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APPELLANTS' APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
PENNSYLVANIA

No. 42419 Civil Action

Juanita Smith, individually, and by her, her minor children, John Smith, Tabitha Miller, Sophia Paynter, William Paynter, Vonceil Paynter, on behalf of themselves and all others similarly situated,

Plaintiffs

v.

Roger A. Reynolds, Mayer I. Blum, Herbert R. Cain, Jr., Katherine M. Kallick, Rosalie Klein, Alfred J. Laupheimer, Edward O'Malley, Jr., Norman Silverman, Julia L. Rubel, constituting the Philadelphia County Board of Assistance, William P. Sailer, its Executive Director, Max D. Rosenn, Secretary of the Department of Public Welfare of the Commonwealth of Pennsylvania, William C. Sennett, Attorney General of the Commonwealth of Pennsylvania,

Defendants

I.

RELEVANT DOCKET ENTRIES

1967

3-31, Petition to proceed in forma pauperis and Order granting same filed.

3-31, Motion to convene a three judge court and complaint filed.

4-21, Answer filed.

5-5, Transcript of hearing 5-3-67 filed.

5-10, Defendants' memorandum of law filed.

5-29, Motion of plaintiff re Class action—Order to be entered.

5-31, Motion and Order that this action be maintained as a class action filed.

6-1, Findings of fact, discussion and conclusions of law.

6-1, Decree that defendants are preliminarily enjoined from enforcing Sections 9 (a) and 9 (d) of the Act of June 24, 1937, P.L. 2051 as amended and from withholding relief benefits from plaintiffs.

7-7, Transcript of hearing of May 29, 1967 filed.

11-9, Motion of Jose Foster, individually, and by her, her minor children, Jeanette Foster, Annie Bea Foster, William Foster and Frances Foster, to intervene as plaintiffs.

11-14, Order granting leave to intervene.

12-18, Opinion and Decree that defendants are permanently enjoined from enforcing the Public Welfare Code residence requirement.

1968

1-2, Notice of appeal of defendants to The Supreme Court of the United States.

In the United States District Court for the
Eastern District of Pennsylvania

(Title Omitted in Printing)

II.
COMPLAINT

1. The jurisdiction of this Court is invoked under Title 28, U.S.C. Sec. 1343, 42 U.S.C. Sec. 1983, 28 U.S.C. Secs. 2281, 2284, and 28 U.S.C. Secs. 2201, 2202, this being an action for declaratory judgment and preliminary and permanent injunction to redress the deprivation under color of state law of rights, privileges and immunities secured to plaintiffs by the United States Constitution.

2. The plaintiffs are:

(a) Juanita Smith, an expectant mother, and her minor children, John, Tabitha, Sophia, William and Voncell, citizens of the United States and residents of the Commonwealth of Pennsylvania with their place of residence at 2859 Amber Street, Philadelphia, Pennsylvania;

(b) All other persons, citizens of the United States and residents of the Commonwealth of Pennsylvania, who would be entitled to public assistance except that they have not resided in Pennsylvania during the immediately preceding one year.

3. Juanita Smith, John Smith, Tabitha Miller, Sophia Paynter, William Paynter and Voncell Paynter fairly and adequately represent the class of Pennsylvania residents described in Paragraph 2 (b) above, on whose behalf they sue, and the persons constituting said class are so numerous as to make it impractical to bring them all before this Court.

4. The defendants are:

(a) Roger A. Reynolds, Mayer I. Blum, Herbert R. Cain, Jr., Katherine M. Kallick, Rosalie Klein, Alfred J. Laupheimer, Edward O'Malley, Jr., Norman Silverman and Julia A. Rubel, who comprise the Philadelphia County Board of Assistance, and are duly appointed and qualified members of the said Board and citizens of the Commonwealth of Pennsylvania;

(b) William P. Sailer, Executive Director of said Board and a citizen of the Commonwealth of Pennsylvania;

(c) Max D. Rosenn, Secretary of Public Welfare of the Commonwealth of Pennsylvania and a citizen thereof;

(d) William C. Sennett, Attorney General of the Commonwealth of Pennsylvania and a citizen thereof.

The foregoing public officers are charged, under the Public Assistance Law of the Commonwealth of Pennsylvania, with the enforcement, operation and execution of the provisions thereof. The County Board of Assistance and its Executive Director are particularly charged with the administration of public assistance and determination of the eligibility of applicants and the continued eligibility of persons re-

ceiving assistance in accordance with said law. The Public Assistance Law of the Commonwealth of Pennsylvania was enacted on June 24, 1937, P. L. 2051, Sec. 1 et seq., 62 Purd. Stat. Sec. 2501 et seq. The relevant provisions of the said Act, as amended, are attached hereto as Exhibit A.

5. The Act of June 24, 1937, P. L. 2501, Secs. 9 (a) (2) and 9 (d), as amended, 62 Purd. Stat. Sec. 2508.1 (6) provides that assistance shall be granted only to or in behalf of a resident of Pennsylvania who has resided therein for at least one year immediately preceding the date of application.

6. Plaintiffs have resided at 2859 Amber Street, Philadelphia, Pennsylvania since the second week of December, 1966, when they came to Pennsylvania from Lincoln, Delaware, and intend to reside permanently in the Commonwealth of Pennsylvania.

7. Plaintiff Juanita Smith's paternal and maternal grandparents were born and raised, worked and owned houses in Philadelphia. Plaintiff's father and mother were born and raised and presently reside in Philadelphia.

8. Plaintiff was born March 8, 1943 in the Army Hospital at Petersburg, Virginia, where her father was stationed, and at one month she returned with her mother to Philadelphia.

9. Plaintiff resided continuously in Philadelphia but for several months until 1959 and attended public schools here.

10. From 1959 to December last, plaintiff lived and worked in Delaware.

11. Plaintiff returned with her children to Philadelphia in December, 1966 to rejoin her family, seeking better education and health care and job opportunities for her children and herself and attempting to escape the vestiges of segregation.

12. Plaintiff's rent through February, 1967 and her expenses were borne by her father but in January, 1967 he was laid off from his job and has since been unemployed.

13. Plaintiff's mother is similarly unemployed and is sickly.

14. On February 20, 1967, plaintiffs made application for public assistance and that day received a grant of \$115.00.

15. A second grant in the same amount was received two weeks later on March 10, 1967.

16. On March 13, 1967, plaintiff Juanita Smith was informed by the County Board of Assistance that assistance to her and her children would be terminated. A copy of the formal notice of termination is attached hereto as Exhibit B.

17. Assistance to plaintiffs was terminated solely because they did not satisfy the statutory requirement of one year's residence immediately preceding their application.

18. Plaintiff Juanita Smith, without any source of income, faces a \$63.00 gas bill for heating her house, rent due April 1, 1967, and the continuing necessity of caring for her children and maintaining herself. Plaintiffs are in immediate and irrevocable need of

public assistance and but for the residence requirement are fully entitled to receive it. Plaintiffs are suffering and will suffer immediate and irreparable injury from termination of public assistance.

19. The Act of June 24, 1937, P. L. 2501, Secs. 9 (a) (2) and 9 (d), as amended, 62 *Purd. Stat.* Sec. 2508.1 (6) requiring as a condition of public assistance that plaintiffs reside in Pennsylvania for one year immediately preceding application is contrary to the United States Constitution in that,

(a) the purpose of said Act is to exclude indigent citizens from the Commonwealth which purpose is impermissible and repugnant under the privileges and immunities clause of the Fourteenth Amendment, the equal protection and due process clauses thereof and under the commerce clause, Article I, Section 8 of the Constitution;

(b) said Act burdens, penalizes and obstructs the exercise by citizens of the United States of the right freely to move from state to state, a right of national citizenship secured by the privileges and immunities clause of the Fourteenth Amendment;

(c) said Act burdens, penalizes and obstructs the free movement of persons from state to state, contrary to the commerce clause, Article I, Section 8 of the Constitution;

(d) said Act arbitrarily and unreasonably discriminates between citizens of the United States, non-residents of the Commonwealth, hindering the movement into the Commonwealth only of those citizens who are poor, an invidious discrimination in viola-

tion of the equal protection clause of the Fourteenth Amendment;

(e) said Act unreasonably denies citizens of other states privileges and immunities accorded citizens of the Commonwealth, contrary to Art. IV, Section 2 of the Constitution;

(f) said Act arbitrarily and unreasonably discriminates between residents of the Commonwealth, citizens thereof, denying assistance to those not continuously resident in the Commonwealth during the immediately preceding one year while granting assistance to all others, an invidious discrimination in violation of the equal protection clause of the Fourteenth Amendment;

(g) public assistance, established to provide for all of the needy and distressed in the Commonwealth, is arbitrarily and unreasonably withheld by said Act from Pennsylvania residents not continuously resident in the Commonwealth during the immediately preceding one year, depriving plaintiffs of due process guaranteed by the Fourteenth Amendment.

Wherefore, plaintiffs respectfully pray that:

1. The Court convene a three-judge District Court as required by Title 28, U.S.C. Secs. 2281 and 2284.

2. The Court declare the Act of June 24, 1937, P. L. 2501, Secs. 9 (a) (2) and 9 (d), as amended, 62 Purd. Stat. Sec. 2508.1 (6) and any enforcement thereof unconstitutional.

3. The Court preliminarily enjoin and, after full hearing, permanently enjoin defendants from en-

forcing the Act of June 24, 1937, P. L. 2501, Secs. 9 (a) (2) and 9 (d), as amended, 62 Purd. Stat. Sec. 2508.1 (6).

4. The Court grant such further relief as shall be necessary and proper.

Respectfully submitted,
By (s) Thomas K. Gilhool
Consumer's Advocate
Community Legal Services, Inc.
313 South Juniper Street
Philadelphia, Penna.
Attorney for Plaintiffs

(Jurat omitted in printing)

In the United States District Court for
the Eastern District of Pennsylvania

(Title Omitted in Printing)

III.

MOTION

Pursuant to Title 28, U.S.C. Sec. 2284 (3) and Rule 65 (b), Fed. R. Civil P. and based upon the verified complaint herein, attached affidavits and certification of counsel, plaintiffs move the court for a temporary restraining order restraining defendants from failure to continue public assistance to plaintiffs.

The grounds in support of this motion are as follows:

1. Defendants, members of the County Board of Assistance and its Executive Director, having made public assistance payments to plaintiffs Juanita Smith and her five minor children on February 20, 1967 and March 10, 1967 each in the amount of \$115.00, now propose to cease such payments.

2. Such termination is solely because plaintiffs had not resided in Pennsylvania for the one year immediately preceding their application and is under contest in the above titled action.

3. Unless restrained defendants will not continue public assistance to plaintiffs and plaintiffs, Juanita

Smith and her five minor children, left destitute and without income to support and maintain themselves, will suffer immediate and irreparable injury.

4. If this temporary restraining order be granted the injury, if any, to defendants herein, if final judgment be in their favor, will be inconsiderable.

Respectfully submitted,
(s) Thomas K. Gilhool
Consumer's Advocate

Community Legal Services, Inc.
313 South Juniper Street
Philadelphia, Penna.
Attorney for Plaintiffs

AFFIDAVIT

Commonwealth of Pennsylvania
County of Philadelphia, ss:

Juanita Smith, being first duly sworn, on oath, deposes and says:

1. That she is plaintiff in the present action and the mother of five children, by her, plaintiffs in the present action.

2. That since receipt of the \$115.00 public assistance payment on March 10, 1967, she and her family have had no income, but for certain small amounts in temporary charity from the Traveler's Aid Society of Philadelphia.

3. That such amounts include \$2.00 for carfare on March 27, 1967, a small food order and the promise of money to meet her rent due April 1, 1967.

4. That she is entirely without money or any source of money to pay a back gas bill of \$63.00 due March 24, 1967; in default her heat will be turned off.

5. That she is without money or any source of money adequately to maintain her children and herself in health and at a minimal standard of subsistence.

6. That she has been refused medical care by Episcopal Hospital for her pregnancy and her children because she is not receiving public assistance.

7. That she and her children are suffering and will suffer immediate and irreparable injury from the failure of the County Board of Assistance to continue public assistance.

(s) Juanita Smith

Sworn to and subscribed before me this 31st day of March, 1967.

(s) Rosetta S. Frank
Notary Public

AFFIDAVIT

Commonwealth of Pennsylvania
County of Philadelphia, ss:

Catherine M. Kerner, being duly sworn according to law, on oath, deposes and says:

1. That she is Executive Director of the Travelers Aid Society of Philadelphia and that as such she is personally acquainted with the actions of the Society with regard to Juanita Smith and her five children.

2. That the Society cannot and will not pay Juanita Smith's back bills, including by way of example, the \$63.00 gas bill for heating her house.

3. That the Society will meet the rent due of Juanita Smith on April 1, 1967 and will meet certain expenses as they arise including some provision for food.

4. That the Society's aid is both temporary and insufficient to maintain the family.

5. That the Society's aid is offered gratuitously as a charity to continue only pending the Society's determination as to whether it is best for the family to remain here or not, and if the Society's decision is negative the aid will continue only until an alternate plan, for example return to Delaware, can be arranged.

(s) Catherine M. Kerner

Sworn to and subscribed before me this 31st day of March, 1967.

(s) Rosetta S. Frank
Notary Public

(Affidavit of service omitted in printing)

In the United States District Court for
the Eastern District of Pennsylvania

(Title Omitted in Printing)

IV.
ORDER

Whereas, in the above titled action it appears by verified complaint and affidavits that a temporary restraining order preliminary to hearing upon motion for a preliminary injunction should issue, without notice because immediate and irreparable injury, loss and damage will result to plaintiffs Juanita Smith and her five minor children before notice can be served and a hearing had thereon, in that defendants will not continue public assistance to plaintiffs and will leave plaintiffs destitute and without income to support and maintain themselves.

Notice and a hearing before entering a temporary restraining order should not be required because time and the immediate jeopardy of plaintiffs do not permit such a hearing.

Now, therefore, on motion of the plaintiffs,

It is ordered that defendants, each of them, their agents, servants and employees, and all persons acting by, through or under them or either of them or

Order Dated Mar. 31, 1967

15a

by or through their order be, and they are hereby,
restrained from failing to continue public assistance
to plaintiffs Juanita Smith and her five minor chil-
dren.

Issued at o'clock ...m. this day of
March, 1967.

(s) Joseph S. Lord, III.
District Judge

Motion denied 3-31-67.

In the United States District Court for
the Eastern District of Pennsylvania

(Title Omitted in Printing)

V.

ANSWER

First Defense

1. The defendant admits that the Public Assistance Law of the Commonwealth of Pennsylvania, the Act of June 24, 1937, P. L. 2051, by Section 8.1, added by the Act of August 26, 1965, P. L. 389, 62 Purdon's Penna. Statutes Annotated, Section 2508.1, provides, inter alia, for a one year period of residence as an eligibility requirement for public assistance benefits.

2. Defendants admit that Max Rosenn, Secretary of Public Welfare, has final responsibility for the administration of the public assistance laws of the Commonwealth of Pennsylvania, and that in the administration of said laws the said residence requirement is enforced.

3. Defendants admit the allegations contained in paragraphs 1, 2(a), 4(c), 5, 14, 15, 16 and 17 of the complaint; allege that they are without knowledge or information sufficient to form a belief as to the

truth of the allegations contained in paragraphs 6, 7, 8, 9, 10, 11, 12, 13 and 18 of the complaint; and deny each and every other allegation contained in the complaint.

Second Defense

1. Defendants deny that the residence requirements for public assistance eligibility deprive plaintiffs of any of the rights secured by the Constitution of the United States, as alleged in paragraph 19 of the complaint and, accordingly, aver that the complaint fails to state a claim against defendants upon which relief can be granted.

Edgar R. Casper
Deputy Attorney General

Edward Friedman
Counsel General

William C. Sennett
Attorney General
Attorneys for Defendants

Office of the Attorney General
Room 238, State Capitol Building
Harrisburg, Pennsylvania 17120

(Affidavit of service omitted in printing)

In the United States District Court for
the Eastern District of Pennsylvania

(Title Omitted in Printing)

VI.

HEARING SUR PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION
MAY 3, 1967

(3) MR. GILHOOL: May it please the Court, I am Thomas Gilhool. I represent the plaintiffs in the action pending before Your Honors.

We are here this morning on plaintiffs' motion pursuant to Rule 65 for a preliminary injunction.

I should like initially to call the Court's attention to the admissions in defendants' answer to Paragraphs 14, 15, 16 and 17, as alleged in the complaint, and in particular to that allegation that assistance to plaintiffs at Paragraph 17—

JUDGE LORD: Excuse me. Just a minute.

MR. GILHOOL: Surely.

JUDGE LORD: Which paragraphs? 14, 15—

MR. GILHOOL: 14, 15, 16 and 17, among others, were admitted. These were most pertinent, particu-

larly Paragraph 17, wherein the Commonwealth and other defendants here admit that:

“Assistance to plaintiffs was terminated solely because they did not satisfy the statutory requirement of one year’s residence immediately preceding their application.”

JUDGE KALODNER: There is no doubt about it. The single question here is one of law, isn’t it? It is a question that this particular person is disqualified or not (4) qualified to receive unemployment relief because she lacks qualification.

MR. GILHOOL: I quite agree, that is the question; there is a large question of that—

JUDGE KALODNER: It is the single question.

MR. GILHOOL: Yes, sir.

JUDGE LORD: You say there is a violation of various constitutional provisions.

MR. GILHOOL: I am here this morning on preliminary injunction and I should like to present evidence to the Court as to irreparable harm and the other matters that concern the Court in the present posture of the case.

I should have in a moment a memorandum of law to hand up to Your Honors and should be pleased to present testimony on that point.

JUDGE KALODNER: Do you think you need that testimony in light of the fact this woman was on relief for two months and the relief was only stopped because she failed to meet the one year residence requirement?

MR. GILHOOL: Your Honor, I am satisfied to omit the testimony, if Your Honor thinks it appropriate.

The testimony I would offer would be offered to prove that the assistance that plaintiffs have received from Travelers Aid since late March when public assistance (5) had been discontinued and the moneys therefrom had expired is itself about to be terminated.

If Your Honors think that question is germane I should be pleased to proceed to proof.

JUDGE LORD: I wonder if that couldn't be stipulated?

MR. CASPER: Your Honors, I am not quite sure what kind of testimony Mr. Gilhool is willing to put in.

JUDGE KALODNER: Ask him.

MR. CASPER: Very well, but I would like to say this: If he is willing to put in, for example, somebody from Travelers Aid, if he is trying to show that Travelers Aid will give no assistance or very little if public assistance is discontinued, I am sure I could stipulate to that, but on the other hand my question is that doesn't necessarily constitute irreparable harm.

In other words, I don't think this is relevant testimony.

JUDGE LORD: Well, that is another question. It is up to us to decide whether it constitutes irreparable harm.

All we are asking you to do in order to shorten this is to stipulate the facts.

MR. CASPER: Your Honor, I am willing to (6) stipulate to facts that are in the affidavit of the lady from Travelers Aid.

MR. GILHOOL: That affidavit, Your Honors, was executed on March 31 and therefore the particular facts as stated there are rather changed.

Travelers Aid assistance has proceeded from the end of March to the present date. Travelers Aid has notified plaintiffs that they can continue assistance no longer than a week from now.

The ground of that notification is inherent in the nature and the purpose of Travelers Aid. They offer temporary relief pending the completion of an analysis of a case and a judgment on their part as to whether continued assistance is either possible or appropriate within the limits of their budget.

In this case, Your Honors, Travelers Aid has had sufficient time to secure the appropriate information from the state from which plaintiffs here come. Their judgment therefore is that since she is or would be eligible for public assistance in Delaware, Travelers Aid Society of Philadelphia cannot and will not continue assistance.

Plaintiffs are therefore faced with the choice of remaining here with no income on which to maintain themselves, or returning to Delaware and thenceforth forfeiting (7) the very rights they are claiming under this action.

JUDGE KALODNER: Why can't you stipulate to that?

MR. CASPER: I can stipulate to that, Your Honor.

MR. GILHOOL: There is one other matter that would have been the subject of proof and that is plaintiff's previous contacts with Pennsylvania; the fact that her parents were born here and reside here; that her grandparents lived, worked here in this state; that plaintiff herself, Juanita Smith, while not born in Pennsylvania did return with her mother to Pennsylvania at the end of one month and was raised here in Pennsylvania, attended schools here, and in 1959, having finished the ninth grade at Harding Junior High School, removed to Delaware and did not return until last December.

Is there a stipulation as to that?

MR. CASPER: I would be willing to stipulate to that, Your Honors.

JUDGE KALODNER: All right.

MR. GILHOOL: If Your Honor please, may I submit my brief?

JUDGE LORD: Is there any reason why we couldn't treat this as if on final hearing?

MR. GILHOOL: Not from my perspective except (8) for the urgency of relief for plaintiff in this matter.

JUDGE LORD: Well, I would think that we could decide this just as quickly as if on final hearing as we could on preliminary injunction.

MR. CASPER: Except for this, Your Honors. I understood Mr. Gilhool's intent to be—

JUDGE KALODNER: Just a minute. I can't hear you. With the whir of this air conditioner I can't hear you.

MR. CASPER: I understood it was Mr. Gilhool's intention to confine his argument today to the proposition that whatever the merits on the constitutional question, if this lady were not to be paid public assistance she would suffer irreparable harm and therefore would ask your Court for a preliminary injunction pending final disposition of the case.

MR. GILHOOL: It was my intention certainly to confine my evidence to that question.

JUDGE KALODNER: But you have to establish a right.

MR. GILHOOL: As Your Honor suggests there is no question but that this action raises a serious constitutional challenge to Section 816.

JUDGE KALODNER: There is no question in your mind.

(9) MR. GILHOOL: Well, I perhaps suggest, Your Honor, even that there is no question in your mind so far as preliminary injunction is concerned.

I am prepared, however, to go beyond that today.

JUDGE KALODNER: If you gentlemen want to agree—you haven't answered Judge Lord's question.

Do you want to treat this as if on final hearing?

MR. CASPER: How would Your Honors propose to proceed as if on final hearing; with briefs to be filed after any argument we might wish to make today?

JUDGE LORD: Certainly, you can do that.

MR. CASPER: Yes, I am merely saying that because I thought again the original understanding was that here are plaintiffs and they are coming in challenging an old law and saying this is unconstitutional.

We felt we could sit back, as it were, and say go ahead, prove it, and see their briefs and look at their argument and their authorities in detail before we took any kind of a firm position. Now, of course—

JUDGE KALODNER: You were acquainted with their contentions set forth in the complaint. Why did you need briefs in order to prepare?

(10) MR. CASPER: I think, Your Honor, there is somewhat of a difference between a contention—the complaint is like a kitchen sink complaint on the United States Constitution; the privileges and immunities clause, the due process clause, the commerce clause; I am sure that—

JUDGE KALODNER: You were acquainted with the fact that those were the bases of their contentions.

MR. CASPER: Yes, but the question of what argument—

JUDGE KALODNER: You have no brief then?

MR. CASPER: We have no brief, no. We have not received a brief from Mr. Gilhool either.

JUDGE KALODNER: What is your name, sir?

MR. CASPER: Edgar Casper.

JUDGE KALODNER: You are a deputy attorney general?

MR. CASPER: Yes, sir. I would be agreeable, Your Honors, if it suits you and Mr. Gilhool, to proceed on this basis, to get into the question of the merits as long as first of all we are not restricted with respect to our rights of responding to a brief that plaintiff puts in.

JUDGE LORD: Let me ask you this, Mr. Casper. Are you, for example, familiar with, have you read and have you analyzed Edwards against California?

(11) MR. CASPER: Yes.

THE COURT: You are familiar with that?

MR. CASPER: Yes.

THE COURT: You are familiar with it, and I suspect, Mr. Gilhool, that is the thrust of your argument, isn't it?

MR. GILHOOL: Yes, sir. That is one of the thrusts of the argument.

The other, sir, among two additional points to be made, derive from Kent versus Dulles, Aptheker versus United States, and United States versus Guest; i.e., that the right to travel freely from state to state is a liberty to be exercised by plaintiffs here, that being established in light of Sherbert versus Verner.

The Commonwealth in this statute has conditioned the receipt of public assistance upon the surrender of

that liberty and as Sherbert holds, such a condition is unconstitutional.

Beyond that, Your Honor—

MR. CASPER: If I may say, Your Honors, I think you will find the argument, in whatever way it progresses, is going to raise complications in terms of analogical reasoning because the cases that plaintiffs rely on are somewhat removed from the actual context of this case.

(12) MR. GILHOOL: Are we proceeding to argument, Mr. Casper?

MR. CASPER: No, I was merely trying to define—forgive me, help clarify the problem presently before the Court as to how to proceed at this point.

JUDGE KALODNER: You are not prepared to go forward on an agreement?

MR. GILHOOL: Your Honors—

JUDGE LORD: Then we will hear you on preliminary injunction.

MR. GILHOOL: As to that, Your Honor, I understand we have on the record stipulations which go to the facts that I desire to prove today.

JUDGE LORD: Yes, you have a stipulation.

MR. CASPER: Yes.

JUDGE LORD: That the Travelers Aid which is the only aid that she is getting, is that correct, is about to terminate in the very near future.

Well, can you say when?

JUDGE SHERIDAN: You did tell us.

MR. GILHOOL: Yes, in a week.

JUDGE LORD: One week.

MR. GILHOOL: Yes, Your Honor.

JUDGE LORD: And that she has no other means of (13) subsistence.

MR. GILHOOL: Yes.

MR. CASPER: I did not—was not willing to stipulate to that, Your Honors.

JUDGE LORD: All right, you are not willing to stipulate to that.

MR. CASPER: No.

JUDGE LORD: Do you want to put your plaintiff on the stand?

MR. CASPER: I would like to say, for example, that there was nothing in the complaint, the motion, anything that I have seen that has been submitted by plaintiff that suggests, for example, that the City of Philadelphia was approached with respect to support of plaintiff under the Philadelphia Child Welfare Program. I have seen nothing so far. I have heard nothing about this.

JUDGE LORD: All right, you are entitled to hear it.

MR. GILHOOL: Your Honor, there are certain matters I should like to ask you to take judicial notice of.

One goes directly to the point just raised by Mr. Casper. I should like to ask the Court to take judicial notice of the Administrative Code of Pennsylvania governing the Philadelphia Child Welfare Program; that is the City of (14) Philadelphia Child Welfare Program referred to by Mr. Casper. That statute is to be found in 71 Purdon's Statute, 600, therein setting out the powers and responsibilities of the Department with respect to Child Welfare.

JUDGE KALODNER: What section?

MR. GILHOO: 600. The Legislature has provided that such assistance shall be granted without regard to residence.

Your Honor, we have in the juxtaposition of that statute and the statute before the Court a considerable anomaly.

Child Welfare and the City's powers to expend money therefor and the Department's purpose in standing behind that arrangement provide that children who are in need or who are dependent or neglected may be placed in foster homes and the cost of their care will be borne by the State, incidentally, at a rate something like four times the assistance granted to those receiving aid to dependent children where the children are in their homes, so plaintiff is faced with the extraordinary fact that she cannot retain her children in her home and receive assistance.

If she is to receive assistance for those children she must part with those children and place them in foster care.

(15) A lengthy dissertation, Your Honor, on one statute—

JUDGE KALODNER: Is this woman married? I notice she has three sets of children, as it were. It doesn't say anything about her husband.

MR. GILHOOL: No, sir. She is not married.

Mr. Paynter, who is the father of the three youngest children, came to Pennsylvania with plaintiff.

I should like to proceed to that matter in testimony, if Your Honor please.

JUDGE KALODNER: All right.

MR. GILHOOL: Miss Smith.

JUANITA SMITH, sworn.

Direct Examination

BY MR. GILHOOL:

Q. Miss Smith, would you state for the Court your name and address?

A. Juanita Smith. I live at 2859 Amber Street.

Q. In Philadelphia?

A. Yes, in Philadelphia.

Q. Have you any children?

A. Yes, I have five and one on the way.

(16) Q. What are their names and ages?

A. Johnny Smith; he is six. Tabitha Miller; she is four. Sophia Paynter; she is three. William Paynter; he is a year and a half, and Vonceil Paynter, she is nine months.

Q. How long have you lived at 2859 Amber Street?

A. Since the second week in December.

JUDGE KALODNER: Will you ask her to keep her voice up?

BY MR. GILHOOL:

Q. Miss Smith, can you keep your voice up?

JUDGE KALODNER: There is a whirl of an air conditioning machine above you.

MR. GILHOOL: Modern technology sometimes interferes.

BY MR. GILHOOL:

Q. Where did you live immediately before you came to Pennsylvania in December?

A. I lived in Lincoln, Delaware.

Q. And who did you live with there?

A. William Paynter. He is the father of my three—you know, the three smallest children and the father of the one I am going to have in September.

Q. Where were you born, Miss Smith?

A. Petersburg, Virginia.

(17) Q. And what previous connection have you had with Pennsylvania?

A. Well, I—well, my mother came back when I was a baby, I was a month old, and I went to school—went to a lot of schools up here.

BY JUDGE LORD:

Q. You went to what?

A. Schools, different schools up here, and I went back to Delaware in '59.

BY MR. GILHOOL:

Q. In 1959?

A. Yes.

Q. Will you describe the circumstances in which you lived in Delaware?

JUDGE KALODNER: Why don't we find out about the father of the other two children?

MR. GILHOOL: Your Honor, I think that matter irrelevant to the legal questions at stake here.

JUDGE KALODNER: We ought to have the facts about the father of the other children here; can they be sued for support?

You are talking about irreparable injury. There is a provision in the State law that she can get support from the father of those children by court order, isn't there?

(18) MR. GILHOOL: Yes, sir.

JUDGE KALODNER: All right, when you speak of irreparable injury you haven't considered apparently the fact that she can recover for it or she can receive support for these children by application and action of the State Court, in the Municipal Court, or the County Court, as it is now called.

MR. GILHOOL: Yes, sir, assuming the defendants in those actions can be located and the action can proceed expeditiously.

JUDGE KALODNER: Suppose the father of the other children can support them. That would have some bearing here.

BY MR. GILHOOL:

Q. Miss Smith, are you aware of—do you know where the father of John Smith is?

A. He is in Delaware. I had sued him when I was there and I had also sued James Miller, Tabitha's father, but they couldn't find either one of them at that time and I haven't heard anything from them.

Q. And you are presently unaware of their whereabouts?

A. I don't know where they are.

JUDGE KALODNER: The same holds true with the father—

(19) BY JUDGE KALODNER:

Q. You have a child, John Smith. You just told us you were never married, were you?

A. No.

Q. All right, you don't know where John Smith—where the father of John Smith is?

A. He was in Delaware and I had sued him.

BY MR. GILHOOL:

Q. When was that, Miss Smith?

A. About two years ago.

BY JUDGE LORD:

Q. Do you know where he is now?

A. No, I don't.

BY JUDGE KALODNER:

Q. Did you receive any support from him as a result of the suit?

A. No, I haven't heard anything from him at all.

Q. You said you sued him in Delaware. What happened?

MR. GILHOOL: Your Honor, I think Miss Smith testified that he was unable to be located.

BY MR. GILHOOL:

Q. Is that right?

A. Yes, and James Miller, Tabitha's father, was somewhere in Baltimore but they couldn't locate him.

(20) BY JUDGE LORD:

Q. Do you know where he is now?

A. No.

Q. How about the father of Sophia?

BY MR. GILHOOL:

Q. Mr. Paynter; where is Mr. Paynter at the moment?

A. Well, Mrs. Enty, when I was on public assistance, heard—she had heard he was in Delaware with his father. I have written to him four times but I received no answer.

Q. Do you know if Mr. Paynter is employed in Delaware?

A. Mrs. Haimowitz in Travelers Aid, she said he was unemployed.

Q. I wonder if you would tell the Court what Mr. Paynter's previous employment had been.

A. Well, in Lincoln he was working at the Shawnee Country Club. It is a seasonal job.

In the summertime he averaged \$50 a week, you know, before they took everything out, but in the wintertime sometimes he came home with \$21, sometimes less, but it wasn't enough to get along with.

Q. Would you describe further your circumstances in Delaware prior to your coming to Pennsylvania last December?

A. Well, my father came to visit us in December and we were staying in a trailer. It had two bedrooms, a kitchen, living (21) room, but no bathroom. We had to go to Milford to get water. That was about three miles.

Q. You had to go to Milford to get water?

A. Yes.

Q. You had no running water?

A. No, and we didn't have any electric, which we were using oil lamps. The closest school was a mile and a half.

Q. Did you work in Delaware?

A. Yes, I had to work in the wintertime because he didn't make too much.

BY JUDGE KALODNER:

Q. What kind of work did you do?

A. I worked at Draper Canning Company. It is a—you know, processes vegetables.

BY MR. GILHOOL:

Q. Why did you and William Paynter with your children decide to come to Philadelphia in December?

A. Well, I had wanted to come up here but when my father came down he saw the conditions which we were living under.

He said why—at that time he was working at United Parcel and he said that he could, you know, help us get a house and get the electric and stuff cut on until William could get a job, but when Mr. Paynter came up here he couldn't find a job so he went back to Delaware.

(22) Q. What were your reasons for coming beyond the job for Mr. Paynter?

A. Well, you could get better jobs up here than you can there and I did want to go back to school because I never went past the ninth grade and Mr. Paynter, he never finished the fourth grade.

BY JUDGE KALODNER:

Q. How old are you?

A. I am 24.

Q. 24?

A. Yes.

Q. Have you gone back to school since you were here?

A. No.

Q. Have you made any attempt to go back to school?

A. No, I can't leave the children alone. I don't have any babysitter.

JUDGE KALODNER: Did you get the ages of the children?

MR. GILHOOL: They are in the record, Your Honor.

BY JUDGE SHERIDAN:

Q. Did I understand you to say you are having another child?

A. Yes, in September.

(23) BY MR. GILHOOL:

Q. Mr. Paynter's child?

A. Yes.

Q. When you were in Delaware did you consider taking up a licensed practical nursing course?

A. I did, but, well, not in Wilmington but in the part where I was—see, I was down there at Milford Hospital, you know, down in Lincoln and Milton.

Well, down there if you are colored you can't—if I had took up nurse's aid I couldn't get a job as a nurse in Milford Hospital.

Q. Why is that?

A. Well, they just don't have any colored nurses in there. I mean I could get a job in the kitchen, you know, or cleaning up, but not as a nurse's aid. I would have to go to Wilmington.

Q. Did you have any relatives here in Philadelphia?

A. Yes, my father's brothers and sisters, they were all born and raised here. They are all here, and my mother's sisters and brothers.

Q. When did you apply for public assistance?

A. I think it was in February, about the 22nd, I think. I am not sure of the date.

Q. Between the time when you arrived in December and (24) February, how had you managed?

A. Well, my father, like I said before, he was helping us with the bills and stuff. He had paid the rent up until March 1st but he got laid off January 7th

Q. What support responsibilities does your father have for his own family?

A. He has a wife and six kids.

BY JUDGE KALODNER:

Q. Who has a wife and six kids?

A. My father.

BY MR. GILHOOL:

Q. You applied for public assistance late in February. Was it granted?

A. Yes.

Q. How many payments did you receive?

A. I received two checks.

Q. And in what amount was each payment?

A. \$115.

Q. When was public assistance terminated?

JUDGE LORD: That is in the complaint.

MR. GILHOOL: Yes.

A. In March.

JUDGE KALODNER: You have an exhibit that sets that forth.

(25) MR. GILHOOL: Yes, sir.

MR. CASPER: That is admitted.

MR. GILHOOL: Right.

JUDGE KALODNER: That is admitted. It was terminated because of the failure to meet the eligibility requirements.

BY MR. GILHOOL:

Q. How have you managed since public assistance was terminated?

A. Travelers Aid has been helping me with my bills.

Q. And what amounts of money has Travelers Aid provided for the maintenance of yourself and the children?

A. Well, when Travelers Aid started helping me they said they could only help, you know, with the bills of the present time for the month.

BY JUDGE KALODNER:

Q. You were asked how much money they were giving you a week.

A. Well, I mean they pay my bills, like the rent.

BY MR. GILHOOL:

Q. Do they give you a weekly payment?

A. No.

Q. How do they pay you?

A. Like my rent is due the first of the month and she will (26) give me a check to pay, you know, half of it.

Q. Is that check sent to you through the mail?

A. No, I go there and get it.

Q. Where is the Travelers Aid office?

A. At 30th Street Station.

JUDGE KALODNER: How much is that check that she gets cashed?

BY MR. GILHOOL:

Q. How much is your rent?

A. My rent is \$50 a month.

MR. GILHOOL: Your Honor, Travelers Aid assistance comes seriatim, ad hoc, so the rent would be a check for \$50. \$25 would be toward the rent.

BY JUDGE KALODNER:

Q. They give you \$25 a month toward your rent. What else do they give you?

MR. GILHOOL: Food.

BY JUDGE KALODNER:

Q. What else?

A. I get food stamps and she gives me the \$6 to go with the order for that and she is taking care of my electric and gas.

BY MR. GILHOOL:

Q. Has Travelers Aid covered all of your outstanding bills?

(27) A. No, because like I said they can only pay the part, where they were helping me. The past of the bills, it is up to me to pay that.

Q. You have some back bills?

A. Yes.

Q. What are they?

A. Well, my gas bill is—it was \$81.

(28) BY JUDGE LORD:

Q. \$81?

A. Yes.

Q. For how long?

A. Part from December.

Q. From December?

A. Yes.

Q. It is still a big gas bill.

A. We have gas heat.

Q. You have gas heat?

A. Yes, and the two houses on each side are empty.

BY MR. GILHOOL:

Q. That bill is still outstanding?

A. Yes.

Q. Have you had any other source of income since public assistance terminated besides Travelers Aid?

A. No.

Q. How long will Travelers Aid continue?

JUDGE KALODNER: Is she in a position to tell us that?

MR. GILHOOL: Yes, sir. I think so. She has been informed how long it will continue by Travelers Aid.

JUDGE KALODNER: She can tell us what she was (29) informed. They may well change their minds.

A. She said another week, another week.

Q. When did she tell you that?

A. When I saw her yesterday.

BY JUDGE LORD:

Q. When you saw her yesterday?

A. Yes.

JUDGE KALODNER: Do you have anyone here from Travelers Aid?

MR. GILHOOL: Yes, sir.

JUDGE KALODNER: All right.

MR. GILHOOL: I have no further questions.
Mr. Casper?

Cross-Examination

BY MR. CASPER:

Q. Miss Smith, when your father was laid off from work and you found yourself with this monetary problem, what did you do?

A. Well, I didn't know what to do and I had to go by the school that day because my little boy needs glasses and the nurse had sent for me.

BY JUDGE LORD:

Q. Your boy what?

A. He needs glasses.

(30) Q. Yes.

A. And the nurse had sent for me, so she told me I had to take him to Jefferson, so I told her I had

been cut off from DPA and I didn't have no way to get any, so she sent me to the Anti-Poverty place, 23rd, Frankford and Allegheny, and they sent me to my lawyer, you know, from the Travelers Aid.

BY MR. CASPER:

Q. If I may interrupt you, I don't think you quite understood my question, Miss Smith.

When there was first a problem you applied for public assistance and you got two payments; is that correct?

A. Yes.

JUDGE SHERIDAN: Excuse me one moment.

JUDGE KALODNER: I have difficulty hearing the witness. I have difficulty hearing you too for that matter. There is a whirr of this air-conditioning above here.

JUDGE LORD: Can we turn that off? I think if we turned it off in here it would turn it off in every other courtroom.

All right, let's try that.

JUDGE SHERIDAN: There is no excuse for a lawyer not being heard.

(31) BY JUDGE KALODNER:

Q. You want me to hear you, don't you?

A. Yes, sir.

BY MR. CASPER:

Q. My question was this, Miss Smith. You applied for public assistance and I understand you received two payments, two checks?

A. Yes.

Q. You were then told that this assistance would be discontinued?

BY JUDGE LORD:

Q. Is that right?

A. Yes.

JUDGE KALODNER: There is no doubt about it. There was a letter of March 28 from the Public Assistance Board notifying her, because she didn't meet the one-year residence eligibility requirement, that unemployment relief would be discontinued. There is no question about it.

MR. CASPER: Your Honor, my question is when confronted with that situation what did she do?

JUDGE KALODNER: Ask her that. Don't ask whether she received notice.

MR. CASPER: No, Your Honor. She misunderstood my question.

(32) BY JUDGE LORD:

Q. When you got that notice what did you do? When you knew you weren't going to get any more public assistance, what did you do?

A. I went up to the Anti-Poverty place at 23rd, Frankford and Allegheny, to find out if I could get any help there. They sent me to my lawyer and I explained everything to him and he sent me to Travelers Aid.

BY JUDGE KALODNER:

Q. Who is your lawyer?

A. Mr. Gilhool.

JUDGE KALODNER: All right.

BY MR. CASPER:

Q. Tell me whether I am correct. Do I understand you correctly, that you are relying on Mr. Gilhool with respect to the question of what resources may be available to you?

A. Yes.

Q. You never went to the City Department of Public Welfare and consulted with them and their social workers?

A. Well, Miss Enty had already told me that I was cut off because of residence.

Q. That is not my question. The City Department of Welfare, not the County Board of Assistance, the Philadelphia City Department of Public Welfare and its social service program; (33) you have never been there?

It is very simple. If you don't know anything about them just tell me.

A. No, I don't.

MR. CASPER: Thank you very much. I have no further questions.

MR. GILHOOL: That's all, thank you.

(Witness excused.)

REBA HAIMOWITZ, sworn.

Direct Examination

BY MR. GILHOOL:

Q. Miss Haimowitz, what is your occupation?

A. I am a case worker at Travelers Aid Society of Philadelphia.

Q. How long have you been there?

A. I have been there two years now.

Q. What is the purpose of the agency?

A. Travelers Aid is set up primarily by Community Chest of Philadelphia to assist newcomers to the city.

Q. And how does it assist them?

A. Our assistance can be in the form of a brief period of financial assistance, but essentially we are concerned about the plans of the people; whether settling in the new community (34) is desirable as contrasted to their purpose for leaving the other community.

Q. Do you act as a referral agency as among other agencies in the city as well?

A. Many times.

Q. Have you had an association with Juanita Smith?

A. Yes.

Q. What has that association been?

A. Miss Smith was referred to us by the Anti-Poverty Program for assistance because of the discontinuance of her public assistance grant and we accepted her as a client.

Q. What assistance have you given Miss Smith and her family?

A. So far it has totalled about \$174 in the time—

Q. That is over what period of time?

A. Since—

Q. Can you recollect what period of time?

JUDGE KALODNER: She is looking at her records.

A. Toward the end of March, about the 25th.

Q. What has this assistance been for?

A. The items primarily covered were transportation since there were clinic visits as well as to us, rent, food, supplementing the stamp program since that is not sufficient for the half-month period, clothing, laundry, soap, various household expenses.

(35) Q. What need or expenses have you not been able to assist with?

A. We do not cover back bills, essentially.

Q. What do you do with respect to medical matters?

A. We try to find a way of getting free medical care if it exists and if a person needs medical care and it is not free we will provide it. We will pay for it.

Q. How long will you continue assistance to Juanita Smith and her family?

A. Since we have gone pretty deeply into the plan, we feel we cannot continue longer than a week or so.

Q. Would you say why it is that you have reached that decision at this time?

A. At this point under the circumstances it would seem that a return to Delaware would be indicated.

Q. And why is that?

A. Because she cannot get assistance here and there is no other plan for maintenance here in the city.

Q. You are not prepared to continue to maintain her through the year?

A. We are not set up for that.

Q. Have you informed Miss Smith of this?

A. Yes.

Q. When did you do so?

(36) A. Yesterday, and also in my home visit last Thursday.

Q. Upon the termination of your assistance and in the absence of public assistance what resources to maintain Juanita Smith and her family are available?

A. Almost none. Her father evidently cannot or will not give any more, I don't know. Her mother cannot assist too much.

Q. Essentially the conclusion of your plan was that it is best she return to Delaware?

You said the understanding was that she could not receive assistance here?

A. Yes.

MR. GILHOOL: I have no further questions.

Cross-Examination

BY MR. CASPER:

Q. I am not sure I understood you. Is it correct that if Miss Smith were to return to Delaware she would be eligible for assistance there?

A. In Delaware she is a resident of Delaware.

Q. Let me ask you this. Have you explored other possibilities of plans that could be worked out if Miss Smith were to remain here, stay here in Pennsylvania?

A. Are you referring to the City Department of Welfare?

Q. That is only one possibility. I am asking you. You are (37) an expert in the field.

A. We are essentially the only agency set up for newcomers and nonresidents.

Q. Well, let's start with the city department. What did you explore?

A. That is primarily an institutional agency and Miss Smith is interested in keeping her family with her.

BY JUDGE LORD:

Q. What is an institutional agency?

A. The Department of Welfare; that is, it is primarily for placement.

Q. In foster homes?

A. Yes, not a method of enabling a mother to stay with her children.

JUDGE LORD: All right.

BY MR. CASPER:

Q. First of all, foster home care, that is not institutional?

A. Right.

Q. But foster home care isn't like an adoption, is it?

A. No.

Q. It may be a temporary matter?

A. Right.

Q. It may help somebody over some rough spots?

A. Yes.

(38) Q. So you can develop a plan?

A. Yes.

Q. And then the mother might get together with the children again?

A. Right.

Q. Did you discuss this case of Juanita Smith?

A. I considered it but I did not discuss it because the problem would still remain of free medical.

Q. What is the problem of medical care?

A. Not being a resident, not receiving assistance, she cannot be helped under the maternal and infant program.

BY JUDGE KALODNER:

Q. Whose program is that?

A. It is a federal program given to different hospitals here and—except it covers a specific area for each hospital.

Q. Does that also have a residence requirement?

A. No, but unfortunately she lives outside of that area of residence for Episcopal Hospital.

BY JUDGE LORD:

Q. Doesn't she live in that area?

A. She is ineligible for Temple and any other hospital and Frankford does not have a program.

BY MR. CASPER:

Q. I am sorry, I don't understand you. I am familiar with (39) the fact that the medical assistance program does not have a residence requirement.

I don't understand what you mean when you refer to this program operating at this or that hospital, that she is not within their residence area.

A. It is a federal program for maternal and infant care.

Q. I am familiar with it.

A. And that does go by certain neighborhoods and she—I have checked with the office at Broad and Pine, Broad and Lombard, wherever it is, and they said if she lives outside the area she is not eligible.

Episcopal Hospital will accept her only if she has lived in that area or can pay the—I think it is \$19 for attending the clinic and then there would be another sum for the delivery.

Temple Hospital cannot accept her. Frankford Hospital has no funds for that program either.

BY JUDGE KALODNER:

Q. What is her problem? What medical care does she need?

A. She is pregnant and because of the numerous pregnancies she has developed terrible varicosities. Her veins are in very bad shape.

BY JUDGE LORD:

Q. Do you mean, you may be saying exactly this, but I would (40) like to be sure of it, that if some people in Philadelphia live in a given area there is no way that they can get free medical care?

A. This is primarily—certain type of care they cannot get. Any hospital will give free emergency care. They will not necessarily accept a nonresident for continued regular care.

Q. What do you mean by nonresident?

A. Anyone who has not been here a year.

JUDGE LORD: Oh, I see.

BY JUDGE KALODNER:

Q. So they do have a residence requirement?

A. Yes.

BY MR. CASPER:

Q. I would like to understand you. You are saying this is in fact the practice?

I mean I know the law and the law does not provide for this. It says absolutely no residence requirement.

A. Under the new program care has been easier to get but the giving of the program seems to vary from hospital to hospital.

BY JUDGE LORD:

Q. What I am interested in knowing is are you telling us that there are certain areas in the City of Philadelphia where (41) people living in those areas cannot get medical care that they need?

A. Yes, in our agency we have found several like that but—that is, they cannot get continuing care. Emergency care they can always get. If it is something like a diagnosis of tuberculosis or something like that, there is no problem.

Q. I am talking about somebody that is pregnant and has varicosities.

A. Unless they live within the area of the hospital it may be not possible to get it.

BY JUDGE KALODNER:

Q. Not all hospitals have the program; is that it?

A. Yes, it has become easier with the grant and the new Pennsylvania medical care program.

MR. CASPER: I shall investigate these facts as soon as I get back.

BY MR. CASPER:

Q. Will you tell me this, please? Did you investigate the possibility of one of the other private agencies that are active in the field of maternal care, particularly in the case of unmarried mothers?

Did you investigate that possibility?

A. Ordinarily the agencies working with unmarried mothers— it is primarily around planning for the mother and the child (42) to be born rather than other children.

Q. This is true. Did you, however, consider it?

A. It was something I considered but I did not actually contact them.

Q. What I am asking you really is what possibilities did you explore in the public sector and in the private sector with respect to a plan that would tide Miss Smith over, as it were?

We are talking about what is for the purposes of argument here a temporary problem.

A. Yes.

Q. I am asking you the question: What possibilities did you explore in the public and in the private sector?

JUDGE SHERIDAN: Are you dealing only with respect to this pregnancy or this other thing. The other children have to be fed.

MR. CASPER: That is what I meant to include, Your Honor, for example when I referred to a possible temporary foster home program for the other children.

JUDGE SHERIDAN: You are going beyond the pregnancy now? Your question encompasses all the other children too?

MR. CASPER: Yes, Your Honor.

A. Do you mean a program until December when she will establish (43) residence?

Q. Yes.

A. The primary family care agencies that give financial assistance are agencies such as Salvation Army, the Episcopal Family Service, the Jewish Family Service. Most of them do not give long-time financial assistance.

Essentially we are the agency that they turn to in those situations.

Q. I understand that the practices vary. My question is specifically, did you in detail explore possibilities of tiding Miss Smith and her family over to next December in whatever way, with foster home care, with care for her situation, maternity care, with the public sector, the City Department of Public Welfare and the various private organizations of whom you know who may primarily not be concerned with the Miss Smiths?

Did you explore the possibility?

A. I did not contact the agencies because of our experience with them in other cases.

MR. CASPER: Thank you. I have no other questions.

(Witness excused.)

(44) JUDGE LORD: Anything else?

MR. GILHOOL: Your Honor, I have no further witnesses.

I think we have demonstrated that in the absence of assistance and with the termination of Travelers Aid plaintiff faces three choices, each of which necessarily would work to her irreparable harm.

One is to attempt, albeit against the hard facts of life, to maintain herself with her children at their present residence without any source of income.

The other is to place her children in foster care, and the third is to return to Delaware which, of course, is both contrary to her intent and her purpose and would forfeit the very rights that she is here claiming.

I think, Your Honor, we have established on the one hand that the harm to the plaintiff is extraordinary. On the other hand, Your Honors, we are talking here about assistance in the amount of \$115 every two weeks.

This burden on the Commonwealth is certainly a negligible one. I am prepared, if Your Honors wish, to address the legal questions which are as I see them not only serious questions with respect to this statute, but as I see them now are sufficiently serious questions to require that that statute be struck down.

(45) JUDGE KALODNER: It is not enough for you to show that there will be irreparable injury and damage done if you don't receive the temporary injunction.

You must show some right to it, the basis for it.

MR. GILHOOL: Yes, sir.

JUDGE KALODNER: Tell us, by the way, what does the Anti-Poverty Program do; simply refer people to lawyers who refer them to other agencies?

Doesn't the Anti-Poverty Program do anything for people in need?

MR. GILHOOL: Yes, sir. It does quite a great deal for people in need. In Miss Smith's case it put her in touch with Travelers Aid.

JUDGE KALODNER: What about the lawyer who put her in touch with Travelers Aid?

MR. GILHOOL: Yes, sir, the lawyers work and have their offices with the other PAAC workers.

JUDGE KALODNER: Does it do anything else other than to refer them to counsel and various public charities?

MR. GILHOOL: Yes, sir.

JUDGE KALODNER: Or private charities?

MR. GILHOOL: Yes, sir. For example, on each (46) of the many occasions over the last five weeks Miss Smith has had to travel from Frankford to center city in order to receive assistance from Travelers Aid.

They have taken care of her children on each occasion when she has had to come into center city.

JUDGE KALODNER: In what way have they taken care of the children?

MR. GILHOOL: Babysitting.

JUDGE KALODNER: They provide babysitters. Do they provide any financial aid?

MR. GILHOOL: No, sir, they have no funds whatever—

JUDGE KALODNER: It seems to me Anti-Poverty Program is a misnomer.

JUDGE LORD: No, I think it is well named. It apparently has no money at all.

JUDGE KALODNER: Let me say that it seems to be impoverished in its administration and its functioning as well as the name.

MR. GILHOOL: No, sir. I am not here either to defend or to—

JUDGE LORD: Mr. Gilhool—

MR. GILHOOL: —act as protagonist for the Poverty Program. I am here for my client.

(47) JUDGE LORD: Excuse me.

MR. GILHOOL: Excuse me, sir. Go ahead.

JUDGE LORD: If the Anti-Poverty Program can act as a babysitter, couldn't it do that and perhaps Miss Smith could attempt to get a job?

MR. GILHOOL: A fine question, Your Honor. The Anti-Poverty Program as you suggested and as Judge Kalodner has suggested is not entirely the most fulsome program in the city. The office in Frankford—

JUDGE KALODNER: That is the understatement of the century. It is the most impoverished program in the city.

Let me suggest this to you; if they paid for a babysitter why couldn't they pay her to sit for her children?

MR. GILHOOL: Your Honor, that question I think would have to be addressed to Congress and the Office of Economic Opportunity in Washington.

JUDGE KALODNER: If they paid somebody else to sit for the children why can't they pay for the mother of the children to sit?

MR. GILHOOL: Sir, it is not a question of—

JUDGE LORD: I don't know that they did.

JUDGE KALODNER: You say they paid for babysitters?

(48) MR. GILHOOL: No, sir. Staff members of the Anti-Poverty Action Council in Frankford have—

JUDGE KALODNER: They paid them?

MR. GILHOOL: Yes, sir. They paid two social aides who act in many capacities, among them referral capacities in the search for whatever might be required for the needs pressed upon the family who chances to be their client, and in the course of that they of course will do what is necessary to assist, to expedite, to make possible that assistance from third parties and so they will within the limits of their staff time babysit every couple of days.

JUDGE KALODNER: They are a booking agency. They book business for private agencies?

MR. GILHOOL: Yes, sir. Unfortunately, unlike a booking agency, they don't work on a commission.

JUDGE LORD: Well, Mr. Gilhool, I am interested in this.

You said that when Miss Smith had to go into town to see Travelers Aid—

MR. GILHOOL: Yes.

JUDGE LORD: —that the Anti-Poverty Program or whatever it is acted as a babysitter so that she—

MR. GILHOOL: One of their staff members did.

JUDGE LORD: One of their staff members did,
(49) I understand.

MR. GILHOOL: Yes.

JUDGE LORD: Now, my question is, if they are set up to babysit why couldn't they babysit while Miss Smith got a job?

MR. GILHOOL: Your Honor, they are not set up to babysit 40 hours a week.

JUDGE LORD: I see. All right, that answers my question.

MR. GILHOOL: Judge Kalodner, I should like to respond to your question which I took as going to the legal basis of the claim here.

JUDGE KALODNER: You have to assert the legal right which will fall on the basis of our jurisdiction. We may be entirely sympathetic but nevertheless unless there is an assertion of a reasonable legal right, how can we act?

MR. GILHOOL: You have before you, Your Honor, a memorandum of law reviewing I think in sufficient detail to make it clear that not only is there a substantial constitutional question here—

JUDGE KALODNER: How is there a substantial question? You keep on saying there is a substantial question.

How?

You say that there is an interference under (50) the commerce clause.

MR. GILHOOL: Yes, sir.

JUDGE KALODNER: How?

MR. GILHOOL: Sir, if I may, let me start with argument No. 3 at page 14 of the memorandum.

MR. CASPER: May I interrupt, Your Honor?

May I have a copy of that?

JUDGE KALODNER: I have a copy of it here.

MR. GILHOOL: All citizens of the United States by virtue of the protections of liberty accorded by the Fifth and Fourteenth Amendments have the right to travel freely from state to state.

This proposition is at this date extraordinarily clear. At page 14, at the bottom of page 14, proceeding from *Kent vs. Dulles* to *Aptheker vs. United States* and *United States vs. Guest*, the court has, and in the latter particularly, unanimously made it very clear that there is a liberty freely to travel from state to state and that that liberty is, as in the words of *Aptheker*, the court, the majority in *Aptheker*, is a constitutional liberty of the order of First Amendment rights.

The Court is well aware of the proposition that First Amendment rights and any address of protected areas by the state require that that address be most narrow, most (51) precise, and most proper in attempting to achieve its legitimate purpose.

The United States Supreme Court in *Sherbert vs. Verner*, which is discussed, Your Honors, at page 14 of the brief, held in a case quite like this that a state may not condition the receipt of assistance benefit upon the surrender of a constitutional right. The

constitutional right in this case was freedom of religion.

JUDGE KALODNER: That was a case where the woman said she wouldn't go back to her job because it required Saturday work and that was in conflict with her religious belief, and the Court held the state could not refuse to pay the unemployment for that reason.

That is not the situation here.

MR. GILHOOL: Yes, sir. It is exactly the same situation.

JUDGE KALODNER: How?

MR. GILHOOL: Juanita Smith lived in this Commonwealth in 1959.

JUDGE KALODNER: She has been away from here for five years.

MR. GILHOOL: That's right, but in leaving she exercised her right freely to move from state to state, a liberty of the highest order.

(52) In so moving, now having exercised that right, the Commonwealth says to her in terms of this residence requirement that since you moved we will not grant you assistance.

JUDGE LORD: Now, let me ask you this then.

Suppose in the exercise of her right to travel she went from Philadelphia to Delaware and she said to Pennsylvania I want you to continue paying my public assistance and if you don't pay it simply be-

cause I moved out of Pennsylvania you are interfering with my right to travel.

MR. GILHOOL: Our claim here, sir, is not that the state must affirmatively support the right to travel. On the contrary, our claim only is that the state may not limit the right to travel.

It is a legitimate interest of the state, it seems to us, and perhaps this is the minimal test permissible, both under this section of the Constitution and under equal protection, that public assistance should be conditioned upon presence in the state and, of course, all those other criteria.

JUDGE SHERIDAN: Would your argument be any different if she had never lived in Pennsylvania?

MR. GILHOOL: No, sir. It would be a bit different but it would still go to liberty, sir.

We are dealing in this regulation with a right (53) that inhibits and deters the exercise of the liberty.

JUDGE KALODNER: Were you counsel in the Delaware case? The District Court has been designated to hear this question. Delaware has a similar one-year eligibility.

MR. GILHOOL: Exactly, and many of the states do, Your Honor.

JUDGE KALODNER: Were you in that case? If you weren't, I won't ask you a question.

MR. GILHOOL: No, sir. I am not in that case.

JUDGE KALODNER: All right, I wanted to ask whether in that case there is also a return of the native, so to speak.

MR. GILHOOL: I don't know, Your Honor. I dare say, however, the time for residence requirements at least in the judgment of the members on this side of the Bar has probably come for review. In addition to that case there is a case pending before a three-judge court in Hartford, Connecticut, presided over by Judge Smith. That Court denied a motion to dismiss.

As the Court is no doubt aware a state court in Utah did on January 27 issue a preliminary injunction in a case of exactly these circumstances.

JUDGE KALODNER: Why didn't you take this to the State Court, may I ask?

(54) You are attacking the constitutionality of the state law. Why didn't you test it in the State Court?

Isn't that the proper forum for testing the liberty or the constitutionality of a state act?

MR. GILHOOL: Your Honor, among the constitutional rights we are especially contesting here are rights that are inherently in the nature of federal rights.

JUDGE KALODNER: You say you are being barred from the exercise of the liberty to travel freely from state to state; that therefore that statute is unconstitutional.

Why don't you go to the State Court?

MR. GILHOOL: Because we preferred to raise this question of such considerable magnitude and relating to so many matters important in the Constitution in Federal Court, and we have that right.

JUDGE KALODNER: Aren't the State Courts competent to decide those questions?

MR. GILHOOL: Yes, but the choice, Your Honor, of forum on a constitutional matter rests with us.

This Court is a three-judge court and, as Your Honor knows, there are certain advantages procedurally and otherwise to being heard before you.

JUDGE KALODNER: I don't know that that is such an advantage.

(55) MR. GILHOOL: Your Honor, if this question, as I think it is, is a question of great importance not only to plaintiff but to seven million poor people in this country here now receiving public assistance and who, because of the multiplicity of residence requirements among the states, are essentially reduced to a status—are essentially prohibited from mobility. The poor must stay put.

JUDGE KALODNER: All right, give us your argument on the commerce point.

MR. GILHOOL: I have given you my argument on liberty.

JUDGE KALODNER: Are you familiar with the fact that the State of Pennsylvania and most states have a residence requirement before you can vote?

MR. GILHOOL: Yes, sir. I certainly am.

JUDGE KALODNER: Are those acts unconstitutional?

MR. GILHOOL: No, sir. I think not. Indeed, the Supreme Court has recently held that they are not.

JUDGE KALODNER: Exactly so. The City of Philadelphia specifies by its Charter that one cannot be employed by the City unless one is a resident of the City.

MR. GILHOOL: Your Honor, that is another matter. I think the same argument that applies here would probably apply to employment.

(56) With respect to the voting requirements I might note that on next Tuesday the voters of this state will act on a constitutional amendment that would lower that requirement to three months.

JUDGE KALODNER: But still it is a requirement.

MR. GILHOOL: Your Honor, in the Fourth Circuit case affirmed by the United States Supreme Court it was made very clear what legitimate interests the state had in the establishing of voting residence requirements for voting and chief among those was, as Your Honors will recall, a question of residence requirement for voting in federal elections, and chief among the reasons thought permissible by the Court to justify such a requirement was the interest of the state in assuring that in contemplation of the Electoral College and the summation of votes by state the state therefore had an interest in assuring that all those who voted and hence controlled how Maryland went in the Electoral College, had some acquaintance with the community, understood the problems of that community, understood the relation of the issues in that election to the community.

Now that justification is not present here.

JUDGE LORD: That one isn't, but do you say there is no legitimate state purpose whatsoever?

MR. GILHOOL: Yes, sir. I find it impossible (57) to discover any legitimate state purpose here.

JUDGE LORD: All right, I don't want to interrupt you in mid-flight.

MR. GILHOOL: The one purpose, Your Honor, that might be postulated, that might possibly be permissible, is referred to at page 6 of the memorandum, and that is the prevention of abuse of public assistance, this public assistance program by persons coming to Pennsylvania with no motive but to obtain assistance.

As I argued with respect to liberty, any regulation of liberty must be the narrowest consistent with the objective.

With respect to equal protection classifications that sweep with undue breadth, they are suspect indeed. They are invalid.

That purpose, if proper, is not served consistent with those strictures by this statute, for this statute excludes not only those who may come with a motive to secure welfare, and plaintiff did not come with that motive, but it excludes also those who may come for very good reasons, reasons that Mr. Justice Douglas talked about in concurring in *Edwards vs. California*; that is, the search for new horizons, for opportunity, for jobs, for education, for whatever, for what people generally move from place to (58) place in order to secure.

JUDGE LORD: True enough, but *Edwards vs. California* was a different case.

JUDGE KALODNER: That was entirely different.

MR. GILHOOL: Well, sir, in this case Pennsylvania has said to Juanita Smith that she may not come to Pennsylvania.

JUDGE KALODNER: It didn't say she may not come; it said if you come to Pennsylvania you must live here a year before we will grant you unemployment relief or mother's assistance.

MR. GILHOOL: The Commonwealth is, however, now, Your Honor, saying to Miss Smith that she **must** return to Delaware.

JUDGE LORD: No, they are not.

JUDGE KALODNER: They are not saying that to her. They are saying you can live here, because the letter says we are cutting you off because you failed to meet the one-year eligibility requirement.

It doesn't say you have got to go back to Delaware.

Miss Haimowitz said her agency thought she could go back to Delaware and receive relief there and that is why they won't help her, but that is not the Commonwealth's—

(59) The Commonwealth is not sending her back.

MR. GILHOOL: That is something like what South Carolina said in *Sherbert vs. Verner* and it is something like what the state said in *Speiser vs. Ran-*

dall; i.e., unless in the one case you surrender your freedom of religion we will not assist you.

JUDGE KALODNER: What freedom are they asking her to surrender?

MR. GILHOOL: They are asking that she surrender her liberty to move from place to place.

JUDGE KALODNER: That is utter nonsense, in my opinion.

JUDGE LORD: Let me ask you this question, Mr. Gilhool. Hypothesize with me for a moment, if you will.

A bum, a hobo, who travels from state to state, in the summertime he goes to Maine, in the wintertime he goes to Florida, and he passes through various states on his travels and he decides, well, I will stay in South Carolina for about a week and pick up a little public assistance; then I will move on to Georgia and I will stay there a week and I will pick up a little public assistance.

MR. GILHOOL: Your Honor, in that case if restricting the movement of that person were permissible and I argue that it is not permissible, in light of liberty (60) and in light of the commerce clause and privileges and immunities of the 14th and the 4th, but if it were permissible this statute is not sufficiently narrow to achieve that purpose.

JUDGE LORD: Excuse me. I didn't finish my question.

MR. GILHOOL: Yes.

JUDGE LORD: Which I will do.

Would you say that a state is constitutionally prohibited from saying that unless you are in the state two weeks we won't give you any public assistance?

MR. GILHOOL: Yes, I would, Your Honor. The state can't do that. Yes, that's right.

JUDGE KALODNER: Can or cannot?

MR. GILHOOL: Cannot.

JUDGE KALODNER: Well, you are consistent.

In other words, the hobo coming into Pennsylvania has the right to receive assistance?

MR. GILHOOL: Yes, sir.

JUDGE LORD: In other words, the state can provide no reasonable regulation whatsoever.

MR. GILHOOL: The state can, Your Honor, provide—

JUDGE KALODNER: Answer our question.

(61) Can the hobo come into Pennsylvania and receive assistance?

MR. GILHOOL: Yes, sir.

JUDGE LORD: In other words you say there is—is the right to be a hobo, a First Amendment right or a commerce clause right?

MR. GILHOOL: No, sir. The right of a hobo to move across state lines is a right of First Amendment stature. It is a right of national citizenship. It is a right that is essential to the constitutional commitment to one nation.

JUDGE LORD: And a state must not interfere with that?

MR. GILHOOL: Sir, it might in the presence of extraordinary necessity interfere with such a right. That standard is the standard that has been applied in the cases cited in argument B of the brief. Those cases deal with the right to travel freely from state to state as based on the rights of national citizenship and is derived from our federalism.

In those cases it is clear that the state can act only in the presence of extraordinary necessity. We are not dealing with any such necessity here.

The purpose of the state in enacting this qualification can in no sense be regarded as one of extraordinary necessity. Edwards and California makes that very clear.

In Edwards and California indeed we were dealing in a historic period when, not in numbers I dare say and not in severity by any contrast with the rest of society, when the country was still recovering and still largely in a depression, and when the question of interstate migration was particularly acute, and when as the Court in Edwards stated the burdens imposed upon a state by the movement of indigents into that state in financial terms might well be worth, they said staggering, nonetheless, the Court held that it was not permissible for a state to attempt to close its boundaries solely to protect its purse.

JUDGE KALODNER: The Supreme Court declared that that law was unconstitutional.

MR. GILHOOL: Your Honor, this statute has inevitably an exclusionary effect. It has such an exclusionary effect, Your Honor, as to—

JUDGE KALODNER: By the way, by the same token this lady, if she came to Philadelphia, couldn't get a job because she is not a resident of Philadelphia. Therefore she would be excluded in exercising certain rights, the right to make a living.

MR. GILHOOL: The statute, however, sir, has (63) not guaranteed by the state to anyone the right to make a living. It has, however, by statute established for the needy the benefit about which we are quarreling here.

JUDGE KALODNER: We get your point, I think.

MR. GILHOOL: With respect to the question you asked as to whether there is in fact an exclusionary effect, Toomer versus Witsell, referred to on page 5 of this brief and which is discussed somewhat more extensively at page 12 of this brief, involved a discrimination in state statute imposing license fees on commercial fishing between residents and nonresidents.

The differentiation there, sir, was something in the order of \$250. The Court held that this differentiation had an effect so great that it was exclusionary.

JUDGE KALODNER: Do you think that situation is analogous to the situation here?

MR. GILHOOL: Yes, sir. I certainly do think it is.

JUDGE KALODNER: That is a difference of opinion. That is what they say makes horse races.

MR. GILHOOL: We are dealing here, sir, with a plaintiff who because of her prior citizenship in Delaware is being discriminated against by the Commonwealth of Pennsylvania.

(64) JUDGE KALODNER: All right.

JUDGE SHERIDAN: I want to ask you one particular question.

Is this father, as I recall the law, still liable for the support of his daughter, Miss Smith?

MR. GILHOOL: Yes, sir. He is in the law liable for their support.

JUDGE SHERIDAN: You haven't exhausted that.

MR. GILHOOL: As Your Honor knows, liability at law for support is quite a different thing from the reality of support.

JUDGE SHERIDAN: We can't assume that.

MR. GILHOOL: The plaintiff here testified, Your Honor, that in previous support actions against two of the gentlemen in question—

JUDGE SHERIDAN: Excuse me. I am talking about her own father.

MR. GILHOOL: Her own father, Your Honor? Plaintiff here testified that he has six children of his own.

JUDGE SHERIDAN: That is correct.

MR. GILHOOL: And a second wife. Her own father, Your Honor, plaintiff testified, lost his job in January. Either of those circumstances and each of them, Your Honor, would preclude under the law of the Commonwealth of (65) Pennsylvania any support from him.

JUDGE SHERIDAN: That would preclude it? I wouldn't know that.

MR. GILHOOL: Yes, sir.

JUDGE SHERIDAN: He may very well be able to support her or take her in.

JUDGE KALODNER: Anything else?

MR. GILHOOL: That's all from my side.

I thank you, Your Honor.

JUDGE KALODNER: All right, Mr. Casper.

I understand you haven't seen the brief but you were put on notice, as it were.

Do you have anything to say now?

MR. CASPER: I would like to say this, Your Honor. I don't think I could distinguish the Edwards case any better than the Court could, so I won't say anything more about that.

JUDGE LORD: That is the safest way.

JUDGE KALODNER: By the way, has there ever been an attack made on the constitutionality of this provision in Pennsylvania?

MR. CASPER: No, Your Honor.

JUDGE KALODNER: It has been in effect for 30 years now.

(66) MR. CASPER: Yes. I do want to say this, starting at the end, the legal point of view.

Obviously plaintiffs are trying something new. There isn't any authority they can rely on and I want to say this.

This is not a situation where the Commonwealth says to anybody keep out of Pennsylvania. It is merely a regulation of a grant system and Mr. Gilhool has said time and time again he doesn't say there is a constitutional right to public assistance. The exclusionary effect that he talks about won't be any different on anybody outside of Pennsylvania if Pennsylvania had no public assistance at all.

He says there is no such right, so if you are going to be logical about that the exclusionary effect is not something that is specifically traceable to this one year's residence requirement. That is first.

Secondly, it is sort of strange to talk in one sense about the exclusionary effect. The plaintiff in all the cases that we have are people who haven't been excluded. I didn't ask Miss Smith in the context whether she knew anything about the Pennsylvania Public Assistance Law before she ever came here, but there has been a study, Your Honor, I don't want to testify here, but it seems highly unlikely that decisions to move about, whether it is by the hypothetical hobo (67) or by somebody who is in search of a better life and usually sets his sights way above the dole. It is not one of those things as if people sit down and

calculatedly make determinations in terms of durational residence requirements of public assistance.

Residence requirements with respect to all sorts and kinds of state regulations have been not only known for years, they are current today. I happen to be a lawyer. If I want to go to Florida because I like the sun I can go to Florida, it is my constitutional right, but I can't practice law, not for ten years. It is part of their law. That one hasn't been challenged yet as far as I know.

Now, I am affected by that and there are any number of other residence requirements; not only the voting one but with respect to all sorts of facilities made available by states through their economy. Because of the limited resources that this particular state has in its economy it has a first and primary duty to its residents.

I don't want to say any more about the legal part of it but I do want to say on the question of irreparable injury it is interesting to note in this case that first of all I suggest plaintiff has not made out a case of irreparable injury. He has not suggested that Miss Smith will starve. I don't think she will starve in this particular situation and (68) please don't understand me in the wrong way. I do understand that there are from a humane point of view very serious problems of poverty involved and I don't want to make light of them.

I am just saying in the legal setting I don't think plaintiff has made out a case of irreparable injury.

First of all, you may recall in my cross-examination I had very grave doubts as to whether the potentials for help in this situation really have been properly exhausted. I asked that of both Miss Smith and the lady from Travelers Aid, whether there had been a detailed contact with the City Department of Public Welfare who, after all, have a responsibility in this matter under the County Institution District Law. The City Department of Public Welfare is in Philadelphia the County Institution District and I have not been told of any efforts made, of any plans looked at.

Now, we do know about a different program, a foster care program which, incidentally, is paid for at more than the public assistance rate but if you take all these things into consideration, these are all possibilities and they haven't been explored yet. How can we meaningfully talk about irreparable injury? That is one.

Two, as Your Honors know, there is even in Pennsylvania, never mind about Utah and Connecticut and (69) Delaware, another case raising the same questions in a different district and that is Leila Waggoner in Pittsburgh.

Now, what is the difference? The difference is that in this case Miss Smith came from Delaware and the County Board of Assistance thought when she applied there was a reciprocity agreement between Pennsylvania and Delaware in force, and gave her two checks. They found they made a mistake.

JUDGE KALODNER: In this case?

MR. CASPER: Yes, in this case. In the Waggoner case Mrs. Waggoner applied for assistance and there was no question of any reciprocity agreement from California, and they immediately said you haven't been here one year, you are not eligible.

Now, Your Honors, you have got the same constitutional issue involved. Would it in any sense be fair to say that because the County Board of Assistance made a mistake to the extent of two payments—

JUDGE KALODNER: No one is arguing that here.

MR. CASPER: I beg pardon, let me finish, to say that to enjoin the County Board from discontinuing assistance which they paid—

JUDGE LORD: If we do it we will do it a little differently. We will enjoin them from refusing to pay.

(70) MR. CASPER: I understand, Your Honor. I am not going to say any more about that.

JUDGE SHERIDAN: Do I understand that if these children went into a foster home, in December then she could get assistance?

MR. CASPER: If she is then financially eligible, yes, Your Honor.

That is all I have, Your Honor.

JUDGE LORD: We will take it under advisement.

(Adjournment)

In the United States District Court for
the Eastern District of Pennsylvania

(Title Omitted in Printing)

VII.

CONTINUED HEARING SUR PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION

May 29, 1967

(73) JUDGE LORD: Smith against Reynolds et al.

MR. GILHOOL: May it please the Court, I have a motion for determination by this Court that a class action may be maintained.

JUDGE KALODNER: Why do you need it?

MR. GILHOOL: Strictly speaking I suppose I don't need the motion.

JUDGE KALODNER: Then why are you doing something you don't have to do?

JUDGE LORD: I think he does.

MR. GILHOOL: Sir, it was suggested by the Court that it might be appropriate, and I have it with a draft order for Your Honor's contemplation.

The Health and Welfare Council by its counsel, Frederic Ballard and Matthew Strickler, have authorized me to say to the Court that they have authorized a petition for leave to appear amicus curiae and will, with the Court's permission, have a brief this week.

I have, Your Honor, three, perhaps four witnesses this morning and I should like—

JUDGE KALODNER: Everybody might as well file. We will have a free-for-all.

MR. GILHOOL: Yes, sir. This is a matter that concerns a great many people and a great many people are (74) interested in addressing the Court on the matter.

If I may I will proceed with my first witness.

JUDGE LORD: Yes, go ahead.

MR. GILHOOL: Miss Deborah Davis, please.

MR. CASPER: If I may, Your Honors, I would like to know if I may what Mr. Gilhool is seeking to prove by putting on this testimony today.

JUDGE LORD: Are you asking for an offer of proof?

MR. CASPER: Yes, sir.

JUDGE LORD: We can probably do it just as quickly by the witness, since there is no jury present.

MR. GILHOOL: Your Honor, very shortly, Miss Davis is the Director of the Bureau of Assistance

Policies and Standards, Office of Public Assistance, and as such has particular responsibility for the administration and oversight of the operation of the residence requirements.

It is the administration and operation of that requirement that she will testify to.

DEBORAH DAVIS, sworn.

Direct Examination

MR. CASPER: Your Honor if I might I still (75) I don't know how this will be relevant to the issue.

JUDGE KALODNER: Keep your voice up.

MR. CASPER: Your Honors, I still don't know how Miss Davis' evidence will be relevant. It appears we are here on a question of law.

JUDGE KALODNER: Did you move to dismiss? I can't recall anything of record.

Did you move to dismiss?

MR. CASPER: No, I believe I did state though, Your Honors, that apart from the fact that we put in question with respect to the complaint I believe we did say in the answer, we didn't make a separate motion to dismiss, but I believe it is perfectly all right to state as we did in our pleadings, in our answer, that there is no cause for which relief can be granted.

JUDGE LORD: That may be, that you alleged that, but we have nothing before us on which to act with respect to a motion to dismiss.

MR. CASPER: No, Your Honor. I understand that.

I merely would like, since we have had a hearing and know what the case is about, and the question is the constitutionality of the residence requirement, I don't want to be carping about it, but I just would like to know (76) what the relevance of the proposed testimony is to the issue that is before the Court.

JUDGE KALODNER: I can't understand the Attorney General's office in this respect. It seems as if the right hand doesn't know what the left hand is doing.

In the case of Leila Waggoner in the Middle District of Pennsylvania in which a constitutional court has been appointed, in that case they have moved to dismiss the complaint and for summary judgment. In this case they haven't.

MR. CASPER: No, there is an explanation for that, Your Honor. If I may say so, I thought that the same thing was accomplished since the Waggoner case was the first one, and I think we would go along, in Pennsylvania.

JUDGE KALODNER: What difference does that make, whether it is the first or not?

If you agree that a motion to dismiss should be filed, why wasn't it filed in both cases?

MR. CASPER: It is my understanding we would not file a motion to dismiss or, in the alternative, for summary judgment, until we were faced with the question of having had at least one hearing in this case

and whether we could arrive at a situation of quick disposition.

JUDGE KALODNER: Without having moved here for it?

(77) MR. CASPER: I believe we have done this, in effect, by our allegation in our answer which I believe is the same as a motion to dismiss.

JUDGE LORD: It certainly is not.

JUDGE KALODNER: I don't know whether—how you can say that, whether in state practice or Federal practice, that the denial of the cause of action in an answer is equivalent to a motion to dismiss, or for summary judgment.

MR. CASPER: Only on the ground, Your Honors, that some of the matters that had been alleged as a basis for your motion to dismiss, you can instead put into an answer.

JUDGE KALODNER: What?

MR. CASPER: You can put into an answer the same allegation.

JUDGE KALODNER: I don't think that is a valid answer.

MR. CASPER: Very good.

JUDGE LORD: Go ahead, Mr. Gilhool.

MR. GILHOOL: Thank you, Your Honor.

BY MR. GILHOOL:

Q. Miss Davis, what is your occupation?

A. I am Director of the Bureau of Assistance Policies and Standards in the Office of Public Assistance.

Q. How long have you held that position?

(78) BY JUDGE KALODNER:

Q. That is in the Commonwealth of Pennsylvania?

A. The Commonwealth of Pennsylvania. I have held the position since 1958.

BY MR. GILHOOL:

Q. What previous positions have you held?

JUDGE KALODNER: What difference does that make? Really and truly, what difference does it make here?

MR. GILHOOL: Your Honor, I want to indicate—

JUDGE KALODNER: This lady has been there since 1938. That is almost 30 years.

MR. GILHOOL: Your Honor, '58.

JUDGE KALODNER: '58? What is the difference? She has had nine years.

MR. GILHOOL: Your Honor, her previous positions with public assistance will indicate the range of her experience with public assistance and the matter before the Court.

THE WITNESS: I have been employed by the Department for 32 years. I have worked in various positions of responsibility.

BY MR. GILHOOL:

Q. Would you indicate what those positions have been?

A. Since 1944 I have been in the State Office, Harrisburg (79) office, and I have held positions as a field representative, as an assistant to the Director of Field Service, and as a policy specialist.

Q. And you have also served as a supervisor and as a case worker, have you not?

A. In the County I served as a case worker and supervisor, yes.

Q. What are the duties of the Bureau of Policies and Standards?

A. The duties of the Bureau are primarily the development of policies and procedures in accordance with the law and Federal requirements. We have additional duties, one of which is the analysis of complaints, appeals that come to the office from all sources, including representatives, clients themselves.

We also have responsibility for interpreting policy and it is in this responsibility we deal with the counties and with the field staff.

Q. What are the duties of the Bureau with respect to the residence requirement?

A. The duties—

BY JUDGE LORD:

Q. Miss Davis, are you reading from something?

A. No.

(80) Q. I didn't think you were and therefore would it be convenient for you to keep your head up, because you are dropping it below the level of the Bench and that is cutting off the flow of sound.

A. I will pull myself up here.

JUDGE LORD: Yes.

JUDGE KALODNER: Read the question.

(The following read by the reporter:)

“Q. What are the duties of the Bureau with respect to the residence requirement?”

THE WITNESS: In respect to residence we have developed the regulations in accordance with the Pennsylvania State Law and our responsibility there extends to getting reciprocal agreements as provided by law with other states.

BY MR. GILHOOL:

Q. How many applicants in calendar 1966 were rejected because of the residence requirement?

A. 1520 families and 2—

JUDGE KALODNER: 15—

A. (Continuing) 1520 families and 2,967 persons.

Q. Do you anticipate that a similar number will be rejected in this year and in the following year?

A. Yes, there has been very little change in the number over the years.

(81) Q. What are the characteristics of the rejected applicants?

A. The Department does not keep characteristics—

JUDGE KALODNER: Pardon me.

BY JUDGE KALODNER:

Q. Does this residence requirement extend to all phases of public assistance?

A. Yes.

Q. Blind, pensions?

A. It extends to all phases except medical assistance. The medical assistance program which went into effect in 1966, January 1, by Federal prohibition does not carry a durational residence requirement.

Q. But blind, pensions for the aged?

A. Yes, all the other categories that are assisted are subject to one year, yes.

BY MR. GILHOOL:

Q. The medical assistance program you speak of provides in-hospital care?

A. Yes, it provides in-patient hospital care, visiting nurses' services.

Q. Fine.

A. Post-hospital nursing.

BY JUDGE KALODNER:

Q. There is nothing in the legislation with reference to (82) that? There is no residence requirement as to that, is there?

A. No, we are specifically prohibited from having one by Federal law.

Q. So there is no legislative mandate with respect to medical assistance, as to the period of residence in the state?

A. No, no.

JUDGE KALODNER: All right.

BY MR. GILHOOL:

Q. What are the characteristics of the applicants rejected on the grounds of residence requirement?

A. Well, as I say, the Department itself does not keep records of the characteristics of people who are rejected on account of residence.

However, in 1959 Dr. Artigues of the Pennsylvania—University of Pennsylvania made a study in which I assisted and the findings I think remain valid, at least from the analysis that we are able to make from correspondence, and from that the figures that he

arrived at were 40 percent previously lived in Pennsylvania, 60 percent have relatives here, 64 percent came to get jobs and 37 percent had jobs when they came. 7 percent came because of health reasons.

Q. Do you have any sense of the stability of residence in the previous state of these applicants?

A. Yes, again from Dr. Artigues' study 50 percent lived (83) in the state from which they came over five years; less than 1/10 had less than a year's residence in the other state.

Q. Do you have any sense of the numbers of rejected applicants who had been recipients of public assistance in the state from which they came?

A. Only 10 percent had received public assistance in the states from which they came.

Q. Characteristically how long have the rejected applicants lived in Pennsylvania before they applied for public assistance?

A. One half have lived here six months before they apply for assistance from this state and two thirds had two or more months residence.

Q. Will you describe the characteristics of some of the rejected applicants that have come to your official attention in the last couple of weeks?

A. We have a number of case situations. For example, here is a woman 80 years old. She came to Pennsylvania to live with her son who died a few months later, leaving nothing. She applied for assistance. She was found ineligible—

BY JUDGE KALODNER:

Q. Old age assistance?

A. Yes, 80 years old.

Q. Yes?

A. Here is a man of middle age. He had been born and raised (84) in Pennsylvania but ran a business in another state.

His son was inducted into the Army last summer and sent to Vietnam. The man went to visit a married daughter in Israel. He was taken very ill.

He returned to Pennsylvania last fall and had three operations, for which he received medical assistance. He is now living with his mother and father, whose only income is Social Security. He has no insurance or income and cannot work.

The son, who is on emergency leave from Vietnam, made application for public assistance for his father's period of recuperation.

BY MR. GILHOOL:

Q. And the application was accepted?

A. The application would be rejected because he doesn't have residence in—

JUDGE KALODNER: What is the point of this examination? Undoubtedly hundreds of people are denied all forms of public assistance in Pennsylvania because they are unable to satisfy the statutory one-year residence requirement.

That is not disputed.

MR. GILHOOL: Yes, Your Honor. That is so.

JUDGE KALODNER: In other words, the Department of Public Assistance is giving effect to the legislative (85) mandate.

What is the purpose of this examination?

MR. GILHOOL: The purpose, Your Honor, is this. We are here challenging a statute of the Commonwealth of Pennsylvania. We think it important, therefore—

JUDGE KALODNER: It imposes a hardship on those who are unable to receive any and all forms of public assistance, because of the one-year residence requirement.

MR. GILHOOL: Yes, Your Honor.

JUDGE KALODNER: Is there any question about it?

MR. GILHOOL: No question whatever.

JUDGE KALODNER: All right, why do you need to offer proof?

MR. GILHOOL: We think it important, Your Honor, that the record should indicate with some precision exactly the characteristics of those who come under this requirement.

We think that germane, Your Honor, to a judgment here.

JUDGE KALODNER: We have two instances. You are piling up instances of cases.

Now, what useful purpose does that serve?

MR. GILHOOL: Your Honor—

JUDGE KALODNER: All these hardship cases are very moving.

(86) MR. GILHOOL: Simply, Your Honor, it makes a full record which I think important to the determination of this case.

JUDGE KALODNER: You can keep this up for a year. Do you think that would have any real value, by piling up the record?

MR. GILHOOL: Your Honor, Miss Davis has testified—

JUDGE KALODNER: I don't think that the Commonwealth could possibly contend that the one-year residence requirement does not result in hardship to those people who are denied assistance by reason of the one-year statutory requirement, or residence.

MR. GILHOOL: Yes, Your Honor.

JUDGE KALODNER: If they did deny it, of course, they would cite such a denial.

MR. GILHOOL: Your Honor, Miss Davis has testified as to some of those cases rejected here in Pennsylvania.

I should like her to go on and testify as to those on public assistance in other states who had previously resided here, whose applications have been rejected.

The significance of that testimony, Your Honor, is precisely the fact that those applicants for public assistance must come back to Pennsylvania or should have stayed (87) in Pennsylvania if they were to receive any income at all. That, Your Honor, goes—

JUDGE KALODNER: Because of migration? Because of migration people failing to meet the residence requirements from the state where they come, then they come back to Pennsylvania, they are unable to satisfy the residence requirement?

Is there any question about that?

MR. GILHOOL: Well, Your Honor, one of the questions in this case is whether the residence requirement does in fact bind recipients of public assistance into the state where they are receiving public assistance, and effectively prevent their mobility to other states.

Now, the testimony that I would like Miss Davis to proceed to goes to that question.

JUDGE KALODNER: You don't need any proof of that, do you?

MR. GILHOOL: If Your Honor thinks not I am very pleased to agree. I thought that was in dispute the last time we were before the Court.

JUDGE LORD: Mr. Gilhool, it seems to me, and I am speaking now only for myself and not for the Court, that the real question here involved is whether or not a state can impose a reasonable residence requirement, No. 1; that is, (88) whether it can constitutionally impose a reasonable residence requirement.

MR. GILHOOL: Yes, sir.

JUDGE LORD: And secondly, if it can, whether the one year is a reasonable residence requirement in this case.

MR. GILHOOL: Yes, sir.

JUDGE LORD: I have no idea of whether I speak for the Court or not, but I am merely voicing my own feeling.

MR. GILHOOL: Yes, sir. I would pose the questions exactly that way.

JUDGE KALODNER: What evidence do you have on that score?

MR. GILHOOL: The testimony to date, Your Honor, has indicated the rejected applicants share, with other needy residents of Pennsylvania, certain characteristics.

That certainly goes to the question of whether this is an arbitrary classification or—

JUDGE KALODNER: Nobody has argued the question of discrimination against this particular party or plaintiff in this case. That hasn't been raised.

MR. GILHOOL: Your Honor, I am—

JUDGE KALODNER: You are not charging discrimination against your plaintiff, are you?

MR. GILHOOL: Yes, sir. We are.

(89) JUDGE KALODNER: As a class?

MR. GILHOOL: As a class, yes, sir, proceeding from the face of the legislation.

JUDGE KALODNER: The point is the legislation is universally given effect in Pennsylvania.

BY JUDGE KALODNER:

Q. I would like to ask you one question. How many states, do you know—

JUDGE KALODNER: The Commonwealth has failed to offer any evidence. I have got to ask the witness.

The Commonwealth has failed to tell us in any of its pleadings, anywhere, any time.

BY JUDGE KALODNER:

Q. How many states have a residence requirement, whether it is a month or five years?

A. 44 states have.

Q. Pardon me?

A. 44.

Q. How many states have public assistance?

A. Oh, all states have public assistance.

Q. 44 have a limitation, residence limitation?

A. Yes.

Q. Can you tell us what those periods range, the range of those periods?

(90) A. They range from five years—I have all the residence requirements listed here as taken from the APWA Directory.

MR. GILHOOL: Your Honor, we should be pleased to present to the Court a copy of that record.

BY JUDGE KALODNER:

Q. Let the witness answer.

A. Arizona, five out of the last nine years for old age assistance; five out of the last nine years for blind; one year for ADC.

Q. Just what do you mean, five out of nine?

A. Five consecutive years out of—or five years out of the last nine. It can be any five within those nine years.

Q. They must have lived for a period of five years out of the last nine?

A. Right.

Q. This would take into account those who would move out and come back in?

A. Yes.

Q. All right, I just wanted to make it clear. Now, the other six states don't have any public assistance program, or do you have—

A. Oh, no. They have.

Q. Without residence requirements?

A. Oh, no. They have public assistance programs. Public (91) assistance is a national program.

JUDGE LORD: But no residence—

BY JUDGE KALODNER:

Q. I know, the Federal Government has one.

A. The states in order to get Federal money have to have a public assistance program.

Q. Are there any states in the union that don't have a public assistance program?

A. No.

Q. You spoke of 44.

A. Six have no residence requirement.

Q. There must be six states that have no residence requirement?

A. That's right.

Q. All right, what are they?

A. Rhode Island is one; New York, Kentucky, Hawaii.

BY MR. GILHOOL:

Q. Those states have no residence requirements?

JUDGE KALODNER: Let her finish, please. She is giving us the names of six.

She has given us four.

THE WITNESS: I gave you five, didn't I?

JUDGE LORD: Four.

(92) BY JUDGE KALODNER:

Q. Rhode Island, New York, Kentucky, Hawaii.

A. My mathematics are wrong. We had 46.

MR. GILHOOL: Your Honor, if I may, the 44 states—

THE WITNESS: 46 states.

MR. GILHOOL: —have residence requirements.

THE WITNESS: Right.

MR. GILHOOL: Fine. In fact, Your Honor, of those 46 three have residence requirements generally but not for aid to families for dependent children.

The District of Columbia has a residence requirement generally as well and there are four, as the record shows, that have no residence requirements whatsoever.

If I might leave the line I was pursuing, entirely satisfied with Your Honors' indication of the irrelevancy of the testimony to the facts that are undoubtedly clear, I might proceed.

BY MR. GILHOOL:

Q. Miss Davis, if the residence requirements were eliminated what would be the cost?

A. The cost would be \$1,637,500 in state funds.

Q. And in Federal funds?

A. \$1,400,000 in Federal funds, or a total of \$3,037,500.

(93) BY JUDGE KALODNER:

Q. How do you arrive at that?

A. This is based on an estimate of the number of families who would apply for assistance as a result of dropping the residence requirement.

Q. How do you arrive at that, based upon what experience?

A. Well, what our research people did was multiply the number of rejected applicants on an average in a year and that comes out to—by three. They figured there would be three times the number of people applying.

BY MR. GILHOOL:

Q. And on what basis did they choose that factor?

A. On their experience with the other states, from other states that relatively few people apply for assistance or come to another state for assistance purposes.

Q. In other words, you contemplate no great influx of indigent poor because of the elimination of the residence requirement?

A. Right.

Q. Is this based on the experience in New York, Rhode Island, Kentucky and Hawaii?

A. This is based on the experience of New York and Rhode Island.

Q. With other changes in regulations have your projections (94) of additional cost proved accurate?

A. Our projections of cost have proven exceptionally accurate.

Q. What is the present total public assistance budget of the Commonwealth of Pennsylvania?

A. The total budget is \$336,557,000. That is for the fiscal year ending in June 30th.

Q. How is the public assistance budget formulated?

A. The public assistance budget is based on estimates of economic conditions, the number of people who will be affected by it during the year's period, and that about does it.

Q. Would the elimination of the residence requirements at all complicate the budgetary process?

A. Not for the number of people involved. We based our estimates on 362,000 people, so 1500 more or less isn't going to substantially affect that.

BY JUDGE KALODNER:

Q. How many people are receiving public assistance in Pennsylvania? How many cases do you have now of all facets other than medical assistance?

A. Other than medical assistance it is about 347,000 right now.

Q. So we may have it for the record, what categories are they, without a breakdown?

(95) BY MR. GILHOOL:

Q. What are the categories?

A. Old age assistance, aid to permanently and totally disabled, aid to families with dependent children. That is called ADC.

BY JUDGE KALODNER:

Q. That is generally called Widows' and Mothers' Assistance?

A. Yes, blind pension.

Q. And unemployed?

A. And general assistance.

Q. Those five categories?

A. Right.

BY MR. GILHOOL:

Q. Given the residence requirement, what administrative burden is imposed on the public assistance program by it?

A. In the policy that denies assistance to people it creates administrative problems in trying to search out other resources, in trying to get the kind of help that people need.

In connection with residence much of the problem goes right from the case worker up the line of administration. That is why I am loaded here with case examples, because we get them in the Harrisburg office.

BY JUDGE KALODNER:

Q. In view of the experience you have just recited to us, (96) having been with the Department of Public Assistance a number of years, the last eight or nine years in the important office you occupy, has there

been any representation made to the Legislature with reference to the elimination of the one-year residence requirement by the Department of Public Assistance?

A. Yes, there has. We have proposed a change in the residence requirement on a number of times but the latest one is a proposal of one out of five years.

Q. Is what?

A. The person have a one year's residence out of five years.

Q. And what happened to that proposal?

A. It was turned down by the Legislature. It is being reintroduced this year, I understand.

BY JUDGE SHERIDAN:

Q. Why hasn't the Department proposed the complete elimination of all residence requirements instead of coming to one of five?

There must be a reason.

A. There is a lot of feeling I think about assistance to persons who haven't been residents of Pennsylvania and a fear that it will greatly increase costs, which you can't counteract by estimates.

Q. How would it increase cost? I think your testimony has (97) been the opposite, hasn't it?

A. Yes, I know, but I am talking about the public opinion.

Q. My question is directed to the Department, not the public.

A. Well, this is why the Department doesn't get its proposals enacted by the Legislature, because there is a pool of opinion that the residence requirements result in an influx of people into the Commonwealth.

BY JUDGE KALODNER:

Q. In other words we can take from that that the Legislature hasn't agreed with the estimate made by the Department of Public Assistance as to the impact of a modification or total elimination of the residence requirements; is that a correct statement?

A. Right.

BY MR. GILHOOL:

Q. Has the experience of New York, Rhode Island, Hawaii and Kentucky been called to the Legislature's attention?

A. The experience hasn't actually—

BY JUDGE SHERIDAN:

Q. What?

A. The experience hasn't proved that there is an influx of people in to receive assistance. However, it hasn't relieved the sentiment, the feeling, even in New York.

(98) BY JUDGE KALODNER:

Q. That wasn't the question asked of you. The question asked of you by Mr. Gilhool is whether or not the attention of the Legislature was called by the Department of Public Assistance or some other agency or some other person or individual to the experience of New York and Rhode Island?

JUDGE KALODNER: Is that your question?

MR. GILHOOL: Yes, sir.

BY JUDGE KALODNER:

Q. Would you answer that? In other words, was the Legislature told about the experience of New York