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One-year Durational Residency Requirement for Dissolution of Marriage Is Not Violative of Equal Protection

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deciding the point, the majority of the *Cousins* Court seem to indicate that congressional action might be upheld to regulate party selection criteria.[53] Yet, Congress must also realize that its statutory enactments cannot invade the associational rights of the party. Although congressional action is not now being advocated, the Court's continuous refusal definitively to decide whether party activities may be subjected to judicial intervention on constitutional grounds could necessitate a congressional prescription of flexible standards to correct abuses in delegate selection.

Uncertainty in this area of law can only inhibit individuals from asserting their associational rights. Therefore, in any future cases before the Supreme Court where state law has clashed with party rules, the Court should define the scope of *Cousins* and clearly establish a proper balance between state, party, and voter interests.

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ONE-YEAR DURATIONAL RESIDENCY REQUIREMENT FOR DISSOLUTION OF MARRIAGE IS NOT VIOLATIVE OF EQUAL PROTECTION

Appellant Sosna's petition for dissolution of marriage was dismissed by a state trial court for lack of jurisdiction due to a failure to comply with Iowa's durational residency requirement,[1] which requires that a petitioner in a dissolution of marriage action be an Iowa resident for one year preceding the filing of the petition if the respondent is a non-resident.[2] Subsequently, pursuant to rule 23 of the Federal Rules of Civil Procedure, appellant brought a class action against the state of Iowa and the trial court judge seeking declaratory and injunctive relief in the United States District Court for the Northern District of Iowa, asserting that Iowa's durational residency requirement violated the United States Constitution on equal protection and due process grounds. After certifying that the appellant represented the class of persons who had resided in Iowa for less than one year, and who desired to initiate dissolution of marriage actions,[3] the three-judge district court upheld the constitutionality of the statute.[4] On appeal the United States Supreme Court[5] *held,* affirmed: The Iowa one-year

53. *But see* Oregon v. Mitchell, 400 U.S. 112 (1970) (where the Justices were widely split on the issue of congressional intervention into state election qualifications).

1. IOWA CODE § 598.6 (1971).

2. Appellant-wife moved to Iowa in August 1972 and filed her petition for dissolution of marriage in September 1972. Respondent-husband was a resident of New York at the time of filing.

3. Sosna v. Iowa, 360 F. Supp. 1182 (N.D. Iowa 1973).

4. *Id.*

5. Before the Court dealt with the substantive issues of *Sosna,* it first addressed itself to the

durational residency requirement for dissolution of marriage is not violative of the equal protection clause on the alleged ground that it establishes two classes of persons and discriminates against those who have recently exercised their right to travel to Iowa; nor is the residency requirement repugnant to the due process clause on the asserted grounds that it denies access to the courts for petitioning for a dissolution of marriage and denies a petitioner an opportunity to make an individualized showing of domicile. *Sosna v. Iowa,* 95 S. Ct. 553 (1975).

Domestic relations is an area of the law that has been traditionally reserved to the states,[6] although constitutional limitations have been found applicable in a few cases.[7] States have commonly provided for durational residency requirements as a condition precedent to a finding of jurisdiction in a dissolution of marriage or divorce action,[8] and the one-year period selected by Iowa[9] is the length of time imposed by a

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question of whether a "case or controversy" as contemplated by article III of the Constitution was presented because by the time the case reached the Court, the appellant had satisfied the Iowa durational residency requirement; the statute, therefore, no longer stood as a barrier to her attempts to secure a dissolution of her marriage in the Iowa courts. In fact, the appellant had already obtained a divorce in New York. 95 S. Ct. at 557 n.7. The Court held that even though the claim of the named plaintiff (appellant) had become moot, an actual case and controversy existed between the named defendant and the class of unnamed persons represented by the named plaintiff because, upon certification of the class action by the district court, the class acquired a legal status separate from the interest asserted by the named plaintiff. *Id.* at 557-59; Mr. Justice White filed a vigorous dissent. *Id.* at 563-67.

6. 95 S. Ct. at 559; Ohio *ex rel.* Popouici v. Agler, 280 U.S. 379, 383-84 (1930) (divorce); Simms v. Simms, 175 U.S. 162, 167 (1899) (divorce and alimony); *In re* Barrus, 136 U.S. 586, 593-94 (1890) (child custody); Barber v. Barber, 62 U.S. (21 How.) 582, 584 (1859) (divorce and alimony).

7. *E.g.,* Stanley v. Illinois, 405 U.S. 645 (1972) (due process and equal protection clauses require that a putative father be given notice and opportunity to be heard at his child's custody hearing); Boddie v. Connecticut, 401 U.S. 371 (1971) (due process clause prohibits a state from denying, solely because of inability to pay court fees and costs, access to its courts to indigents who, in good faith, seek judicial dissolution of their marriage); Loving v. Virginia, 388 U.S. 1 (1967) (state's statutory scheme to prevent marriages between persons solely on the basis of racial classifications was violative of both due process and equal protection).

8. 95 S. Ct. at 560 & nn.15-18. Forty-eight states have durational residency requirements. Some are applicable to all divorce actions, others only when the respondent is not domiciled in the forum state, and still others are applicable depending on where the grounds for the divorce have accrued. Louisiana and Washington are the exceptions. For a fifty state compilation of residence requirements see NATIONAL LEGAL AID AND DEFENDERS ASSOCIATION, DIVORCE, ANNULMENT AND SEPARATION IN THE UNITED STATES (1973) [hereinafter cited as DIVORCE, ANNULMENT AND SEPARATION IN THE UNITED STATES].

9. The Supreme Court of Iowa has defined the term "resident," as used in the state's durational residency requirement under IOWA CODE § 598.6 (1971), to be the equivalent of domicile. 95 S. Ct. at 560; Korsund v. Korsund, 242 Iowa 178, 45 N.W.2d 848 (1951). Thus, the effect of the one-year residency requirement is to preclude a petitioner from making a showing of such domicile until the one-year period has passed, even though domicile has been previously established. 95 S. Ct. at 562.

This interpretation of "residency," which requires proof of domicile, is in accord with the overwhelming number of states. The classic test of domicile is residence plus a present intention to make the state one's home. RESTATEMENT (SECOND) OF CONFLICT OF LAWS §§ 15, 16, 18 (1971).

In Williams v. North Carolina, 325 U.S. 226, 229 (1975), the Court stated that "[u]nder our system of law, judicial power to grant a divorce—jurisdiction, strictly speaking—is founded on

majority of the states.[10] Nonetheless, the equal protection issue raised in *Sosna* has significant constitutional implications with respect to these residency requirements. In order to place the issue in its proper perspective, it is necessary to review the history of equal protection-right to travel cases that have dealt with other durational residency requirements.

The right to travel is based upon two constitutional theories.[11] The first is that the right to travel within the United States is protected against state action restricting the freedom of physical movement or the right to engage in commerce.[12] The reasons articulated derive essentially from principles of federalism: the need for a strong central government and for commerce between the states.[13] Therefore, in *United States v. Guest,*[14] although not pointing to a particular provision of the Constitution, the Court characterized the right to interstate travel as "fundamental."[15] The second theory recognizes the right to travel as an element of individual freedom. The right to travel abroad, for example, which does not involve considerations of federalism, has been found to be an element of the "liberty" protected by the fifth amendment's due process clause.[16]

In 1969 the fundamental right to travel was entwined with equal protection and durational residency requirements in the case of *Shapiro v. Thompson.*[17] There, a state statute denying welfare benefits to those who had not lived in the state for one year was found to violate equal protection.[18] The Court held that any classification which serves

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domicil." However, it should be noted that the Court did not phrase this in the form of a constitutional mandate.

10. 95 S. Ct. at 560 & nn.15-17; DIVORCE, ANNULMENT, AND SEPARATION IN THE UNITED STATES, *supra* note 8. The periods vary among the states and range from six weeks to two years. *See, e.g.*, IDAHO CODE § 32-701 (1963) (six weeks); MASS. GEN. LAWS ANN., ch. 208, §§ 4-5 (Supp. 1975) (two years); NEV. REV. STAT. §§ 125.020(e) (1973) (six weeks); R.I. GEN. LAWS ANN. § 15-2-2 (Supp. 1974) (two years).

11. *The Supreme Court, 1972 Term,* 87 HARV. L. REV. 67, 72 (1973) [hereinafter cited as *Supreme Court, 1972 Term*].

12. Crandall v. Nevada, 73 U.S. (6 Wall.) 35, 43-44 (1868). In Ward v. Maryland, 79 U.S. (12 Wall.) 418 (1871), the privileges and immunities clause of article IV of the Constitution was employed to strike down a state license tax on out-of-state "drummers." The Court found that the privileges and immunities clause "protects the right of a citizen of one State to pass into any other State of the Union for the purpose of engaging in lawful commerce, trade or business without molestation." *Id.* at 430.

13. *Supreme Court, 1972 Term, supra* note 11; Note, *Shapiro v. Thompson: Travel, Welfare, and the Constitution,* 44 N.Y.U.L. REV. 989, 992-93 (1969).

14. 383 U.S. 745 (1966).

15. *Id.* at 757. "The right of interstate travel has repeatedly been recognized as a basic constitutional freedom." Memorial Hosp. v. Maricopa County, 415 U.S. 250, 254 & n.7 (1974). *See also* Dunn v. Blumstein, 405 U.S. 330 (1972); Oregon v. Mitchell, 400 U.S. 112, 237, 285-86 (1970) (separate opinion of Brennan, White, & Marshall, JJ.) (Stewart, J., concurring and dissenting, with whom Burger, C.J., & Blackmun, J., joined); Shapiro v. Thompson, 394 U.S. 618 (1969).

16. Aptheker v. Secretary of State, 378 U.S. 500 (1964).

17. 394 U.S. 618 (1969).

18. The Court observed that the statute's requirements created two classes of needy residents "indistinguishable from each other except that one is composed of residents who have

to *penalize* those persons who have exercised their fundamental constitutional right to travel would be subject to strict scrutiny,[19] but added the caveat that certain types of "waiting-period or residency requirement[s] . . . may not be penalties upon the exercise of the constitutional right of interstate travel."[20] This caveat and the Court's extensive discussion of the evidence that the state had actually intended to deter migration,[21] however, created confusion as to the reach of *Shapiro* and as to the necessity of actual deterrence before the strict scrutiny test would be applied.

Three years later, in *Dunn v. Blumstein,*[22] the Court implied that all durational residency requirements constituted "penalties" and would be subject to strict scrutiny. The majority in *Dunn* did not rest on a finding that travel was actually deterred, but, rather, on the

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resided a year or more, and the second of residents who have resided less than a year, in the jurisdiction." *Id.* at 627.

19. *Id.* at 634. Strict scrutiny is also referred to as the "compelling state interest" test. Conventional equal protection analysis is comprised of a two-tier approach: (1) strict scrutiny or the compelling state interest test, and (2) the rational basis test. Strict scrutiny means that the ordinary presumption in favor of a statute's constitutionality is not entertained. *See, e.g.,* McGowan v. Maryland, 366 U.S. 420 (1961); Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911). Instead, the government has the burden of demonstrating that a "compelling governmental interest" makes the particular classification necessary. Even if such an interest is shown, the classification is not deemed necessary if the same interest could have been furthered by less drastic means. 95 S. Ct. at 567 (Marshall, J., dissenting); Shapiro v. Thompson, 394 U.S. 618 (1969). Due to the heavy burden which is placed on the government when strict scrutiny is invoked, the government is rarely able to prevail. Note, 72 MICH. L. REV. 800, 810-11 & n.74 (1974). Thus, the decision to apply strict scrutiny is very often the determinative factor whether the statute will be found constitutional. Dunn v. Blumstein, 405 U.S. 330, 363-64 (1972) (Burger, C.J., dissenting). The Supreme Court has held in only two cases prior to *Sosna* that durational residency requirements passed strict scrutiny. *See* Burns v. Fortson, 410 U.S. 686 (1973) (per curiam) (50-day durational residency requirement for voting); Marston v. Lewis, 410 U.S. 679 (1973) (same).

State action is subject to strict scrutiny when it creates classes based on "suspect criteria." *See* Gomez v. Perez, 409 U.S. 535 (1973) (per curiam) (probably suspect when based on illegitimacy); Frontiero v. Richardson, 411 U.S. 677 (1973) (plurality opinion) (possibly suspect when based on sex); Graham v. Richardson, 403 U.S. 365 (1971) (alienage); Loving v. Virginia, 388 U.S. 1 (1967) (race); Griffin v. Illinois, 351 U.S. 12 (1956) (poverty when it results in an absolute deprivation); Oyama v. California, 332 U.S. 633 (1947) (nationality).

State action which abridges a fundamental right is also subject to strict scrutiny. *See* Roe v. Wade, 410 U.S. 113, 152-53 (1973) (implying that a fundamental right to privacy has been recognized); Dunn v. Blumstein, 405 U.S. 330 (1972), Shapiro v. Thompson, 394 U.S. 618 (1969) (right to travel), Harper v. Board of Elections, 383 U.S. 664 (1966) (right to vote); Skinner v. Oklahoma, 316 U.S. 535 (1942) (right to procreate).

Other state action which creates classifications is subject to the "rational basis" test, under which the action will be upheld if rationally related to a permissible state goal.

This standard puts the burden on the challenger to show that the classification has no reasonable basis. To sustain the classification the court need merely find any reasonably conceivable state of facts that support it. *See* McGowan v. Maryland, 366 U.S. 420, 425-27 (1961). Under this lenient standard, legislation of even the most tenuous rationality has been upheld. Note, 72 MICH. L. REV. 800, 813 (1974); *see, e.g.,* Williams v. Lee Optical, Inc., 348 U.S. 483 (1955); Railway Express Agency, Inc. v. New York, 336 U.S. 106 (1949).

20. 394 U.S. at 638, n.21 (waiting-period or residency requirements for voting, tuition-free education, practicing a profession, hunting, fishing and so forth).

21. *Id.* at 627-33.

22. 405 U.S. 330 (1972). The Court invalidated one-year state and three-month county durational residency requirements for voting, in part because of their effect on interstate travel.

principle that it was a "fundamental misunderstanding of the law" to believe that an absence of either an intent to deter or actual deterrence could provide a basis for not applying the strict scrutiny test.[23]

Notwithstanding *Dunn*'s rather broad implication that all durational residency requirements must pass strict scrutiny, the Court did not thereafter find all such statutes to be unconstitutional penalties, but summarily affirmed district court rulings upholding durational residency requirements for receiving in-state tuition benefits[24] and taking bar examinations.[25] Moreover, in *Vlandis v. Kline*,[26] where the plaintiff's equal protection-right to travel argument was clearly at issue, the Court decided the case on other grounds,[27] thus further indicating its desire to avoid the sweeping language of *Dunn*.

The Court's final pronouncement on the matter prior to *Sosna* was *Memorial Hospital v. Maricopa County*[28] which involved a one-year residency requirement for eligibility to receive state subsidized non-emergency medical care. Here the Court held that strict scrutiny would be applicable only when a durational residency requirement resulted in both: (1) a denial of a benefit to new residents which would "penalize" the exercise of the right to travel and settle in a new state,[29] and (2) a deprivation of a "basic necessity of life."[30] This approach had the advantage of shifting the focus of analysis to the type of deprivation actually suffered by the party, rather than utilizing the slightest effect on the right to travel as a justification for invoking strict scrutiny.[31]

In *Sosna*, Justice Rehnquist, writing for the majority, departed from the two-prong *Maricopa County* approach. The questions of whether Iowa's one-year residency requirement constituted a "penalty" on the right to travel[32] and whether the obtaining of a dissolution of marriage is a "basic necessity of life,"[33] were not even considered.

23. *Id.* at 342.

24. Sturgis v. Washington, 414 U.S. 1057, *aff'g mem.* 368 F. Supp. 38 (W.D. Wash. 1973).

25. Rose v. Bondurant, 409 U.S. 1020, *aff'g mem.* Scuffling v. Bondurant, 339 F. Supp. 257 (D.N.M. 1972).

26. 412 U.S. 441 (1973).

27. Note, 72 MICH. L. REV. 800, 803 & nn.26, 27 (1974).

28. 415 U.S. 250 (1974).

29. *Id.* at 256-59.

30. *Id.* at 259-61. The Court found that the deprivation of non-emergency medical care constituted a deprivation of a "basic necessity of life." Though the majority stated that the welfare benefits in *Shapiro* and the voting rights in *Dunn* were "basic necessities of life," *id.* at 259, room was left for considerable argument as to what actually constituted a "basic necessity of life." *See id.* at 285 (Rehnquist, J., dissenting); *The Supreme Court, 1973 Term*, 88 HARV. L. REV. 41, 117 (1974) [hereinafter cited as *Supreme Court, 1973 Term*].

31. *See Supreme Court, 1972 Term, supra* note 11, at 74.

32. In light of *Shapiro, Dunn* and *Maricopa County*, which all dealt with one-year residency requirements, Iowa's one-year residency requirement might very well constitute a "penalty" for equal protection–right to travel purposes.

33. In his dissent in *Sosna*, Justice Marshall clearly agreed with the proposition that the obtaining of a dissolution of marriage constitutes a basic necessity of life. 95 S. Ct. at 567. *See also* Boddie v. Connecticut, 401 U.S. 371, 383 (1971) (divorce is an adjustment of a fundamental human relationship); Loving v. Virginia, 388 U.S. 1, 12 (1967) (marriage is one of the basic personal rights of free man).

Rather than using the *Maricopa County* standards to determine whether the strict scrutiny or rational basis test should be applied, the majority opinion distinguished *Sosna* from *Shapiro, Dunn,* and *Maricopa County* on three grounds and applied what would appear to be a rational basis test.[34] The reasons for distinguishing *Sosna* and the reasons for upholding the classification under the rational basis test were essentially the same.

The first ground for distinction can be referred to as the budgetary or record-keeping distinction.

> What [*Shapiro, Dunn,* and *Maricopa County*] had in common was that the durational residency requirements they struck down were justified on the basis of budgetary or record-keeping considerations which were held insufficient to outweigh the constitutional claims of the individuals. . . .
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> Iowa's residency requirement [however] may reasonably be justified on grounds other than purely budgetary considerations or administrative convenience.[35]

Though this statement is true, it appears to be an artifical distinction which circumvents the real focus of the equal protection-right to travel issue, *i.e.,* whether there has been a penalty upon the right to travel and what the nature of the actual deprivation has been to the aggrieved party.

The second distinction was that the Iowa residency requirement *merely delayed* the receipt of the benefit (obtaining judicial cognizance of a petition for dissolution of marriage) as opposed to *totally denying* it. This distinction has difficulty withstanding analysis, however, because there is a penalty upon the right to travel regardless of whether the benefit is totally denied or merely delayed.

> [The Court'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

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34. Although the majority never labeled the test, it appears that the rational basis test was employed. The Court delineated a number of state interests that were protected by the durational residency requirement, which is indicative of the reasoning that the means (one-year residency requirement) are rationally related to achieving the end (protecting the various state interests). *See* 95 S. Ct. at 561. This mode of analysis is traditionally utilized in applying the rational basis test. *See* note 19 *supra*. Moreover, Justice Rehnquist, the author of the *Sosna* opinion, appeared to favor the rational basis standard for equal protection analysis of the right to travel in his *Maricopa County* dissent. 415 U.S. at 277-88.

Justice Marshall's *Sosna* dissent referred to this test applied by the majority as an "*ad hoc* balancing test." 95 S. Ct. at 567. However, in the majority opinion there was no comparison made between the appellant's and the state's interests which is essential to such a test. This approach has been utilized in evaluating state regulation of interstate commerce. *See, e.g.,* Pike v. Bruce Church, Inc., 397 U.S. 137 (1970); Southern Pac. Co. v. Arizona *ex rel.* Sullivan, 325 U.S. 761 (1945).

35. 95 S. Ct. at 561. This seems to be a highly attenuated interpretation of *Shapiro, Dunn* and *Maricopa County,* since such would seem to imply that an ad hoc balancing test was applied in those three cases. However, even a cursory reading of those cases will reveal that the compelling interest test was applied.

> not directly measurable in money terms like the loss of welfare benefits, but it cannot reasonably be argued that when the year has elapsed, the petitioner is made whole. The year's wait prevents remarriage and locks both partners into what may be an intolerable destructive relationship.[36]

In light of these considerations, it would appear that a petitioner for dissolution of marriage cannot "ultimately obtain the same opportunity for adjudication"[37] after a one-year waiting period has elapsed.[38]

In addition, this distinction is inconsistent with prior case law.[39] Mr. Justice Marshall pointed out in dissent that if such a distinction

36. 95 S. Ct. at 568-69 (Marshall, J., dissenting).

37. 95 S. Ct. at 561.

38. The distinction between mere delay and total denial was also the majority's basis for finding the Iowa durational residency requirement not repugnant to the due process clause. This distinction is subject to the same criticism when applied to due process as when applied to equal protection.

The due process argument in *Sosna* was made in two parts. In one part the Court held that there was no due process denial of an opportunity to be heard because there was only a one-year delay in obtaining cognizance of the dissolution petition as opposed to a total denial thereof. 95 S. Ct. at 563. A contrary position has been taken, however, by certain justices. *Id.* at 569 & n.2; *see* Boddie v. Connecticut, 401 U.S. 371, 383-86 (1971) (Douglas, J., concurring), *construed in* State v. Kras, 409 U.S. 434 (1973).

The other part of the due process argument dealt with the constitutionality of an irrebuttable presumption of no-domicile until the one-year residency requirement is fulfilled. Earlier, in Vlandis v. Kline, 412 U.S. 441 (1973), the Court had considered a state statute which provided an irrebuttable presumption of non-residence during the entire tenure in the state university system for those students who were not residents of the state at the time of application for admission. The Court held that the due process clause of the fourteenth amendment does not permit a state to deny an individual the opportunity to present evidence that he is a bona fide resident and entitled to in-state college tuition rates on the basis of a permanent and irrebuttable presumption of non-residence, when (1) that presumption is not necessarily or universally true in fact, and (2) when the state has a reasonable alternative means of making the crucial determination. This two-pronged test was not applied in *Sosna,* however. Instead, the *Sosna* majority resorted to a qualification made in *Vlandis,* saying "that [the *Vlandis*] decision should not 'be construed to deny a State the right to impose . . . , as one element in demonstrating bona fide residence, a reasonable durational residency requirement.' " 95 S. Ct. at 562, *quoting* Vlandis v. Kline, 412 U.S. 441, 452 (1973).

Analytically, the difference between *Sosna* and *Vlandis* is that in *Sosna* the statute created an irrebuttable presumption that domicile could not be established for one year, while in *Vlandis* the presumption continued until the student terminated his relationship with the state university system. Though *Sosna* was impliedly distinguished on the basis that the irrebuttable presumption therein was non-permanent rather than "permanent" as in *Vlandis*—the Court speaking in terms of mere delay and total denial—it would seem that this permanent-temporary distinction is insufficient to preclude the application of the *Vlandis* test. Furthermore, difficulties are foreseeable in applying this distinction since the concept of permanence is relatively esoteric; *e.g.*, is the *Vlandis* irrebuttable presumption a "permanent" one, or is it merely non-permanent to last for an uncertain length of time, that is, until the student's relationship with the university system is terminated? It should also be noted that the irrebuttable presumption has been subject to a good deal of criticism. *See* Note, 72 MICH. L. REV. 800 (1974).

The majority's third justification for not finding *Sosna* apposite to *Vlandis* was that an individualized showing of domicile would not entitle a petitioner to a dissolution because the Iowa statute required not only domicile, but also residence in the state for one year in order to exercise jurisdiction. 95 S. Ct. at 562. This, however, is merely stating a reason through the use of a conclusion, since the second prong of the *Vlandis* test is whether the state has a reasonable alternative means of making its determination; *i.e.*, could the state determine domicile without the use of the one-year durational residency requirement?

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

were applied to *Maricopa County,* the claim for non-emergency medical care should not have been granted because the patient would have eventually qualified for the same type of service after the one-year residency period had expired.[40]

Finally, the Court distinguished *Sosna* from prior residency cases on the ground that termination of marriage was an area traditionally reserved to the states. The Court reasoned that since significant social consequences, including marital status, property rights, alimony, support, and child custody, may be affected by a dissolution, the state may regulate the process by which it is granted, requiring the petitioner to have a "modicum of attachment to the State"[41] and that, therefore, a one-year residency requirement is proper.[42]

However, the majority did not consider that

> by declining to exercise divorce jurisdiction over its new citizens, Iowa does not avoid affecting these weighty social concerns; instead, it freezes them in an unsatisfactory state that it would not require its long-time residents to endure.[43]

Additionally, the majority failed to recognize that in the case of a domiciliary, the state does have an interest in the marital relationship regardless of whether or not the petitioner has resided within the state for one year.[44]

Though the reasoning for distinguishing *Sosna* from the prior cases is subject to considerable criticism, the rationale given by the Court for traditional state control of termination of marriage proceedings appears sufficient to uphold the constitutionality of the one-year residency requirement under the rather lenient rational basis test.[45] Had the Court applied the *Maricopa County* test, however, strict scrutiny would have been in all probability applicable, and since strict scrutiny requires a finding of unconstitutionality if the state interest

40. 95 S. Ct. at 569 (Marshall, J., dissenting).

41. 95 S. Ct. at 561.

42. *Id.* at 562. In this regard the Court further declared that a state is entitled to provide such a residency requirement as a means of minimizing the susceptibility of its own dissolution decrees to collateral attack for improper domicile and to discourage those seeking "quickie divorces" from descending upon it. *Id.*

However, the dissent suggested that these interests would be adequately protected by a simple showing of domicile, because (1) a good-faith determination of domicile would provide the necessary screening process for a state to avoid becoming a haven for divorce seekers, while also meeting the full faith and credit requirements set out by the Court in Williams v. North Carolina, 325 U.S. 226 (1957) and (2) even the residency requirement does not provide protection against collateral attack if the question of domicile is incorrectly determined. *Id.* at 570 (Marshall, J., dissenting).

It should also be noted that the finding of the Iowa statute to be unconstitutional would likewise affect other states with similar requirements and thus give little incentive for those seeking a dissolution to converge upon Iowa. Moreover, Iowa has a 90-day conciliation period which would further "serve to discourage peripatetic divorce seekers who are looking for the quickest possible adjudication." *Id.* at 571 n.9.

43. *Id.* at 569 n.3 (Marshall, J., dissenting).

44. Sosna v. Iowa, 360 F. Supp. 1182, 1188 (1973) (dissenting opinion).

45. *See* note 19 *supra.*

could be attained by less drastic means,[46] the availability of the "pure domicile" test would have rendered the Iowa statute unconstitutional.[47]

Thus, the significance of *Sosna* is not in the answers it provides, but, rather, in the questions that it raises as to the future applicability of equal protection-right to travel challenges to durational residency requirements.[48] Because the "budgetary or record-keeping" and "mere delay-total denial" distinctions are tenuous, it is arguable that *Sosna* is an isolated decision. In addition, it is arguable that *Sosna* was actually decided on the basis that termination of marriage has been traditionally a matter of state law.[49]

Nevertheless, *Sosna* suggests even further limitations upon the *Maricopa County* test when considered in connection with a number of other factors. In *Vlandis v. Kline,* for example, the Court completely failed to discuss the equal protection-right to travel argument, though it was clearly an issue,[50] perhaps indicating a desire to avoid the rigidity of strict scrutiny without openly repudiating *Shapiro* and *Dunn.*[51] Furthermore, *Maricopa County* was itself a limitation on the broad implications of *Dunn,*[52] and *Sosna,* while distinguishing this prior line of cases, clearly limits the *Maricopa County* test with respect to dissolution of marriage durational residency requirements.

If *Sosna* is indicative of a general change in the Court's analysis of equal protection-right to travel cases, however, it has not presented a clear answer to the question of when the strict scrutiny rather than the rational basis test will be applicable. Moreover, although it appears that the majority applied a rational basis test,[53] it is possible that *Sosna* is representative of a shift to a new mode of analysis, such as *ad hoc* balancing.[54] Until these questions are dealt with in future deci-

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46. *See* note 19 *supra*.

47. 95 S. Ct. at 570 n.6 (Marshall, J., dissenting).

48. The *Sosna* opinion did not deal with the question of whether the Iowa durational residency requirement was violative of the equal protection clause on the ground that it provides for a one-year waiting period when the petitioner is a resident of the state and the respondent is not, without imposing the same requirement when the respondent resides within the state, but the petitioner does not. Sosna v. Iowa, 360 F. Supp. 1182, 1186 n.1 (1973) (McManus, C.J., dissenting).

49. This argument is buttressed by the Court's language in noting that

> We therefore hold that the state interest in requiring that those who seek divorce from its courts be genuinely attached to the State, as well as a desire to insulate divorce decrees from the likelihood of collateral attack, requires a different resolution of the constitutional issue presented than was the case in *Shapiro, supra, Dunn, supra,* and *Maricopa County, supra.*

95 S. Ct. at 562.

50. *See* note 26 *supra* and accompanying text.

51. *Supreme Court, 1972 Term, supra* note 11, at 75.

52. *See* notes 22-31 *supra* and accompanying text.

53. *See* note 34 *supra*.

54. Ad hoc balancing might provide a more flexible form of analysis than the traditional strict scrutiny-rational basis dichotomy. While strict scrutiny provides great protection to the right to travel, it accords little respect to state sovereignty. On the other hand, the rational basis test defers to state sovereignty, but provides little protection to the right to travel. *Supreme*

sions, the reach of *Sosna* upon equal protection-right to travel challenges to durational residency requirements will remain speculative.

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Court, 1973 Term, supra note 30, at 117-19. However, ad hoc balancing has the disadvantage of lacking clear guidelines for its application and possibly allowing the outcome to be a function of individual Justice's personal preferences.