UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 78-1447

VICKI GREENE GOLDEN,

Plaintiff-Appellant,

v.

STATE BOARD OF LAW EXAMINERS, et al.,

Defendants-Appellees.

On Appeal From The United States District Court
For the District of Maryland

BRIEF OF AMICUS CURIAE DIVISION FOUR (COURTS, LAWYERS, AND THE ADMINISTRATION OF JUSTICE) OF THE DISTRICT OF COLUMBIA BAR*

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* These views are being presented only on behalf of Division Four (Courts, Lawyers, and the Administration of Justice) of the District of Columbia Bar. They do not represent the views of the District of Columbia Bar or of its Board of Governors.

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BRIEF OF AMICUS CURIAE

Division Four (Courts, Lawyers, and the Administration of Justice) of the District of Columbia Bar joins plaintiff-appellant in urging reversal of the decision below.[1/] We agree with plaintiff that the Maryland rule requiring applicants to the bar to be domiciled in Maryland at the time they apply, take the bar examination, and are admitted violates the Privileges and Immunities and Commerce Clauses of the Constitution. This brief is submitted in order to emphasize two points in support of plaintiff's argument. First, the Committee on Admissions to the Bar of the District of Columbia has encountered no difficulty in screening its applicants without such a domicile requirement. Second, Maryland's domicile requirement presents a case of impermissible economic protectionism which discriminates particularly against bar applicants who reside in the District of Columbia. Accordingly, this Court should rule

1/These views are being presented only on behalf of Division Four (Courts, Lawyers, and the Administration of Justice) of the District of Columbia Bar. They do not represent the views of the District of Columbia Bar or of its Board of Governors.

Letters of consent to the filing of this brief from counsel for appellant and counsel for appellees are attached as an addendum to this brief.

that Maryland's domicile requirement is unconstitutional. Alternatively, the Court should at the very least remand this case for further inquiry into the purposes and effects of the challenged rule.

QUESTIONS PRESENTED FOR REVIEW

The questions presented for review are stated by plaintiff at page 2 of her brief.

RULE INVOLVED

Rule 10 of the Rules Governing Admission to the Bar of Maryland, which is challenged in this case, is set forth at pages 2-3 of plaintiff's brief.

STATEMENT OF THE CASE

The facts underlying this case and the proceedings below are stated at pages 3-4 of plaintiff's brief.

ARGUMENT

I. EXPERIENCE IN THE DISTRICT OF COLUMBIA DEMONSTRATES THAT MARYLAND'S DOMICILE REQUIREMENT IS NOT SUFFICIENTLY RELATED TO ITS PURPORTED PURPOSE AND THAT LESS BURDENSOME ALTERNATIVES ARE AVAILABLE TO ACHIEVE THE PURPORTED PURPOSE.

The Supreme Court on several occasions has held that "state discrimination against non-residents seeking to ply their trade, practice their occupation, or pursue a common calling within the State" violates the Privileges and Immunities Clause. Hicklin v. Orbeck, 57 L. Ed.2d 397, 404 (1978). Mullany v. Anderson, 342 U.S. 415 (1952); Toomer v. Witsell, 334 U.S. 385 (1948); Ward v. Maryland,

79 U.S. (12 Wall.) 418 (1870). In order to withstand scrutiny under the Clause, state-imposed discriminations on non-citizens must bear a "close relation" to valid reasons for imposing the discrimination. Toomer v. Witsell, supra, 334 U.S. at 396. Hicklin v. Orbeck, supra, 57 L. Ed.2d at 406 (discrimination must be "closely tailored" to a legitimate purpose). Moreover, "the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities." Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970).[2/]

The experience of the Committee on Admissions to the Bar of the District of Columbia Court of Appeals -- as recounted in the affidavit of the Committee's secretary, Mr. Anthony Nigro (App. 31-33) -- demonstrates that Maryland's domicile requirement does not bear the requisite close relationship to Maryland's interest in ascertaining the integrity of applicants to the bar and that there are less burdensome alternatives for achieving this purpose.[3/]

2/Pike v. Bruce Church, Inc., supra, involved the Commerce Clause. However, because of "the mutually reinforcing relationship between the Privileges and Immunities Clause of Art. IV and the Commerce Clause," Hicklin v. Orbeck, supra, 57 L. Ed.2d at 408, the Court should inquire into the availability of less burdensome alternatives under the Privileges and Immunities Clause as well as under the Commerce Clause.

3/The Privileges and Immunities Clause also requires a showing that "non-citizens constitute a peculiar source of the evil at which the statute is aimed." Toomer v. Witsell, supra, 334 U.S. at 398. We concur with plaintiff that defendants have wholly failed to establish any nexus whatsoever between non-residency and the evil of disreputable and inept attorneys.

The Committee on Admissions is the administrative agent of the District of Columbia Court of Appeals for the admission of attorneys (App. 31).[4/] Among its responsibilities, the Committee is required by the Court "to conduct a careful investigation of all applicants," including their moral character and general fitness to practice law (Id.). As part of these investigations, applicants are required to submit affidavits concerning their academic, personal and professional backgrounds (App. at 32). With respect to applicants who are members of the bar of other jurisdictions, the Committee may request a report from the National Conference of Bar Examiners (NCBE) (Id.).[5/]

In the event that an applicant's affidavits or the NCBE reports reveal unfavorable information, the applicant is usually required to appear before the Committee at the applicant's own expense. (App. at 32, 33). Obviously any applicant who seeks admission must comply with the Committee's request to appear or to submit supplemental affidavits. The assertion below of defendants' counsel that "the bona fide residency requirement is the only way Character Committees appointed by the Board of Bar Examiners are assured access to a candidate so as to personally interview him

4/Responsibility for regulation of admissions to the bar rests with the District of Columbia Court of Appeals. D.C. Code §11-2501; Pub. L. 91-358, §111; 84 Stat. 521 (1970).

5/The NCBE's nationwide investigatory service has been recognized to be "efficient, thorough, and widely used." Keenan v. Board of Law Examiners, 317 F. Supp. 1350, 1360 (E.D. N.C. 1970) (three-judge court).

and investigate his background, moral character and qualification"[6/] is not only unsupported by any record evidence but is demonstrably implausible as well.

Mr. Nigro also stated in his affidavit that the procedures followed in the District of Columbia have been entirely satisfactory in evaluating the large number of applicants to the District of Columbia bar who come from all over the United States:

> Since January 1974 the Committee has had before it for consideration of moral character and general fitness to practice law applications from 4536 attorneys seeking admission without examination and 2175 successful applicants of the bar examination from every state and territory of the United States. On many occasions applicants were requested to appear before the Committee and did so without difficulty. . . .
>
> The Committee on Admissions has not encountered any difficulty in carrying out the mandate of the Court to conduct a careful investigation of applicants seeking admission. The present procedure is working effectively and I can see no reason for the procedure to be changed or modified.

(App. at 33) (emphasis in original).

The experience of the District of Columbia demonstrates that admissions committees can develop procedures for evaluating non-resident applicants which are "closely tailored" to the aim of preserving the integrity of the bar without imposing the unnecessary burden of requiring domicile in the jurisdiction at the time of application and admission. Since plaintiff seeks to vindicate

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6/Memorandum in Support of Defendants' Motion to Dismiss, 5 (emphasis added).

a policy to which our jurisdiction is successfully committed, we therefore join her in urging this Court to strike down Maryland's domicile requirement.

II. MARYLAND'S DOMICILE REQUIREMENT PRESENTS A CASE OF INVIDIOUS DISCRIMINATION AIMED AT LAWYERS WHO RESIDE IN THE DISTRICT OF COLUMBIA.

While plaintiff has demonstrated that the discrimination embodied in Rule 10 serves no rational purpose, we wish to point out that this discrimination is invidious as well because it serves purposes of economic protectionism and may even have been designed to achieve these impermissible purposes. City of Philadelphia v. New Jersey, 57 L. Ed.2d 475, 481 (1978) ("[W]here simple economic protectionism is effected by state legislation, a virtually per se rule of invalidity has been erected").[7/] It is readily apparent that the discrimination of the domicile rule falls with particular harshness on District of Columbia lawyers who, like plaintiff, wish to join the Maryland bar. Moreover, if plaintiff can demonstrate through discovery -- which thus far has been denied -- that Rule 10 was intended to serve such purposes, such facts would provide further compelling reasons for striking down the domicile requirement.

In this regard, we note that a member of the Maryland State Board of Law Examiners has written that certain provisions of the state's rules have been adopted specifically to keep District of Columbia lawyers from competing with Maryland lawyers. Adkins, What Doth the Board Require of Thee?, 28 Md. L. Rev. 103 (1968).

7/This presumption has equal applicability to analysis under either the Privileges and Immunities Clause or the Commerce Clause. See n.2, supra.

Mr. Adkins reports that a 1962 amendment to the Rules which excluded government lawyers from eligibility for admission on motion was adopted, at least in part, because

> [M]embers of the Maryland Bar, especially those in the Montgomery County area, began to express loud objections to admissions on motion, particularly of government lawyers. The geographical relationship of Montgomery County to the District of Columbia might help to explain their position.

Id. at 109.

Mr. Adkins also writes

> The unstated premise of the argument against liberal admission on motion is also an economic one. It involves the fear of lawyers, especially those in the Washington suburban areas, that they will be immersed in a tidal wave of retired JAG officers, Department of Justice employees, and the like. Standards for admission to the bar should not however, be based on a desire to suppress competition, a sort of protective tariff approach.

Id. at 112-113 (footnote omitted).

Whether the adoption of Rule 10 was motivated by similar impermissible factors is not apparent on the present record because plaintiff was denied the opportunity to take any discovery. It is clear, however, that Ms. Golden falls squarely within the class of lawyers who have been objects of discrimination by Maryland in the past. Thus, if this Court is not prepared to strike down Maryland's domicile requirement on the present record -- as we believe it should -- the Court should at least remand this case for development of a fuller record.

CONCLUSION

For the reasons stated above, as well as in plaintiff's brief, this Court should declare Maryland's domicile requirement to be unconstitutional. Alternatively, the Court should remand the case for further development of the record through discovery.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that two copies of the foregoing Brief of Amicus Curiae were mailed, first-class, postage prepaid, this 15th day of September, 1978 to John Sims, Esquire, Suite 700, 2000 P Street, N.W., Washington, D.C. 20037 and to Diana Motz, Esquire, 1 South Calvert Building, Baltimore, Maryland 21202.

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September 5, 1978

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Re: Golden v. State Board of Law Examiners (No. 78-1447)

Dear Mr. Lynch:

Plaintiff-appellant Vicki Greene Golden hereby consents to the filing of a brief amicus curiae in the above action by Division Four (Courts, Lawyers, and the Administration of Justice) of the District of Columbia Bar.

Sincerely yours,

John Cary Sims

John Cary Sims
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cc: Diana G. Motz, Esquire

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Re: Golden v. State Board of Law Examiners
(No. 78-1447)

Dear Mr. Lynch:

The Defendants hereby consent to the filing of a brief amicus curiae in the above action by Division Four (Courts, Lawyers, and the Administration of Justice) of the District of Columbia Bar.

Very truly yours,

Diana G. Motz

Diana G. Motz
Assistant Attorney General

cc: John Cary Sims, Esquire

DGM/mb