately obtain the same opportunity for adjudication . . . ."[39] By application of the "rational basis" equal protection analysis and utilization of a "total deprivation" due process standard, the Court accorded greater weight to the latter aspect of this case. In prior cases where the right to travel was allegedly infringed, the burden of proof was on the state to show that its statute advanced a "compelling interest" in the least drastic way.[40] In *Sosna,* the burden of proof was on the appellant to show that she was totally deprived of an important right.

Justice Rehnquist found distinguishable an earlier holding which struck down a Connecticut residency requirement for reduced in-state college tuition.[41] In that case, the petitioner had been denied reduced

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by a compelling governmental interest . . . . The Court's failure to address the instant case in these terms suggests a new distaste for the mode of analysis we have applied to this corner of equal protection law. In its stead, the Court has employed what appears to be an *ad hoc* balancing test . . . . *Id.* at 418-19.

38. Adhering to his dissent in San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 109 (1973), Justice Marshall stated in *Sosna* that "the 'rational basis' test has no place in equal protection analysis when important individual interests with constitutional implications are at stake . . . ." 419 U.S. at 420. *See generally* Yackle, *Thoughts on Rodriguez: Mr. Justice Powell and the Demise of Equal Protection Analysis in the Supreme Court,* 9 U. RICH. L. REV. 181 (1975).

39. 419 U.S. at 406.

40. *See* Memorial Hosp. v. Maricopa County, 415 U.S. 250, 262-63 (1974); Dunn v. Blumstein, 405 U.S. 330, 342-43 (1972); Oregon v. Mitchell, 400 U.S. 112, 238 (1970) (opinion of Brennan, White & Marshall, JJ.); Shapiro v. Thompson, 394 U.S. 618, 634, 638 (1969).

41. Vlandis v. Kline, 412 U.S. 441 (1973). Mrs. Sosna had relied on this case as setting forth the proper test to be applied in her case. Instead, the Court found the due process analysis of Boddie v. Connecticut, 401 U.S. 371 (1971), more applicable to the facts in *Sosna.* In *Boddie,* it was held that the state could not deny indigents access to divorce courts simply because they could not afford the filing fee:

> Prior cases establish, first, that due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard. 401 U.S. at 377.

The appellants in *Boddie* were totally deprived access to the courts, a clear violation of due process. However, "the gravamen of appellant Sosna's claim [was] not total deprivation . . . but only delay." 419 U.S. at 410. This reasoning was consistent with *Boddie*:

> In concluding that the Due Process Clause of the Fourteenth Amendment requires that

tuition "on the basis of a permanent and irrebuttable presumption of nonresidence, when that presumption [was] not necessarily or universally true in fact, and when the State [had] reasonable alternative means of making the crucial determination."[42] The opinion further stated that due process required Connecticut to give the petitioner a chance to present evidence to rebut the presumption.[43] The Court in *Sosna* pointed out that the Connecticut statute involved petitioner's "domicile" for a state benefit, whereas Iowa's statute involved "residence" for state court jurisdiction.[44] Justice Rehnquist stated that prior Court decisions did not foreclose the use of a residency requirement as one element in determining bona fide residence.[45] Thus, the Court's strict "total deprivation" analysis combined with the rational basis for the Iowa law and its mere incidental impact on interstate travel upheld the residency requirement for divorce.

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these appellants be afforded an opportunity to go into court to obtain a divorce, we wish to re-emphasize that we go no further than necessary to dispose of the case before us . . . . We do not decide that access for all individuals to the courts is a right . . . guaranteed by the Due Process Clause . . . . 401 U.S. at 382.

42. Vlandis v. Kline, 412 U.S. 441, 452 (1973). It should be noted that Justice Rehnquist dissented in this case, contending the majority opinion was based on "highly abstract and theoretical analysis" which ignored the valid state interests. *Id.* at 468. On several other occasions, Justice Rehnquist has expressed his distaste for the "irrebuttable presumption" analysis. "There is a qualitative difference between, on the one hand, holding unconstitutional on procedural due process grounds presumptions which conclude factual inquiries without a hearing . . . and, on the other hand, holding unconstitutional a duly enacted prophylactic limitation . . . ." Department of Agriculture v. Murry, 413 U.S. 508, 524 (1973) (Rehnquist, J., dissenting). For other "irrebuttable presumption" cases *see* Jimenez v. Weinberger, 417 U.S. 628 (1974); Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632 (1974); Stanley v. Illinois, 405 U.S. 645 (1972); Bell v. Burson, 402 U.S. 535 (1971). *See also* Note, *The Irrebuttable Presumption Doctrine in the Supreme Court,* 87 HARV. L. REV. 1534 (1974); Note, *Irrebuttable Presumptions: An Illusory Analysis,* 27 STAN. L. REV. 449 (1975) (both articles criticize this due process approach).

43. Vlandis v. Kline, 412 U.S. at 452.

44. 419 U.S. at 409-10.

45. *Id.* at 409. The case of Starns v. Malkerson, 326 F. Supp. 234 (D. Minn. 1970), *aff'd,* 401 U.S. 985 (1971), was referred to as support for this proposition. In *Starns,* a state residency requirement was upheld because evidence to rebut the presumption could be presented in court. In Weinberger v. Salfi, 95 S. Ct. 2457 (1975), sections of the Social Security Act survived a due process challenge involving a nine month residency requirement for benefits. The Court emphasized that the time requirement was merely a threshold determination as in *Starns.* Unlike *Vlandis,* the parties were allowed to present evidence to overcome the presumption and prove that they were *bona fide* claimants. *Id.* at 2470. Thus, a clear conflict has arisen concerning challenges to a statute on due process grounds. Rather than clearly overruling the "irrebuttable presumptions" analysis developed in *Vlandis* and later cases, the Court has tried to distinguish subsequent cases. However, in the process of distinguishing cases, the Court has recognized the importance of the opportunity to present additional evidence. This opportunity was not present in *Sosna.* Yet, the Iowa statute was held not to violate due process.

Justice Marshall also found the majority's due process analysis inadequate.[46] He conceded the need for Iowa to determine residency to safeguard the integrity of its decrees[47] and thus insure that they be accorded "[f]ull faith and credit"[48] by other states. Yet, even the one year requirement was not absolute insurance against collateral attack.[49] Justice Marshall believed the legitimate state interests "would be adequately protected by a simple requirement of domicile—physical presence plus intent to remain—which would remove the rigid one-year barrier while permitting the State to restrict the availability of its divorce process to citizens who are genuinely its own."[50]

The majority opinion in *Sosna* failed to explain why Iowa's statute was not subjected to the strict scrutiny equal protection analysis normally utilized when a fundamental interest is infringed. The reasons for the Court's return to a more deferential standard and its implications for future cases are unclear. It appears that despite the expansive rulings in *Shapiro, Dunn* and *Maricopa County,* in certain instances, the right to interstate travel will not alone be enough to trigger strict judicial scrutiny. A crucial factor in the Court's analysis, bringing procedural due process considerations into the equation, is whether the deprivation is total or merely delayed. In some cases, the Court must decide whether any delay amounts to unconscionable deprivation. An ad hoc balancing process seems to be guiding the Court in its decisions, rather than any concrete, structured analysis. The jagged line representing the limits and extensions of the Burger Court's protection under the fourteenth amendment has been somewhat delineated.[51] Future cases will have the task of clarification, but

46. [The majority's] analysis . . . ignores the severity of the deprivation suffered by the divorce petitioner, who is forced to wait a year for relief . . . . The injury accompanying that delay is not directly measurable in money terms like the loss of welfare benefits [in *Shapiro*], but it cannot reasonably be argued that when the year has elapsed, the petitioner is made whole. 419 U.S. at 421-22 (Marshall, J., dissenting).

47. *Id.* at 424.

48. U.S. CONST. art. IV, § 1.

49. 419 U.S. at 426. Justice Marshall in other cases has tried to move the Court away from rigid residency requirements and towards this more flexible concept. "In most cases, it is no more difficult to determine whether one recently arrived in the community has sufficient intent to remain to qualify as a resident than it is to make a similar determination for an older inhabitant." Hall v. Beals, 396 U.S. 45, 55 (1969) (Marshall, J., dissenting). *But see* 51 TEXAS L. REV. 585 (1973).

50. 419 U.S. at 424 (Marshall, J., dissenting).

51. While the "irrebuttable presumptions" standard is a relatively new mode of procedural due process analysis for the Court, it has become a source of clear division. Five Justices approved its application to invalidate statutes in Stanley v. Illinois, 405 U.S. 645 (1972), and six approved this form of scrutiny in Vlandis v. Kline, 412 U.S. 441 (1973), Department of Agriculture v. Murry, 413 U.S. 508 (1973) and Cleveland Bd. of Educ. v. LaFleur, 414 U.S.

Sosna settled the issue of the validity of state residency requirements in the area of divorce. While several members of the Court's "Warren era" continue to object to the new approaches,[52] the Burger Court's evolution is proceeding within a discernible framework.

S.D.S.

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632 (1974). Justice Rehnquist wrote dissents in *Vlandis, Murry* and *LaFleur* severely criticizing the approach as improper. During the last Court term a definite shift occurred, indicating a new dislike for utilization of the "irrebuttable presumptions" analysis. Justice Rehnquist, formerly in the minority, wrote the majority opinions rejecting the analysis in *Sosna* and Weinberger v. Salfi, 95 S. Ct. 2457 (1975). Only Justices Marshall, Brennan, and Douglas continue to favor the approach, although Justice Douglas joined the majority opinion in *Sosna,* showing even his hesitancy. What this shift means in terms of the Court's due process analysis is unclear. One possible explanation could be the differences between the classes of statutes challenged or the particular petitioner's situation. To date, no clear explanation has been given by the Court. With each case there has been an ad hoc reevaluation which has tended to narrow this type of analysis.

52. *See generally* Gunther, *Foreword: In Seach of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection,* 86 HARV. L. REV. 1 (1972); Tribe, *Foreword: Toward a Model of Roles in the Due Process of Life and Law,* 87 HARV. L. REV. 1 (1973); Yackle, *Thoughts on Rodriguez: Mr. Justice Powell and the Demise of Equal Protection Analysis in the Supreme Court,* 9 U. RICH. L. REV. 181 (1975).