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The Constitutionality of State Residency Requirements for Admission to the Bar

State residency requirements for admission to the bar can be classified into two basic types. The first, the durational residency requirement, demands that the applicant reside in the state during a set period of time. The second, the simple residency requirement, demands only that the applicant establish residence by a specific date—for example, the day of application or admission to the bar.


Bar admission standards appear in many forms. They may be court rules, see, e.g., Ill. S. Ct. R. 701-09, or rules of a board of bar examiners whose power is delegated by the state court, see, e.g., Florida Board of Bar Examiners, Rules and Regulations, Oct. 15, 1970. If the admissions standards appear in the form of state statutes, they are generally formulated only as an aid to the state court and the final decision as to the acceptability of the standards still rests with the court. See, e.g., In re Park, 484 P.2d 690, 691 (Alas. 1971). Although operationally delegated to another body, the formulation of admissions standards is a judicial function, the authority and final responsibility resting with the court. See Dowling, The Inherent Power of the Judiciary, 21 A.B.A.J. 635, 638 (1935).

2. The different types of durational residency requirements include:
   a. Residence prior to application. See, e.g., Mont. S. Ct. R. 25(A)(1) (six months); Wyo. S. Ct. R. 21(c) (six months).
   b. Residence prior to bar examination. See, e.g., Ariz. S. Ct. R. 28(c)(IV)2 (three months prior to first day of examination); Nev. S. Ct. R. 51(8) (six months); Vt. S. Ct. (pt. II) R. I, § 1 (six months). See generally Section of Legal Education and Admissions to the Bar, American Bar Association, Law Schools and Bar Admission Requirements in the United States (1968) [hereinafter ABA, Admission Requirements]; Rules for Admission to the Bar (West Publishing Co. 1972) [hereinafter Bar Rules].

   The word “residence” has no uniform meaning with respect to bar admissions among the different states. See Reese & Green, That Elusive Word, “Residence”, 6 VAND. L. REV. 501, 508 (1953). A rule requiring that an applicant be a “resident” of a state for a set number of months before admission may require only domicile or it may require as much as actual presence in the state for seventy-five per cent of the six-month period. Compare, e.g., In re Stevens, 335 P.2d 164 (Alas. 1960), interpreting what is now Alaska Stat. § 08.08.130 (1963), with Ariz. S. Ct. R. 28(c)(IV).


   Some states have no residency requirements at all. See, e.g., Comm. on Admissions and Grievances, U.S. District Court for the District of Columbia, Information for Applicants for District of Columbia Bar Examination, March 1970; Ill. S. Ct. R. 701-09; Articles of Incorporation of the Louisiana State Bar Assn., art. 12. Some states require an intention to become a resident. See, e.g., Conn. Super. Ct. R. (Admission to the
Because state statutes generally make it illegal to practice law without a license, these requirements affect persons in several different situations. In order to practice in most states a graduating law student must fulfill a residency requirement. An attorney who is admitted to practice in one state but who desires to practice in another must often give up his old practice and residence in order to meet the residency requirement of the new state. An attorney who desires to appear periodically or in isolated cases in a state in which he is not licensed will often be required to appear with associated in-state counsel.

There has been controversy in the lower federal courts concerning durational residency requirements and one recent state court challenge of a simple residency requirement. This Note will discuss the constitutional validity of these requirements in the face of equal protection attacks, concentrating on the extent to which such requirements are justified by the interests of state courts in maintaining the integrity of their legal systems.

Bar § 8 (for those who have practiced in another state, there is a six-month durational-residency requirement, id. § 13). A last group of states requires an intent to practice in the state. See, e.g., Arkansas State Board of Law Examiners, Arkansas Bar Examinations—Requirements and Information, May 15, 1972; Michigan State Board of Law Examiners, Rules Governing Admission to the Bar, Rule 1, 1965. See generally ADA, Admission Requirements, supra note 2; Bar Rules, supra note 2.


The states have the power to administer their own court systems. More specifically, it is settled that “[a]dmission to practice in a State and before its courts necessarily belongs to that State.”

That there are some limitations upon state control over its bar, however, has been demonstrated by a long history of judicial decisions. First, the state’s purpose must be a legitimate one; the admission standards are to be for the protection of the state’s citizens and not for the selfish interests of its bar. A second limitation is that the bar admission standards must not deprive persons of rights guaranteed by the Constitution.

The first limitation presents no serious difficulty in regard to residency requirements. Despite some naked assertions to the contrary, these requirements no doubt are formulated to protect the

9. The two judicial systems of courts, the state judicatures and the federal judiciary, have autonomous control over the conduct of their officers, among whom, in the present context, lawyers are included. The court’s control over a lawyer’s professional life derives from his relation to the responsibilities of a court.


13. Although bar residency requirements are often attacked as trade barriers, critics rely on neither legislative history nor statistics to prove their point. See, e.g., Dalton & Williamson, State Barriers Against Migrant Lawyers, 25 U. Kan. L. Rev. 144 (1977); Horack, “Trade Barriers” to Bar Admission, 28 J. Am. Jud. Soc. 102 (1944). Durational residency requirements will initially have some effect on the market conditions within the state. But it is probable that the resulting decrease in the number of lawyers within the state would drive legal fees up. As the fees increase, more lawyers would be willing to meet the residency requirement, minimizing any trade barrier effect. The long-term effect of short durational residency requirements would be negligible.
state's citizenry. The question, therefore, is whether the state's interests are sufficient to fortify the requirements against constitutional attack.

Because the equal protection challenges to bar residency requirements have generally arisen in the federal courts, it should be noted that the federal courts may owe some deference to state court systems. As Justice Harlan once noted, bar admission practices involve "an area of federal-state relations . . . into which [federal courts] should be especially reluctant and slow to enter." A practical justification for this view is that the complicated problems of the bar are best dealt with by the courts who work directly with the attorneys. This principle of local control, a part of English legal institutions, was transplanted to the colonies and is still recognized today to be necessary for the effective administration of the bar.

It could be argued that any deference due state bar admissions standards should apply only when dealing with nonconstitutional problems; federal courts should exercise a demanding standard when reviewing all state laws that infringe on fundamental constitutional rights. But in several cases dealing with first amendment challenges to bar practices it appears that the Supreme Court has allowed incursions into constitutionally protected areas that might have been disallowed in circumstances not so closely concerned with the integrity of the state's legal process itself. For example, a state has been permitted to deny admission to the bar to an applicant for failure to answer questions concerning membership in the Communist Party

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14. See notes 69-80 infra and accompanying text.
15. See cases cited in note 5 supra. The suit in In re Titus, Va. —, 191 S.E.2d 798 (1972), had previously come before a three-judge federal district court, which abstained. See — Va. at —, 191 S.E.2d at 799.
18. See C. Warren, supra note 17, at 39-143; Lee, supra note 1, at 245.
21. The Court's decisions dealing with first amendment rights and admission to the bar are, however, difficult to reconcile with one another. See Baird v. State Bar, 401 U.S. 1, 2-4 (1971) (Black, J.).
because the failure obstructed legitimate inquiry. The Court has affirmed a proper examination into an applicant's political beliefs when used to ensure the sincerity of the applicant in taking his oath. Lawyers may also be required to support a professional organization, despite disagreement with its public position or policies, because of the greater benefit to the profession and to society that would result from a unified bar. Although in all of these situations there were infringements upon the constitutionally protected rights of freedom of speech and association, the Court deferred both to the judgment and vital interests of the state courts.

The Court, however, has held that the first amendment protects the right of organizations to supply group legal services to their members. The state statutes involved prohibited this practice because it constituted fomenting and soliciting legal business. In each of these cases the Court found that the state was unable to show that the state law furthered any "appreciable public interest," specifically, "the State's interest in high standards of legal ethics." While these cases indicate that certain bar practices will be curtailed, the Court appeared willing to balance the interest of the state with the constitutional interest of the individual.

More directly in point, in two rather cryptic decisions the Su-
The Supreme Court has deferred to state bar admissions practices in regard to residency requirements. *Martin v. Walton*\(^2\) appears to have indirectly approved simple residency requirements and *Suffling v. Bondurant*\(^2\) upheld a six-month durational residency requirement.

In *Martin v. Walton* the appellant was a lawyer with practices and offices in both Kansas and Missouri. Kansas law required any attorney practicing in another state, even if a member of the Kansas bar, to appear with a local attorney when appearing in Kansas courts. The Kansas supreme court upheld the statute against an equal protection challenge.\(^3\) The United States Supreme Court, per curiam, dismissed the appeal for want of a substantial federal question, noting *inter alia*: "We cannot disregard the reasons given by the Kansas Supreme Court for the Rules in question."\(^4\) The Kansas supreme court had stressed that the rules were designed "to provide litigants in [Kansas] tribunals with the service of a resident attorney familiar with local rules, procedure and practice and upon whom service may be had in all matters connected with actions or proceedings proper to be served upon an attorney of record."\(^5\) The considerations behind the Kansas practice mirror those behind simple residency requirements. In fact, the Virginia supreme court, relying on the same justifications that were commended by the Court in *Martin*, recently upheld a simple residency requirement for bar admissions in the face of due process and equal protection attacks.\(^6\) The basic premise behind both the Kansas practice and simple residency requirements is that there are definite advantages in having a bar composed of local attorneys—local in the sense that they live or work, or both, in the state.

A six-month durational residency requirement was challenged in *Suffling v. Bondurant*. A three-judge district court found that the New Mexico bar rules, which required six months of residence prior to admission, were acceptable under the traditional equal protection

\(^4\) 187 Kan. at 484-85, 357 P.2d at 791-92.
\(^5\) 568 U.S. at 26.
\(^6\) 187 Kan. at 482-83, 357 P.2d at 790.
test. The state used the time period to investigate the applicant’s background.\textsuperscript{34} The Supreme Court’s affirmance was without opinion.\textsuperscript{35}

It is possible to view \textit{Martin} and \textit{Suffling} as decisions on the merits, foreclosing any further questions concerning simple residency and six-month durational residency requirements.\textsuperscript{36} But because \textit{Martin} at best only indirectly approves simple residency requirements and because the precedential value of the \textit{Suffling} affirmance without opinion is uncertain, the constitutional dimensions should be examined.

Under the traditional equal protection standard, a state retains discretion to classify people (in this case into groups according to residency status) so long as the classification bears a rational relationship to a legitimate state purpose.\textsuperscript{37} The state is not required to classify people with “mathematical precision,”\textsuperscript{38} and classifications made by the state bear a presumption of validity.\textsuperscript{39} This deference to state wisdom\textsuperscript{40} allows classifications to stand unless they are

\begin{itemize}
\item \textsuperscript{34} 399 F. Supp. at 299.
\item \textsuperscript{35} 41 U.S.L.W. at 3287.
\item \textsuperscript{39} Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78-80 (1911).
\item \textsuperscript{40} The standard grew out of a deference to state legislative wisdom, see Tussman & tenBroek, \textit{The Equal Protection of the Laws}, 37 Calif. L. Rev. 241, 245-46 (1949), but
arbitrary or capricious. Under this traditional standard state legislation has appeared virtually immune from attack.

However, doubt has been cast upon the permissiveness of this standard by recent Court decisions striking down legislation while voicing the traditional test. There may be emerging a more demanding "traditional" test that could be couched in terms of requiring a "fair and substantial relationship" between means and purpose. But it is too early to gauge the import of these decisions, and the application of a more rigorous traditional test to bar admission requirements is uncertain.

When dealing with either infringements upon fundamental rights or with suspect classifications the Court uses a wholly different standard of review, one that imposes an almost Herculean task upon the state. The classification must be precisely tailored so as to accomplish the state's purpose, less drastic means must not be available to accomplish its objective, and ultimately the interest furthered must be a compelling one.

The initial question is which standard of review applies to bar the Supreme Court has applied the same standard to state courts in bar admissions cases. See, e.g., Schware v. Board of Bar Examiners, 353 U.S. 232, 238-39 (1956).


42. Classifications are generally overturned only when "no grounds can be conceived to justify them." McDonald v. Board of Election Commrs., 394 U.S. 802, 809 (1969).


residency requirements. Because the right to travel is an established fundamental right, it is protected by the strict equal protection standard. Clearly, penalization of travel may abridge that right as does deterrence or prohibition. But the Court in Shapiro v. Thompson, while invalidating a one-year residency requirement for state welfare benefits, was careful to avoid comment on whether bar residency requirements "penalized" the right of travel.

The Court's travel cases may indicate the extent of the penalization necessary to constitute a denial of the right to travel. Edwards v. California and United States v. Guest dealt with actions that prohibited interstate movement. In Dunn v. Blumstein the penalization was denial of the fundamental right to vote. In Shapiro welfare benefits were denied to indigents. People cannot live where they cannot eat, and such a denial of benefits would either effectively bar entry into the state or force them to live without food and shelter. In all these cases there is either deterrence, prohibition, or a substantial penalization.

All state bar admissions requirements will, to some degree, either penalize or deter an applicant's move into a new state. Examples

54. We imply no view of the validity of waiting-period or residence requirements to obtain a license to practice a profession . . . . Such requirements may promote compelling state interests on the one hand, or, on the other, may not be penalties upon the constitutional right of interstate travel.
56. 314 U.S. 160 (1941) (statute designed to prevent nonresident indigents from entering the state).
58. The possible scope of future constitutional attacks based on the right to travel appeared to concern Chief Justice Warren, dissenting in Shapiro, when he warned: The Court's decision reveals only the top of the iceberg. Lurking beneath are
are a different education requirement, a more difficult bar examination, a more exacting character investigation, a larger fee, or a different requirement for references in the new state. Even the many definitions of the term "residence" will do the same. But impositions upon movement are spectral. Some requirements will cause an individual only minor inconvenience while others will effectively prohibit him from moving into a new state. The most minor, such as requiring an individual to submit three rather than two references for bar admission, are clearly not the kinds of penalization that have concerned the Court. But a one-year durational residency requirement for voting approaches the other end of the spectrum, and a sufficient penalization to invoke the stricter standard is more certain.

Recent cases reveal a judicial approach consistent with this analysis. Martin v. Walton and lower court decisions upholding simple residency requirements under the traditional equal protection standard indicate that these requirements are, indeed, only minor

the multitude of situations in which States have imposed residence requirements including eligibility to vote, to engage in certain professions or occupations or to attend a state-supported university. Although the Court takes pains to avoid acknowledging the ramifications of its decision, its implications cannot be ignored.

394 U.S. at 655.

59. Compare, e.g., GA. CODE ANN. § 9-103(b)(i) (1966) (two years of undergraduate college work), with CONN. SUPER. CT. R. (ADMISSION TO THE BAR) § 8 (either a bachelor's or master's degree).


62. Compare, e.g., Articles of Incorporation of the Louisiana State Bar Assn., art. XIV, § 7(A) (1972) ($35.00 fee), with Florida Board of Bar Examiners, Rules and Regulations, Rule 5, § 51, Oct. 15, 1970 ($400.00 fee from applicants admitted to another bar in the past twelve months).

63. See, e.g., King, supra note 61, at 114.


inconveniences and not the sufficient penalization necessary to invoke the stricter standard of review.

Durational requirements present a more difficult problem of determining when sufficient penalization of the right to travel occurs. It would be difficult to describe a hypothetical one-day durational residency requirement as a penalization but not difficult to classify as such a three-year requirement. For an individual who has met all admissions requirements save residence, temporary employment for a short durational period should be no problem. In addition, employers often hire waiting bar applicants to do substantially the same work that the applicants will do after being licensed. The problem is: at what discrete point is the penalization sufficient to invoke strict scrutiny? Any line drawn must, out of necessity, be an arbitrary one. The lower federal courts, in deciding the ultimate issue of constitutionality, have consistently struck down twelve-month durational residency requirements, while in Suffling v. Bondurant a six-month requirement was upheld. Perhaps these decisions provide practical guidance for determining when to apply the strict standard.

Assuming that the strict test does not apply, both simple residency and durational requirements bear up well under the traditional test. This analysis will first consider the justifications for simple residency requirements. One justification is that a bar with a local membership creates the professional and social pressures necessary for the maintenance of discipline. As a means of setting


68. All the cases cited in note 7 supra as overturning durational residency requirements involved twelve-month periods except Potts v. Honorable Justices of the Supreme Court, 332 F. Supp. 1592 (D. Hawaii 1971). In that case, the requirement was for six months of residence any time after the age of fifteen, while a period specified for character investigations and interviews did not require residence. The court found the residency requirement "arbitrary and capricious," and did not reach the issue of penalization of the right to travel. 332 F. Supp. at 1398. However, Smith v. Davis, 350 F. Supp. 1225, 1228 (S.D. W. Va. 1972), Lipman v. Van Zant, 329 F. Supp. 391, 403 (N.D. Miss. 1971), and Webster v. Wolford, 321 F. Supp. 1259, 1262 (N.D. Ga. 1970), all expressly stated that shorter requirements would be permissible for the purpose of character investigations and interviews. Suffling v. Bondurant, 339 F. Supp. 257 (D.N.M. 1972), affd. mem. sub nom. Rose v. Bondurant, 41 U.S.L.W. 3287 (U.S., Nov. 21, 1972), upheld a six-month requirement for this same purpose. The period approved in Suffling, though, was six months prior to admission. 339 F. Supp. at 260. A requirement of six months of residence prior to application for the bar examination may be a twelve-month requirement in sheep's clothing.

69. There has recently been much attention focused on the need for a disciplined bar. See, e.g., R. CLARK & H. Kalven, Contempt: Transcript of the Contempt Citations, Sentences, and Responses of the Chicago Conspiracy (1970); Special Committee on Evaluation of Disciplinary Enforcement, ABA, Report 8-9 (1971); Burger, The Necessity for Civility, 52 F.R.D. 211 (1971) (remarks of the Chief Justice at the opening session of the American Law Institute); Cole, Bar Discipline and Spevak v. Klein, 53 A.B.A.J. 819 (1967); Wright, Self Discipline of the Bar: Theory or
standards and of identifying and correcting unacceptable behavior, local pressure and observation are invaluable and strike an acceptable balance between the need for discipline and for a free-thinking bar.\textsuperscript{70} Another justification for simple residency requirements is that local lawyers will have a stake in the community. To the extent that lawyers realize that their actions and activities will have an impact on the administration of the legal system in their community, they may be less inclined toward unprofessional and unethical conduct and more inclined toward effecting high professional standards.\textsuperscript{71} Third, local lawyers will have a knowledge of local customs and procedures that recent law school graduates and out-of-state attorneys will not have. Although knowledge of local intricacies is not expected of the novitiate, it is part of the education of a seasoned lawyer and is what the community properly expects.\textsuperscript{72} Finally, many members of

\textit{Fact}, 57 A.B.A.J. 757 (1971). It is interesting to note that the British recognized as early as the seventeenth century that local associations were necessary to maintain effective control over the bar. 6 W. \textit{HOLDSWORTH}, \textit{supra} note 17, at 442-43.

The interest in a disciplined bar has been stressed repeatedly by the Supreme Court. See, e.g., \textit{Theard v. United States}, 354 U.S. 276, 281 (1957); \textit{Ex parte Burr}, 22 U.S. (9 Wheat.) 529 (1824). A disciplined bar is needed because the legal profession is entrusted with "the safekeeping of this country's legal and political institutions." \textit{Konigsberg v. State Bar}, 366 U.S. 36, 52 (1961). This interest has asserted itself in admissions standards dealing with moral and ethical considerations. See, e.g., Justice Frankfurter, concurring in \textit{Schware v. Board of Bar Examiners}, 353 U.S. 232, 247 (1957):

[All the interests of man that are comprised under the constitutional guarantees given to "life, liberty and property" are in the professional keeping of lawyers. It is a fair characterization of the lawyer's responsibility in our society that he stands "as a shield," . . . in defense of right and to ward off wrong. From a profession charged with such responsibilities there must be exacted those qualities of truth-speaking, of a high sense of honor, of granite discretion, of the strictest observance of fiduciary responsibility, that have, throughout the centuries, been compendiously described as "moral character."

It has also asserted itself in court control over lawyers through disbarment proceedings. See generally \textit{Note, Procedures for Disciplining Attorneys in Virginia}, 29 Wash. & Lee L. Rev. 429 (1972).

70. Pressure and observation with respect to those lawyers involved in litigation comes from the courts, and is best done on a continuous basis. A transient bar, in and out of courtrooms across the country, would not be subject to the same day-to-day control as are local bars. An understanding of the bounds of permissible conduct results from experience and a continuous process of standard-setting by the local bench.


a community may have more confidence in a stable, local bar. A simple residency requirement bears a rational relationship, or indeed, a "fair and substantial relationship," to all of these permissible goals.

Durational residency requirements promote these purposes, but their durational aspect needs further justification. One consideration is that by residing in the state for the required period of time the applicant will absorb knowledge of the state's governmental structure and customs. But any knowledge of local customs or of state and local governmental structure can be tested in bar examinations. An other justification is that by meeting a long durational residency requirement an applicant demonstrates his bona fide intention to become a permanent resident of the community. It can be argued, however, that "[i]n our highly mobile society, one who has lived in a particular locale for one year may be firmly rooted in the community or he may be ready to move tomorrow." But the issue is one of probability; an individual who has lived for some time in a community may be more likely to stay than one who has not. Thus, this ground has some, but not overwhelming, merit.

A more serious justification is that the residency period gives the community an opportunity to observe the applicant's moral character, thus facilitating the state agency's evaluation of his qualifications. Critics claim that a durational period is not an effective aid in assessing character. They point to the nationwide investigatory service operated by the National Conference of Bar Examiners as an alternative. However, because the state examining committee is

R. 5(1): "It shall be requisite to the admission of attorneys or counsellors to practice in this court, that they shall have been such for three years past in the highest court of a state . . . ."

73. Several studies have suggested that confidence in the bar and, concomitantly, in the legal process itself, rests on a continuing relationship between the community and its legal establishment. See Missouri Bar Association, A MOTIVATIONAL STUDY OF PUBLIC ATTITUDES AND LAW OFFICE MANAGEMENT (1963); Iowa State Bar Association, Law Opinion of Iowa Lawyers (1949). Moreover, although in extreme cases formal disciplinary proceedings, malpractice suits, and other actions can be brought against nonresident attorneys, see Note, Interstate and Federal Practice, 80 Harv. L. Rev. 1711, 1714-15 (1967), the practical considerations of out-of-state litigation make these remedies unattractive to aggrieved clients.


77. The two most common objections are that a durational residency requirement results in observation during an unfavorable period of forced idleness and that in an urban society any observation at all is unlikely. See, e.g., Keenan v. Board of Bar Examiners, 317 F. Supp. 1350, 1359-60 (E.D.N.C. 1970); Horack, supra note 13, at 103.

ultimately responsible for the proper conduct of the investigation, it may have more confidence in its own officials, procedures, and standards. More importantly, the state may believe that a six-month period of residence results in a necessary period of observation, especially with respect to smaller communities.\footnote{79} Such a requirement for the purpose of assessing the quality and integrity of applicants is reasonable, providing the period of observation is not of an excessive length. This last justification alone meets the traditional equal protection standard. Under the “fair and substantial” version of the traditional standard, however, the validity of a longer durational residency requirement, such as twelve months, is doubtful.\footnote{80}

Assuming that the traditional standard of review is not used, can either simple residency or durational residency requirements withstand the strict standard of equal protection review? It seems possible that a state’s interest in the integrity of its bar is a compelling one.\footnote{81} Simple residency requirements further that interest by vesting legal institutions with the most direct and effective means available of ensuring that the bar is disciplined, that lawyers have a stake in the community and are familiar with local customs and practices, and that community confidence in a stable, local bar is

\footnote{79. The investigating committees are local in nature, often covering only one county. See, e.g., Green, Procedures for Character Investigations, 55 Bar Examiner 10, 11 (1966).}

\footnote{80. See note 68 supra and accompanying text.}


The first Supreme Court case that possibly justified strictly scrutinized governmental action by a finding of a compelling interest was Korematsu v. United States, 323 U.S. 214 (1944). In that case national security provided a compelling federal interest. One case decided after the advent of “two-tiered” equal protection, Abate v. Mundt, 403 U.S. 182, 185-87 (1970), may also have rested on the finding of such state interest in an apportionment plan that attempted to preserve a county-district overlap of elected officials. It was in this barren setting that Chief Justice Burger remarked:

To challenge such [standards] by the “compelling state interest” standard is to condemn them all. So far as I am aware, no state law has satisfied this seemingly insurmountable standard, and I doubt one ever will, for it demands nothing less than perfection.

Dunn v. Blumstein, 405 U.S. 330, 363-64 (1972) (dissenting opinion). It is interesting to note that two dicta in the Dunn majority opinion indicated that Tennessee may have had compelling interests in a simple residency and thirty-day durational voting requirement, 405 U.S. at 343-44, 347-49. See also Marston v. Lewis, 41 U.S.L.W. 2498 (U.S., March 19, 1973) (upholding fifty-day durational requirement for voting). Subsequent to Dunn there has been an explicit finding of a compelling state interest in Roe v. Wade, 41 U.S.L.W. 4218 (U.S., Jan. 22, 1973). The state’s interest in the life of a mother becomes “compelling” after three months of pregnancy, and its interest in the fetus becomes “compelling” at viability. 41 U.S.L.W. at 4228.}
maintained. But because a simple residency requirement will prevent some otherwise qualified individuals from practicing within the state and will at the same time allow some unqualified individuals to practice, a rigid application of the strict test might invalidate the requirement.

Durational requirements would more surely be invalid under a literal application of the strict standard. The use of a durational requirement to screen applicants for the likelihood of becoming permanent residents and as an aid in character investigations lacks surgical precision. These requirements are both over- and under-inclusive, and a less onerous means, although one perhaps not as acceptable to the state, is available through the national investigatory service. As noted above, however, it would not be unreasonable to draw a line with respect to the degree of penalization of the constitutional right to travel, subjecting lengthy durational residency requirements to strict scrutiny while leaving simple residency and shorter durational residency requirements subject to the traditional test.

In addition to the traditional and strict equal protection standards, there is a third alternative by which to judge these bar admissions requirements. A finding that simple or durational residency requirements penalize travel sufficiently to make the application of the traditional test, with its broad leeway, inappropriate, does not logically require the application of a wooden, inflexible test. In an area where some degree of penalization or deterrence of travel will result from any bar admissions requirement an unyielding test should have no place. In an area historically and constitutionally one of state authority some deference should come to bear. Indeed, the Supreme Court has appeared to approach all bar admissions problems with some trepidation.

This deference may come to bear at various points in an equal protection analysis. The strict test may not be applied at all, solely because of the state's interest; possibly a more stringent traditional test would be used. If a compelling interest standard is used, a court could still require the involvement of a vital state interest but might allow some leeway as to the precision of the means used. But these

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83. See notes 16-27 supra and accompanying text.


85. See notes 43-44 supra and accompanying text.

86. When formulating durational residency requirements the states' concern is with the character of their applicants. Since the whole process of character evaluation, by its nature, is not amenable to precise methodology, states should be allowed leeway in attempting to assess character. Cf. Mahan v. Howell, 41 U.S.L.W. 4277, 4281 (U.S., Feb. 21, 1973).
approaches, as a practical matter, indicate that a straightforward balancing test, suggested by recent Court decisions, is an ideal analytical framework.\footnote{7} If travel is sufficiently penalized by a requirement, this means almost certain death under the strict standard despite the requirement's merits. Under a comparative approach the state's interest could still be given appropriate weight.\footnote{8} The judgment of the state courts in their formulation of bar standards could be considered and the extent of penalization compared. Both simple residency and short durational requirements would fare well under such an analysis.


\footnote{8} Justice Holmes has pointed out:

All rights tend to declare themselves absolute to their logical extreme. Yet all in fact are limited by the neighborhood of principles of policy which are other than those of which the particular right is founded, and which become strong enough to hold their own when a certain point is reached.