and Rhode Island; to wit, that it did not increase and result in any great increase?

A. Yes.

Q. Of the case load?

A. Yes, the Legislature has been informed.

Q. That was before the Legislature?

A. Yes.

BY JUDGE SHERIDAN:

Q. Did Rhode Island and New York eliminate residence requirements recently?

A. Rhode Island has as long as I can remember.

Q. All right.

A. And New York has been around 1940, I think.

(99) BY MR. GILHOOL:

Q. You have testified that all but four of the states have residence requirements.

Does Pennsylvania have reciprocal agreements with other states?

A. Yes, we have reciprocal agreements with 17 states.

Q. Do you recognize this as a copy of the Public Assistance Manual regulations on residence?

A. Yes, it is a copy.

MR. GILHOOL: You can hold onto that.

May I have marked for admission into evidence as Plaintiffs' Exhibit 1 the residence regulations of the State Public Assistance Manual.

(Residence regulations of the State Public Assistance Manual marked Plaintiffs' Exhibit No. 1 for identification.)

BY MR. GILHOOL:

Q. May I call your attention to the last page of those regulations, Appendix 1, Reciprocal States.

Those are the 17 states with whom Pennsylvania has reciprocity agreements?

A. Yes.

Q. Would you explain how reciprocity operates?

A. We initiate a request to the other state as to whether (100) they will grant assistance to people from Pennsylvania in a form agreement which obligates them to provide for people from Pennsylvania if we in turn provide for people from this other state without regard to the length of their residence in the state.

We have in all of these 17 states taken the initiative and we regularly keep in contact with other states.

We have one in process right now with Kentucky.

BY JUDGE SHERIDAN:

Q. I notice that Delaware is one of these states. How would that work with respect to this plaintiff?

The testimony shows she came here in December from Delaware.

A. Delaware, we would grant assistance to a resident from Delaware without regard to the length of stay that the person—

Q. Why hasn't it been granted in this case?

MR. GILHOOL: May I call your attention—

JUDGE KALODNER: Will you let her answer Judge Sheridan's question?

MR. GILHOOL: Certainly, sir.

A. If you notice Delaware is in relation to blind.

Q. I see.

A. Delaware withdrew. We had a reciprocal agreement with Delaware but they withdrew.

(101) BY JUDGE KALODNER:

Q. You just said that you are now working out an agreement with Kentucky?

A. Yes.

Q. I thought you told us a few minutes ago that Kentucky has no residence requirement.

A. I know. Neither does New York but they are on here too.

We work out a reciprocal arrangement anyway with New York State because this permits us to waive our year's residence requirements. They are all right but we are not.

Q. Now, is there permissive legislation to enable you to do so?

A. Yes, it is written right into the law, this reciprocity.

BY MR. GILHOOL:

Q. Miss Davis, do you recognize this letter?

A. Yes.

MR. GILHOOL: May I ask that this be marked as Plaintiffs' Exhibit 2 and offer it in evidence.

(Copy of letter dated June 23rd, 1966, addressed to Mr. Arlin M. Adams, Secretary of Public Welfare, from John E. Hiland, Jr., Director, State of Delaware Department of Public Welfare marked Plaintiffs' Exhibit No. 2 for identification.)

BY MR. GILHOOL:

Q. What is that letter, Miss Davis?

(102) A. The letter is from the State of Delaware to the Secretary of Public Welfare concerning reciprocal agreements in Public Assistance.

Q. And how does—how did it affect the agreement between Delaware and Pennsylvania?

A. It resulted in our eliminating our—well, it cancelled the reciprocal agreement.

Q. Do reciprocal agreements and their state change often?

A. Not frequently.

Q. In 1966 how many new regulations, how many new copies of Appendix 1—

JUDGE KALODNER: Where does this help us? What difference does it make?

MR. GILHOOL: Your Honor, it goes precisely to the arbitrary and capricious operation of this statute.

JUDGE KALODNER: Why?

MR. GILHOOL: Because had plaintiffs chosen to come to Pennsylvania at a slightly different season they would have received assistance.

JUDGE KALODNER: Because another state changes its rules, that means that there must be an increase on the part of the Pennsylvania Legislature.

MR. GILHOOL: Yes, sir, the Pennsylvania State Legislature.

(103) JUDGE KALODNER: That's what makes horse races. That is your idea.

I don't agree.

BY MR. GILHOOL:

Q. How often did it change in the course of calendar 1966?

A. We had made three changes in 1966.

Q. Does Pennsylvania seek these reciprocal agreements?

A. We have initiated them in all instances. No other state has approached us.

Q. Why does the Commonwealth seek them?

A. Because it is required under the law. It is an obligation under the law.

Q. Do these reciprocal agreements cost the State money?

A. No, they balance out. Just about as many persons from Pennsylvania go to the other states as come from other states into Pennsylvania.

Q. May I call your attention to this list of 17 states?

A. Yes.

Q. Would you indicate which of these states provides grants that are lower than those of Pennsylvania Public Assistance, and which higher, and which the same?

A. Arkansas is lower; Delaware is lower; Georgia is lower; Hawaii is lower; Idaho about the same; Maine lower; Michigan and Minnesota are about the same; Mississippi would be lower.

(104) New Hampshire lower; New Jersey about the same, a little higher in some areas; New York very substantially higher; Rohode Island higher; South Carolina lower; Virgin Islands lower; Wisconsin about the same.

BY JUDGE SHERIDAN:

Q. Before you leave that, are any of those 2967 families rejected, are any of those included here?

A. No.

Q. They are outside—

A. They wouldn't be. They are rejected.

BY MR. GILHOOL:

Q. May I call your attention to Section 3154.12 of the Manual of Regulations on Residence.

The provisions of that regulation I guess speak for themselves. The first paragraph and the last and last but one paragraph—

A. Yes.

Q. Would you turn your attention to those paragraphs?

How many rejected applicants have been assisted to return to the state from whence they came under this regulation?

A. We have not kept statistics on that.

Q. Is this provision 3154.12 called to the attention of all rejected applicants?

(105) A. Yes, indeed.

MR. GILHOOL: I have no further questions.

BY JUDGE LORD:

Q. Miss Davis, I would like you to clarify something for me.

Going back to the figures that you gave us that would result if the residence requirements were eliminated—

A. Yes.

Q. I believe you said that the cost would be $1,637,500 to the State.

A. Yes.

Q. And $1,400,000 to the Federal Government?

A. Yes.

Q. Is that in addition to the present cost of the administration of public assistance?

A. Oh, yes.

Q. This is in addition?

A. This would be additional cost.

Q. In other words so that I am absolutely clear, if the residence requirements were eliminated the cost would increase to the Commonwealth by $1,637,000?

A. Right.

Q. That is on your projection?

A. That is right.

(106) Q. On your projection?

A. On our projection, yes.

JUDGE LORD: I see. All right.

BY JUDGE KALODNER:

Q. Is this the projection of the Department, or your own projection?

A. No, this is the projection of the Department. We have a unit engaged in this.

Q. But you have failed to persuade the Legislature?

A. Right.

MR. CASPER: I have no questions of this witness.

BY JUDGE SHERIDAN:

Q. Do I understand your testimony now that you have recommended to the Legislature one out of five years, but your testimony is that the agency, your agency thinks there ought to be no restriction?

A. Well, we would like to see no restriction, I am sure, but one of the handicaps is the other states that have residence requirements and on the whole I think Governor Lawrence back in his administration tried to sway the Governors into agreement of eliminating residence requirements entirely.

We are looking to the Federal Government, (107) really, to take some responsibility in this.

BY JUDGE KALODNER:

Q. Well, did he—

A. This is part of the problem.

Q. All right, but you said Governor Lawrence proposed that to other states.

What was the premise of the proposal? Did he state it?

A. The elimination of the residence requirements.

Q. I know, but when he asked he must have given some reason for it.

A. They were proposing compact arrangements very much like our reciprocal agreements at this Governors Council, and Governor Lawrence's reply to this was that the compact agreements did not solve the problem, that the major thing with a mobile population was to remove residence requirements, that they no longer had the significance that they had.

It hampered people in their movement.

BY MR. GILHOOL:

Q. Do you recognize this letter?

A. Yes.

MR. GILHOOL: I should like to have marked as Plaintiffs' Exhibit 3 and offered into evidence the letter of Governor Lawrence to Governor

Rosellini, Chairman of the (108) Governors' Conference in 1959, precisely elaborating the governor's position as Your Honor has explored it.

(Copy of letter dated June 24, 1959, addressed to Honorable Albert D. Rosellini, Governor of Washington, Olympia, Washington, together with attachments, marked Plaintiffs' Exhibit No. 3 for identification.)

MR. GILHOOL: I have no further questions, Your Honors.

Thank you, Miss Davis.

(Witness excused.)

MR. GILHOOL: I call Stanley J. Brody to the stand.

STANLEY J. BRODY, sworn.

Direct Examination

BY MR. GILHOOL:

Q. Mr. Brody, what is your occupation?

A. I am a public welfare administrator.

Q. What position do you hold?

A. I am the Regional Director for the Southeast Region for the Department of Public Welfare.

JUDGE KALODNER: Keep your voice up, please.

(109) BY MR. GILHOOL:

Q. How long have you been Regional Director?

A. Approximately three years.

Q. What is your professional background?

A. I am a member of the Bar and I have both degrees in social work and law.

Q. Prior to your encumbency as Regional Director what positions did you hold?

A. I was Executive Secretary of the State and Local Welfare Commission, which is a State commission to repattern the delivery of welfare services in Pennsylvania.

Before that I was consultant to the Attorney General of the United States in the Office of Juvenile Delinquency.

Prior to that I was the editor of the Social Legislation Information Service which is a national service on social legislation.

I have also been a legislative analyst for the old Bureau of Public Assistance for the Federal Government.

Q. What are your duties as Regional Director of the Department of Public Welfare?

A. I coordinate the seven different programs the Department engages in in this five-county area.

Q. What does public assistance provide for the recipient (110) thereof?

A. Public Assistance provides basically three kinds of services.

One of course is the money grant service, the public assistance grant. Secondly, they provide social services in the way—to clients, and thirdly, they provide medical assistance services.

Q. With respect to the latter, Mr. Brody, would you describe the medical assistance provided under public assistance as such, and would you compare and

contrast that with other medical assistance programs administered by your department?

A. Our public assistance program really is two basic medical—two basic programs; one for people who are receiving money grants, who are on public assistance.

For them we have literally—I would prefer to call it subsidized medicine, but in essence it is a complete subsidization of the recipient so far as his medical needs are concerned.

We pay for his drugs, we pay for certain basic dental care, we pay for inpatient care, we pay for physician care in the home, and on an outpatient we do not pay for in the hospital at this point.

Q. As to that there is a residence requirement?

A. There is a residence requirement under the money grant (111) programs.

Q. What other medical assistance programs do you have?

A. The other medical assistance programs we have are for inpatient care. This roughly we use on an eligibility basis for the medically indigent.

A person would be medically indigent if there were a family of four and have an income of $4,000. That would give you a rough rule of thumb.

Q. As to that—

A. We would give 60 days of inpatient hospital care followed by 60 days after that of convalescent care in a nursing home.

Q. Is there a residence requirement for that program?

A. No, there is not.

Q. You mentioned social services that accompany public assistance, and that are available to recipients.

Would you describe them?

A. Within the administrative feasibility of an overworked staff our requirements are—what we would ask our employees to do, that—to help clients to live a—to a more complete existence in terms of getting training, educational training, and we do run educational programs.

Q. Would you describe some of them in particular?

A. For example, probably the best anti-poverty program in the City is run by the County Board of Assistance. We don't (112) make too much noise about it but we have 1200 recipients of public assistance who are functionally illiterate.

We are teaching them in cooperation with the Board of Education how to read and write.

We do that through a special incentive program which encourages them to attend these classes and many of them are now starting to graduate high school.

Q. Do you have a job training program?

A. We have also work training programs in conjunction with this program.

Q. What do recipients do with their children while they are attending either the literacy class or the job training?

A. We have tried to make arrangements for day care for them while they go into these job training programs or these educational programs.

Q. Will public assistance provide for these plans as well as the care of their children?

A. Yes.

Q. What particular job training programs are you associated with?

A. Do you mean within the Department itself?

Q. What kind of jobs?

A. Well, there are a variety of jobs; any kind of hospital, orderly job—

(113) Q. Licensed practical nurse?

A. Licensed practical nurse, for some purposes, yes; clerical jobs. For example, one of these girls works right in my office for half a day.

Q. Thank you. Given the residence requirement in the public assistance program, what ramifications does that have on other programs, public or private?

A. Well, for example, the Home for the Jewish Aged will qualify as a voluntary home, or any other voluntary home—I picked this one because I am intimately familiar with it, but will qualify its intake based on residence requirement since this is the way people would be funded in the home.

This is particularly true with almost every voluntary agency.

Q. Why does public assistance work such carry-over effect on other programs?

A. This is the basic support, you see, for the agency.

For example, the Stephen Smith Home is a home that services primarily Negro clients. It depends upon the public assistance grants in order to give the service.

Q. Does any other state or county program provide income maintenance for the indigent?

A. No.

Q. Is there any public provision, absent provision or income (114) maintenance for indigent newcomers?

A. The only possibility would be under a county program, if the county were to provide these services, and there is a statutory enabling act which would allow the county to do it. De facto it doesn't.

Q. De facto it doesn't?

A. No.

Q. Why doesn't it?

A. Well, I would say certainly in Philadelphia County it doesn't, and I don't—in my experience in going through almost every county in the state, generally speaking the position of the county commissioners and/or the local authorities is that this is an obligation they are not willing to accept.

Q. Have funds ever been appropriated to the counties—

BY JUDGE KALODNER:

Q. Public assistance programs were designed to do away with the old-fashioned poorhouse?

A. Yes.

Q. That was the very purpose?

A. Yes.

Q. To take it out of the hands of the counties?

A. That's right.

BY MR. GILHOOL:

Q. Mr. Brody, what are the characteristics of public (115) assistance recipients?

A. Well, the bulk of the public assistance recipients fall into what we call the ADC category. A small group, perhaps 10 percent, come into the old age assistance category; another 10 percent perhaps

in the blind category; another 10 percent or so in the disabled category, which takes you up to 30 percent.

You get a fill-in there of general assistance, but the bulk of your grants runs around into the ADC group, which would run at least 50 percent, perhaps a little more, of your total populations.

BY JUDGE KALODNER:

Q. Isn't the figure closer to two thirds than that?

A. I would think 60 percent is closer to that. I would have to consult the figures.

Q. I was familiar with the statistics a good many years ago inasmuch as I was Secretary of the Budget of Pennsylvania.

A. If you will recall old-age assistance used to take in a large number. That has dropped substantially because of the increase of Social Security, but the ADC category has steadily grown over the last 30 years.

BY MR. GILHOOL:

Q. What percentage of public assistance recipients are unemployable?

(116) A. This is a very subjective statement. Mr. Adams, Arlin Adams, had been the Secretary of Welfare.

BY JUDGE LORD:

Q. What is he doing now, by the way?

A. He is the Chancellor of the Bar, I think.

Q. Oh, yes.

A. Among other things, I suspect, but Mr. Adams and I had occasion to test this concept of employability.

Anybody the case worker thinks is employable must report to the Bureau of Employment Security periodically for jobs. We examined the statistics of it, knowing what was happening.

We challenged the Department of Labor and Industry. They said we were sending them unemployables.

Mr. Adams and I sat down at the Bainbridge office and looked at these people coming in and it was clear that they were unemployables, and we revised our definition of—our disabled definitions.

(117) As a result I would say today, for example, of the 115,000 people on public assistance in the City of Philadelphia, the County of Philadelphia—

BY JUDGE KALODNER:

Q. How many?

A. 115,000, I would estimate perhaps 5000 might be employable.

The Special Assistant to the President of the United States made a public statement a couple weeks ago which was well-recorded in the press in which he said of the—I don't know my universe on this, but my universe may be two or three million, that there were 5000—

BY MR. GILHOOL:

Q. 7.3 million.

A. 7.3 million, that perhaps there were 5000 who were employable.

Q. What is the average—

BY JUDGE KALODNER:

Q. In other words, the employment—the hard core is just unemployable?

A. That is correct.

BY MR. GILHOOL:

Q. What is the average length of time a recipient is receiving (118) public assistance?

A. About two years.

Q. In other words, receiving public assistance is rather a crisis matter?

A. That's right.

Q. People come and go?

A. They make other arrangements. It is really a crisis program.

Of course, it is more than that too because you have to remember that public assistance is really the most comprehensive program the state has to offer.

If you are mentally ill you need public assistance usually after you have been in the state hospital. Almost the only way you can get out of a state hospital is in terms of being supported.

If you have a problem in terms of children, this is —again comes in your medical problem, so public assistance in a comprehensive way really underlies your whole social fabric in terms of dealing with the crises people have in life.

Q. Are you saying without public assistance in many cases people faced with crisis would not be able to secure these other services as well?

A. That is correct.

(119) Q. How do Pennsylvania public assistance grants compare in money terms with those in other industrial states?

A. It depends upon the category.

Q. Industrial.

A. In aging and disabled we compare favorably.

JUDGE KALODNER: What does that have to do with the problem before us?

MR. GILHOOL: Your Honor—

JUDGE KALODNER: As to the adequacy or inadequacy of comparable payments?

MR. GILHOOL: Your Honor, it might well be, though I would argue to the contrary, that the state could say we have a legitimate interest in attempting to keep the poor out of the state, because we have a program of grants that is far in excess of any other state.

As I say, I would argue that is not permissible. I want to establish simply that Pennsylvania—

JUDGE KALODNER: That they have—

MR. GILHOOL: I think we want to establish the fact of whether Pennsylvania does or does not—

JUDGE KALODNER: Did you say that is a fact that should be taken into consideration?

MR. GILHOOL: One must accommodate eventual and fortuitous consideration.

(120) JUDGE KALODNER: I can't understand this.

MR. GILHOOL: Your Honor, is this one of those horse races where I can proceed with the question?

JUDGE KALODNER: Yes. I don't understand what you are trying to get to.

What difference does it make whether or not Pennsylvania grants are lower than any other state, or higher?

MR. GILHOOL: Your Honor, if they were higher possibly the state might be justified in attempting to keep people out.

If on the other hand they are not notably higher but are lower—

JUDGE LORD: I think, Mr. Gilhool, I must take issue with your formulation of that.

I don't believe that the state is trying to keep people out. I think the state is saying you can come in, but we have to have some kind of a reasonable regulation before we pay you public assistance.

MR. GILHOOL: Fine, Your Honor. The state is trying to keep them off public assistance, and they can do that either by foreclosing it to them when they come in, or not.

JUDGE LORD: All right.

MR. GILHOOL: That is the point.

(121) JUDGE KALODNER: Answer the question then.

THE WITNESS: As I pointed out, in the three categories of disabled, blind and old-age assistance, we have—we are comparable with other states.

When it comes to ADC, we are substantially lower than the states around us, the New England States, the Middle Atlantic States.

BY JUDGE KALODNER:

Q. ADC, is it?

A. Yes.

Q. You are talking about unemployment relief?

A. Public Assistance, ADC, Aid to Dependent Children.

Q. What about unemployment relief?

A. The general assistance category?

Q. Yes, the general assistance category.

A. In the general assistance categroy we are comparable and in some cases better.

BY MR. GILHOOL:

Q. How do our grants compare with those in New York?

A. We are radically lower.

Q. With those in Illinois?

A. Substantially lower.

Q. With those in Massachusetts?

A. Radically lower.

(122) BY JUDGE LORD:

Q. Have you made any—

BY JUDGE KALODNER:

Q. What about Southern States?

A. Radically higher.

BY JUDGE LORD:

Q. Have you made any inquiry into the state of the deficit in New York State as compared to the deficit in Pennsylvania?

A. In terms of its overall budget I would not want to qualify myself as a competent witness on this except that we have examined it, of course, and we take some great pride in the fact that we have managed, if the thrust of your question is that—how have we done in public assistance vis-a-vis New York State, we have been able to maintain our public assistance levels fairly well, but we think we have done this because, in the last eight years we have increased the health, the industrial health of Pennsylvania, and we have also, through these programs, helped people off public assistance in a constructive way.

MR. GILHOOL: I have no further questions.

BY JUDGE KALODNER:

Q. Do you have any familiarity with the state's fiscal operations?

A. Yes, sir.

(123) Q. All right, does Pennsylvania have a deficit now?

A. No, sir.

Q. I read in the paper that the Governor is talking about some $200 million in taxes.

A. I was answering your question, sir, as of now. In terms of the projected budget, yes. In terms of currently, we are probably running a small surplus, in terms of our '66-'67 budget.

It is the '67-'68 budget which will require additional taxation, if adopted by the legislature.

In other words, this is a projected budget which is proposed and is now under consideration.

MR. CASPER: I have no questions, Your Honors.

JUDGE LORD: I have nothing further.

JUDGE SHERIDAN: That's all.

MR. GILHOOL: Thank you, Mr. Brody.

I call Miss Florence Silverblatt.

(Witness excused.)

FLORENCE SILVERBLATT, sworn.

Direct Examination

BY MR. GILHOOL:

Q. Miss Silverblatt, what is your occupation?

(124) A. I am a social worker.

Q. What is your present position?

A. I am Director of the Social Services Division of the City of Philadelphia.

Q. How long have you been Director of the Social Services Division of the City of Philadelphia?

A. Seven years.

Q. How long have you been associated with the City Department of Public Welfare?

A. 15 years.

Q. What is the distinction between the City Department of Public Welfare and the Commonwealth Department of Public Welfare?

A. The Commonwealth Department of Public Welfare provides public assistance as you have just heard described by the two last witnesses.

The City of Philadelphia is the County Institution District under the supervision of the Commonwealth of Pennsylvania, but actually represents the City of Philadelphia which is a city and county co-terminus,

and provides services to dependent and neglected children of Philadelphia.

Q. What kind of services do you provide to dependent and neglected children?

A. We provide the basic services of—all the services that (125) will promote the health and welfare of dependent and neglected children, and specifically we provide emergency shelter case, emergency and temporary foster home care, basic foster home and institutional care, home-maker services and many services to strengthen family life.

Q. Do you offer any grants for income maintenance?

A. No.

Q. What services do you offer indigent newcomers?

A. Newcomers?

Q. Yes.

A. Are you speaking of the person coming into the city for the first time?

Q. Yes.

A. Well, the County Institution District of Philadelphia, or their allied departments, operate under the County Institution District Law.

Q. Yes.

A. And also under the Philadelphia City Charter.

Now, the Philadelphia Charter provides services to children and their families residing in Philadelphia County.

However, it does provide for flexibility in the provision of care when it will prevent the separation of children from their parents.

(126) Q. You have mentioned foster care. Suppose a young woman came to the department and said

she wanted to place her five children in foster care until next December.

What would you do?

A. I would—a request like that is not taken very lightly because basically we know from many years of child welfare experience that whenever possible children should be kept in their own home.

We would have to know why a mother is requesting the placing of her children.

Q. Suppose the mother wanted to go to work?

A. Well, again, this goes right back to the White House Conference on Children, that children should not be removed from their parents for financial reasons and that children should not be removed except for compelling reasons.

Now, there are times when there are no parents to provide for the children or there are other times when children are neglected. We must protect the children, but we do look very carefully as to why children are separated from their parents.

Q. So is it strong public policy of your department to keep the family together?

A. Yes.

(127) BY JUDGE LORD:

Q. Let me ask you this, though. Suppose the mother has no income at all and suppose the mother is about to be evicted from where the mother and the children are living together as a family, and the mother finally decides that well, there is only one thing to do, there is only one thing left and that is to go to work and comes to you and says, "Will you place my children?"

A. Well, Your Honor, our first question would be why she could not have emergency or public assistance or temporary public assistance.

Q. From where?

A. From the Office of Public Assistance.

Q. Pennsylvania Public Assistance?

A. Yes.

Q. But she says, I have got the answer to this, "They tell me I have not been here for a year."

A. Then we would have very grave question in providing for placement for the children, not that we wouldn't have to keep these children on an emergency basis if they had no shelter, but we would argue this very strenuously because of the fact that—there are two facts, but the first fact is that this is not providing for the best welfare of the child, for the mother to be separated.

(128) Q. What do you do with them if they have got no money, no food, no shelter?

A. Well—

Q. What do you say? "It is better you stay with your mother"?

A. No, but, Your Honor, I think the question that is being raised by you is the very question that is the issue here.

Q. That is exactly why I raised it. I think we might better get to that.

A. May I speak of this in a little more detail?

I am saying to you that we would not in our department allow any child to go without shelter, and we would certainly take those children in, but I am saying that it is a very bad policy from the point of view of human value.

Let me tell you, financially when we are talking about these programs—

BY JUDGE KALODNER:

Q. You do give them help, though? You say it is a bad policy but in this particular case we have before us where the lady has five children, all of very tender age, you would take those children and place them in foster homes, wouldn't you?

A. We would, temporarily.

BY MR. GILHOOL:

Q. Until she satisfied the residence requirements?

(129) A. Yes.

Q. In this case it would be next December, so let's have a concrete case.

You would place the children in a foster home until next December?

A. We would have to, Your Honor.

Q. Miss Silverblatt, do you have available foster homes this day?

A. That is a very good question. You are making me wash my linen in public.

We have—serve 6200 children in this city. We have 711 foster homes. We purchase care from 25 voluntary agencies. We have children in our two centers awaiting care.

They should be there 90 days. They sometimes wait two years in order to find resources for these children.

Q. You speak of two centers. Where are they?

A. One center is called the Stenton Child Care Center, located in Germantown, which provides emergency care for children from three to eight. The capacity is 135. At present we have 168 there.

We have another center on Callowhill Street for infants up to three years of age. The capacity is 45. We have 47 there.

(130) Q. When do you place children in these homes?

A. Whenever there is an emergency in the family.

Q. And temporary foster homes are not available?

A. And temporary foster homes are not available.

Q. What is the average length of time that children wait in those homes for placement in private foster homes?

A. Six months is our average.

MR. GILHOOL: That's all.

Mr. Casper?

MR. CASPER: I have no questions.

MR. GILHOOL: I have no further questions. Thank you, Miss Silverblatt.

(Witness excused.)

JUDGE LORD: Mr. Gilhool, if we were to declare this section of the Act unconstitutional, that is the residency requirement, and I ask that question—

MR. GILHOOL: Yes, sir. I understand. It is a hypothetical.

JUDGE LORD: —containing no implication whatsoever of what would happen, would the entire Act fall?

MR. GILHOOL: No, sir. The Act is—the provisions of the Act are severable.

(131) JUDGE LORD: There is a severability provision in the Act?

MR. GILHOOL: Yes, sir. Your Honor, I should welcome the opportunity to present argument to the Court after further brief, if Your Honor finds it appropriate and convenient to set some date over the next little while.

JUDGE SHERIDAN: Isn't the Commonwealth going to present anything on the reasonableness of this one-year requirement?

MR. CASPER: If it please Your Honors—

JUDGE KALODNER: Come up to the bar of the Court.

MR. CASPER: At the hearing we had in this case before, you may recall the questioning. It was asked of Mr. Gilhool whether the quantity of the durational residence was in question.

His position was—it was an all-or-nothing position. Durational residence requirements, period, were unconstitutional, so we have positioned our counterargument on that basis.

JUDGE SHERIDAN: Just because he takes that position? Suppose we don't think that?

MR. CASPER: Subject to the argument in our brief, Your Honor, where we cited a number of arguments in (132) support of the reasonableness of specifically the one-year period, we made reference if you may recall to the provisions in the Social Security Act which allow a residence period of up to one year.

We made reference to the tie-in between the one year and fiscal budgeting.

These are arguments we addressed ourselves to.

JUDGE KALODNER: Miss Davis, who is presently employed by the Department, and there is no reason to question—she seems a very knowledgeable witness, and she said that the total cost to the state would be $1,637,000 per year if the residence requirement was waived, and that compares to an annual outlay of some $336,500,000.

MR. CASPER: Yes, Your Honor.

JUDGE KALODNER: Which is an infinitesimal fraction.

JUDGE LORD: Less than one-half of 1 per cent.

MR. CASPER: Yes, Your Honor.

JUDGE KALODNER: That is in essence the state's position, and the department having to do with the situation has recommended to the Legislature that the provision be repealed because it would be of little cost, minute cost, to the state.

(133) Judge Lord has said it is less than one-half of 1 per cent.

MR. CASPER: I believe so, Your Honor, but these have been proposals that have been put to the Legislature not just once—

JUDGE KALODNER: Don't we have to decide whether or not this provision in the law is a reasonable one?

MR. CASPER: In one sense, yes, Your Honor.

JUDGE KALODNER: What other sense is there?

MR. CASPER: In two phases. Mr. Gilhool's first argument is to say that no residence requirement at all can be.

JUDGE SHERIDAN: Suppose we reject that?

MR. CASPER: Then the Court would have to face the question of what kind of residence requirement.

JUDGE SHERIDAN: You have submitted no evidence.

MR. CASPER: Your Honor, I say that we, in our brief, addressed ourselves to that, giving some argument in support of the present one year's requirement.

JUDGE SHERIDAN: What about the facts? How do we know about the budget other than what we have heard today?

This is the first we have heard.

(134) MR. CASPER: If I may say so, Your Honor, I am in a position of representing the Commonwealth in a case where the constitutionality of a state statute is being challenged, a statute passed by the Pennsylvania Legislature.

The Department of Public Welfare as part of the Executive may or may not agree with what the Legislature has enacted into law.

At the moment as I conceive my job to be, I have to try and put before Your Honors what I can to sustain the legality of the law as it is on the books, irre-

spective of what the department may have to say with respect to the reasonableness of the test that is presently adopted, or some modification thereof. That is the law at the moment.

JUDGE LORD: It is, at the moment.

MR. CASPER: Yes, sir, but I have not been briefed nor do I know of any machinery where I could be briefed by the gentlemen of the Legislature who are responsible for this particular policy.

If I were to produce evidence—

JUDGE KALODNER: You might be briefed on the legislative position, that of the Department.

JUDGE LORD: You have given us no facts at all.

MR. CASPER: No, Your Honor. I don't see how (135) I can. If I could—

JUDGE LORD: The plaintiff did. The plaintiff gave us facts. The plaintiff gave us facts showing that the increase, if the residence requirements were lifted, would be only ½ of 1 per cent of an increase over the total budget.

The plaintiff has presented evidence here that there would be no budgetary problems; in fact, the budgetary problems or the administrative problems would be less if the residence requirements were eliminated.

The Commonwealth has given us no facts whatsoever.

MR. CASPER: If I may say so, Your Honor, the witnesses that Mr. Gilhool called are the very people that I would rely on for my facts. The facts would be exactly the same.

JUDGE LORD: Splendid, then.

MR. CASPER: But I am saying, if I may say this, these are the experts from the Department of Public Welfare. The experts of the Department of Public Welfare and the Department is not necessarily responsible for the decision which is reflected in law.

That is my problem in this situation. I have no indication from any source that the facts would be—the (136) Legislature might come forward with different facts.

JUDGE SHERIDAN: You have argued in your brief that for budgetary reasons this is reasonable.

MR. CASPER: Yes, Your Honor.

JUDGE SHERIDAN: In view of this evidence today do you withdraw that argument?

MR. CASPER: Certainly not. I would say to Your Honor that I would have to take a position that however, whatever it would be in percentage, that one million and some dollars is something to be reckoned with, and if the Legislature wants to use that money for some other purpose on their priority scale, that they have the power to do it, although other people might disagree with it. That is the position.

JUDGE KALODNER: Don't they have to reasonably do it?

MR. CASPER: Reasonably, within a very broad discretion, Your Honor.

In other words, it is not a question of having a large fund of monies available and somebody saying do you

have anything like a reasonable claim? If so, we will grant it to you.

It is a matter of not enough money being (137) available for all the needs that there are, even in terms of the levels of public assistance of all categories, so therefore even one million dollars is very important. It is not a question of going to a reasonable place.

JUDGE KALODNER: Do you know how much the budget of Pennsylvania is?

MR. CASPER: It is very considerable, Your Honor, but I will still say that one million dollars may also be considerable in terms of where it is allocated, and this is a question of—in which the Legislature should be given last discretion.

JUDGE LORD: Suppose it was $50?

MR. CASPER: We would be reduced, I confess, to de minimis, Your Honor.

JUDGE LORD: All right.

JUDGE KALODNER: You have no evidence to offer? The Commonwealth has no evidence to offer?

MR. CASPER: No, Your Honor.

JUDGE LORD: All right, we have it on the record. Mr. Gilhool, do you wish to file a further brief?

MR. GILHOOL: Yes, Your Honor. I do.

JUDGE LORD: Within what time?

MR. GILHOOL: Ten days at the very longest, (138) Your Honor.

JUDGE LORD: Very good. Does the Commonwealth wish to file another brief?

MR. CASPER: If at all we would like to file it after Mr. Gilhool submits his to us.

JUDGE LORD: We will give you ten days from the date on which you receive Mr. Gilhool's brief. That does not mean ten days from today. If he gets his in in five days, you have 15 days from today.

MR. CASPER: I understand. Thank you very much.

JUDGE LORD: Then if we determine that we want oral argument we will so advise you.

MR. GILHOOL: Thank you, Your Honor. My request stands of record.

JUDGE SHERIDAN: You want oral argument, do you?

MR. GILHOOL: Yes, sir.

JUDGE LORD: How about if we think your brief is so abundantly clear that—

MR. GILHOOL: Your Honor, I have no desire to burden you further.

JUDGE LORD: I think we understand your position.

(Adjournment at 12:25 p.m.)

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

(Title Omitted in Printing)

VIII.

MOTION FOR DETERMINATION THAT CLASS ACTION MAY BE MAINTAINED

Pursuant to Fed. R. Civ. P. 23, plaintiffs move this Court to determine by order that the action herein brought as a class action to be so maintained, on the following grounds:

1. Plaintiffs are members of that class of persons, citizens of the United States and residents of the Commonwealth of Pennsylvania, who are entitled to public assistance except that they have not resided in Pennsylvania during the immediately preceding one year.

2. The persons constituting the class are so numerous as to make it impractical to bring them all before this Court.

3. There are questions of law common to the class and the claims of plaintiffs here are typical of the claims of the class.

4. Plaintiffs fairly and adequately represent the class and will fairly and adequately present its interest.

5. Defendants have refused public assistance on grounds applicable to the class, namely, the provisions of the Public Assistance Law of the Commonwealth of Pennsylvania, Act of June 24, 1937, P. L. 2501, Secs. 9 (a) (2) and 9 (d), as amended, 62 Purd. Stat. Sec. 2508.1 (6) which require residence in Pennsylvania for one year immediately preceding application as a condition of public assistance, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

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

(Affidavit of service omitted in printing.)

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

(Title Omitted in Printing)

IX.

ORDER

And Now, this 31st day of May, 1967, pursuant to Fed. R. Civ. P. 23, it is determined and hereby Ordered that the above mentioned action is to be maintained as a class action on behalf of that class of persons, citizens of the United States and residents of the Commonwealth of Pennsylvania, who are entitled to public assistance except that they have not resided in Pennsylvania during the immediately preceding one year.

By the Court:
(s) Joseph S. Lord, III
J.

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

(Title Omitted in Printing)

X.

FINDINGS OF FACT, DISCUSSION AND CONCLUSIONS OF LAW

Before: Harry E. Kalodner, Circuit Judge, and Michael H. Sheridan and Joseph S. Lord, III, District Judges.

By: Joseph S. Lord, III, District Judge.

FINDINGS OF FACT

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1. Plaintiffs are Juanita Smith, individually and, by her, her minor children, John Smith, Tabitha Miller, Sophia Paynter, William Paynter, and Voncell Paynter.

2. Defendants, with the exception of William C. Sennett, Attorney General of the Commonwealth of Pennsylvania, are variously charged with the powers and duties of administering public assistance, determining the eligibility of all applicants, superintending the public assistance program, and establish-

ing rules, regulations, and standards for administration by County Boards of Assistance.

3. The Act of June 24, 1937, P. L. 2051, §§9(a)(2) and 9(d), as amended, 62 Purd. Stat. §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.

4. Plaintiff Juanita Smith resided in Philadelphia, Pennsylvania until 1959 and attended public schools in Philadelphia. From 1959 to December 1966, plaintiff Juanita Smith and other plaintiffs as they were born resided in the State of Delaware. Since the second week of December, 1966, plaintiffs have resided at 2859 Amber Street, Philadelphia, Pennsylvania.

5. Plaintiffs are now and were at the time of the institution of this suit citizens of the United States.

6. Plaintiffs intend to reside permanently in Pennsylvania.

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

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

9. 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.

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

11. No alternative resources, either from public programs or private agencies, exist to provide financial assistance to maintain plaintiffs here.

12. Plaintiffs are faced with a choice of remaining in Pennsylvania with no income to maintain themselves, separating the family by placing the children in foster home care, or returning to Delaware.

13. Plaintiffs are suffering and will suffer immediate, certain, great and irreparable injury from termination of public assistance.

14. If preliminarily enjoined from refusing to continue public assistance to plaintiffs, defendants will suffer negligible injury.

DISCUSSION

Requisite to the granting of a preliminary injunction is a showing that the plaintiff will suffer irreparable injury and a balancing of the "conveniences of the parties and possible injuries to them according as they may be affected by the granting or withholding of the injunction." Yakus v. United States, 321 U. S. 414, 440 (1944); Joseph Bancroft & Sons Co. v. Shelly Knitting Mills, Inc., 268 F. 2d 569, 574 (C. A. 3, 1959). We have found that plaintiffs will suffer irreparable injury. On the other hand, it is obvious that any injury to the Commonwealth would be *de minimis*. Thus, as to this essential, the balance is heavily in favor of the plaintiffs.

There are on the record here serious and substantial questions[1] of constitutional dimension, *inter alia,* as to whether the one-year residence requirement in the Pennsylvania Act of June 24, 1937 is a reasonable classification.[2]

CONCLUSIONS OF LAW

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1. The Court has jurisdiction over the parties and the subject matter.

2. Plaintiffs have raised serious and substantial issues concerning the constitutionality of the Pennsylvania Act of June 24, 1937, P. L. 2051, §§9(a) (2) and 9 (d), as amended.

3. The record presents serious and substantial questions of constitutional dimension.

4. Plaintiffs will suffer imminent and irreparable harm if preliminary relief is withheld.

5. Any injury to defendants as a result of the granting of preliminary relief will be negligible.

6. Plaintiffs are entitled to a preliminary injunction as prayed.

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[1] Railroad Yardmasters of America v. Pennsylvania Railroad Company, 224 F. 2d 226, 229 (C.A. 3, 1955).

[2] Carrington v. Rash, 380 U.S. 89, 93 (1965); McLaughlin v. Florida, 379 U.S. 184, 190 (1964).

DECREE

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1. And Now, June 1, 1967, defendants are preliminarily enjoined from enforcing sections 9 (a) (2) and 9 (d) of the Act of June 24, 1937, P. L. 2051, as amended, and from withholding relief benefits from plaintiffs because of the terms of those sections.

2. This preliminary injunction shall not be construed to extend to any person other than the plaintiffs set forth in Finding of Fact No. 1.

By the Court
Joseph S. Lord, III
J.

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

XI.

AFFIDAVITS

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(1) AFFIDAVIT OF JOSE FOSTER

Commonwealth of Pennsylvania
County of Philadelphia, ss:

Jose Foster, being first duly sworn, on oath, deposes and says:

1. That she is applicant for intervention as plaintiff in the present action, and plaintiff in the complaint attached to said application, and the mother of four minor children, by her, applicant-plaintiffs in the present action.

2. That neither she nor her children have any income whatever.

3. That with her four children she presently shares a six room house, three bedrooms and one bath, with her sister and brother-in-law and their six minor children.

4. That all three adults and ten children share the same table, supplied only by her brother-in-law's limited income.

5. That she has been placed by medical advis[c]e upon a special non-salt diet because of her high blood pressure, which diet alone requires special expenditures on food.

6. That she is under medical care requiring frequent visits to Temple University Hospital but that without the necessary money for transportation she has not been able to keep many of these appointments.

7. That she has applied for public assistance and with her children is in immediate and irrevocable need of public assistance, as demonstrated by the fact that she is eligible therefor and fully entitled to receive it except that, with her children, she has not resided continuously in Pennsylvania for one year immediately preceding her application for public assistance.

7. That she and her children are suffering and will suffer immediate and irreparable injury from the denial of public assistance.

(s) Jose Foster
Jose Foster

(Jurat omitted in printing)

(2) AFFIDAVIT OF LOUISE THOMPSON

Commonwealth of Pennsylvania
County of Philadelphia, ss:

Louise Thompson, being first duly sworn, on oath, deposes and says:

1. That with her husband, Howard Thompson, and six children, aged 12, 11, 9, 7, 4 and 2 years, she resides at 2143 North Newkirk Street, Philadelphia, Pennsylvania.

2. That since August 28, 1967, her sister, Joe Foster, and her four children have lived with her and her family, sharing her table and her husband's income.

3. That the house at 2143 North Newkirk Street has only three bedrooms and one bath and is thus overcrowded by the presence of three adults and ten children.

4. That her family's income ranges between $80 and $90 per week because of seasonal variations in her husband's work.

5. That her family's gas bill is one and one-half months in arrears, that a shut-off notice has been received from the Gas Works, that on November 6, 1967 an employee of the Gas Works appeared to turn the gas off, refrained from doing so only because she was not at home, and promised to return within the week.

6. That her family's telephone bill is two months in arrears.

7. That her family has no income or savings from which to pay the overdue bills.

8. That the monthly rent of $59.50, exclusive of utilities, is due November 15, 1967 and that if that expense is to be met at all, it must be met out of next week's income, as must the food and other necessary daily expenses.

9. That her family's income is insufficient to support three adults and ten children at a minimum standard of health and dignity.

10. That she has been under treatment at Temple University Hospital for a nervous condition which condition has been aggravated by the present crowded and lean circumstances.

11. That one of her children, an 11 year old son who is not in school, is retarded and disturbed and that his condition is aggravated by the crowded and lean circumstances.

12. That she and her family are suffering and will continue to suffer immediate and irreparable injury from the denial of public assistance to her sister and her sister's family.

(s) Louise Thompson
Louise Thompson

(Jurat omitted in printing.)

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

Civil Action No. 42419

Juanita Smith, individually, and by her, her minor children, John Smith, Tabitha Miller, Sophia Paynter, William Paynter, Voncell Paynter, 2859 Amber Street, Philadelphia, Pennsylvania; 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, 1400 Spring Garden Street, Philadelphia, Pennsylvania; Thomas W. Georges, Jr., Secretary of the Department of Public Welfare of the Commonwealth of Pennsylvania Health and Welfare Building, Harrisburg, Pennsylvania; William C. Sennett, Attorney General of the Commonwealth of Pennsylvania,

Defendants

Jose Foster, individually, and by her, her minor children, Jeanette Foster, Annie Bea Foster, William Foster, Frances Foster, 2143 North Newkirk Street, Philadelphia, Pennsylvania

Applicants for Intervention as Plaintiffs

XII.

ORDER

And Now, November 14, 1967, upon the motion of Jose Foster, individually, and by her, her minor children, Jeanette Foster, Annie Bea Foster, William Foster and Frances Foster, for leave to intervene as plaintiffs in this action, it is Ordered that said applicants be and hereby are granted leave to intervene as plaintiffs in this action.

Joseph S. Lord, III.
J.

In The United States District Court For
The Eastern District of Pennsylvania

(Title Omitted in Printing)

XIII.

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 and a hearing, because immediate and irreparable injury, loss and damage will result to applicants for intervention as plaintiffs, Jose Foster and her four minor children, before notice can be served and a hearing had thereon, in that defendants have denied public assistance to applicant-plaintiffs and left them 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 applicant-plaintiffs do not permit such a hearing.

Now, therefore, on motion of the applicant-plaintiffs,

It is ordered that defendants, each of them, their agents, servants and employees, and all persons act-

ing by, through or under them or either of them or by or through their order be, and they are hereby, restrained from denying public assistance to applicant-plaintiffs Jose Foster and her four minor children solely because they have not resided continuously in Pennsylvania during the year immediately preceding their application for public assistance.

Issued at 2:20 o'clock p.m. this 14th day of November, 1967.

Joseph S. Lord, III.
J.

In The United States District Court For
The Eastern District of Pennsylvania

Civil Action No. 42419

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

vs.

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

XIV.
OPINIONS OF THE COURT

OPINION

Before: Harry E. Kalodner, *Circuit Judge,* and Michael H. Sheridan, and Joseph S. Lord, III, *District Judges.*

By: Joseph S. Lord, III, *District Judge.*

This class action challenges the constitutional validity of a Pennsylvania statutory provision which requires applicants for public welfare to have resided in the State for a period of one year immediately preceding the date of application for assistance. The members of the class are citizens of the United States and bona fide residents of Pennsylvania who would otherwise be qualified for public assistance but for the fact that they have not resided in Pennsylvania for a period of one year. We hold that the residence requirement, as presently administered, constitutes a denial of "equal protection of the laws" to members of the class, and that accordingly, Section 432 (6) of the "Public Welfare Code," Act of June 13, 1967 P. L. ..... (Act No. 21)[1] is void and may no longer be enforced.

We are aided in our conclusion by full evidentiary hearings. Plaintiffs' evidence showed that the requirement of one year's residence as a condition to the receipt of public assistance has no logical basis and is wholly arbitrary in its application to needy residents of the Commonwealth. The Attorney General of Pennsylvania, far from disputing this evidence, openly embraced plaintiffs' proofs, adopting the testimony of the expert witnesses who were produced, while introducing no evidence of his own.[2]

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[1] At the time suit was instituted, the identical provisions were contained in Sections 9(a)(2) and 9(d) of the Act of June 24, 1937, as amended, 62 Purdon's Pa. Stat., Section 2508.1(6).

[2] The Deputy Attorney General stated for the record at the conclusion of the second hearing: "If I may say so, Your Honor, the witnesses that Mr. Gilhool [plaintiffs'

(1) The one-year residence requirement does not necessarily prevent migration to the State of impoverished individuals, nor would the abolition of the requirement enhance the attractiveness of the Commonwealth to such persons. Thus, there would be no noticeable increase in the influx of newcomers, poor and otherwise, if the requirement were deleted.

(2) Those persons who do come to Pennsylvania and find themselves in need of public assistance within the first year of their arrival do not, to any significant extent, emigrate to the State for the purpose of obtaining such aid. Although the fact that they may not at present obtain welfare benefits may tend to deter or discourage migration to the State, there is concededly no competent evidence that it does so in fact, nor is there evidence that newcomers, once arrived, depart once they discover their subordinate status. Those who come into the State (and later find themselves in need of public assistance) do so for reasons wholly unrelated to the incidental benefits of public welfare which might be available to them. In most instances, they come to accept or seek employment in the State, to rejoin or join family relations, or for health reasons. Seeking new opportunities or established contacts, they find themselves temporarily in need of public assistance; they apply for such help, and it is denied to them.

(3) The cost to the Commonwealth of providing public assistance to those to whom it is now refused

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counsel] called are the very people that I would rely on for my facts. The facts would be exactly the same." N.T. 135.

because they have not been residents of the State for at least one year would be an insignificant portion of the present welfare budget—about one half of one per cent—and half of this amount would be absorbed by the Federal Government.

(4) Administrative costs and budgetary problems would actually be significantly decreased if the residence requirement were abolished; the necessity of screening and investigating applicants in this respect would be eliminated and the savings to the Department of Public Welfare in time and money would be substantial.

(5) The Commonwealth can ascribe no purpose at all to the distinction made by the Statute between residents who have lived in the State for over one year and residents who have not. The Attorney General's position is simply that the Legislature may allocate the State's resources in any way it wishes, and that it may discriminate freely among residents in the matter of public welfare benefits except with respect to the applicant's race, religion, or sex. Any other distinction or classification is permissible, argues the Attorney General, since the Legislature has the uncontrolled discretion to spend its money on whichever of its residents it chooses to favor.

It is elementary constitutional doctrine that the Equal Protection Clause of the Fourteenth Amendment prohibits a State or instrumentalities of the State from invidious discrimination among its citizenry. Reitman v. Mulkey, 387 U. S. 369. There is, of course, no constitutional right to receive public welfare any more than there is a constitutional right

to public education or even public police protection. However, if the State chooses to provide such public benefits, privileges, and prerogatives, it cannot arbitrarily exclude a segment of the resident population from their enjoyment. It is for this reason that classification in State statutes which purport to exclude from coverage one or more classes of individuals who would otherwise qualify for the advantages and opportunities conferred by the Legislature must be examined in order to determine whether there is any legitimate purpose for the distinction; whether an important and constitutionally cognizable State interest inheres in the classification, or whether on the other hand, the exclusion is purely arbitrary. Loving v. Virginia, 388 U. S. 1 (1967); Carrington v. Rash, 380 U. S. 89, 93 (1965); McLaughlin v. Florida, 379 U. S. 184, 1960 (1964). If the distinction is arbitrary, then the statute deprives the citizens so excluded of equal protection of the State's laws and of the benefits which those laws may impart. A discrimination without rational basis and without legitimate purpose or function is inherently invidious, and hence constitutionally interdicted.

In the context of the present case, we are totally at a loss to discern what purpose, if any, the Pennsylvania Legislature has ascribed to the one year residence requirement. To require a period of one year's residence as a condition to the receipt of public assistance results in the division of Pennsylvania residents into two classes: those who have lived in the State for one year and those who have lived in the State for less than one year. Such a distinction has no apparent purpose. See Green v. Department of Pub-

lic Welfare, 270 F. Supp. 173 (Del. 1967).[3] The Attorney General does not, of course, contend that its purpose is to erect a barrier against the movement of indigent persons into the State or to effect their prompt departure after they have gotten there and begun to realize the disadvantages of second-class citizenship. Such a purpose would be patently improper and its implementation plainly impermissible. The right to travel freely without deterrence is inherent in the notion of a unified nation, and no State may exclude citizens migrating from other States, whatever the reason for the migration. Edwards v. California, 314 U. S. 160 (1941); United States v. Guest, 383 U. S. 745 (1966). In any event, the proof mutually accepted by both sides in this case is that deletion of the residence requirement would not result in an influx of destitute relief-seekers.

Nor is there any contention that the residence condition enhances the administrative effectiveness of the Public Assistance Act. To the contrary, all of the evidence is to the effect that many of the burdensome budgetary and administrative problems which are currently encountered by welfare officials in the conduct of the public assistance program would be substantially alleviated by the removal of this bottleneck in the processing of applicants. Moreover, the added cost of the Commonwealth of helping the now excluded class would be relatively insignificant. Needless

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[3] See also Thompson v. Shapiro, 270 F. Supp. 331 (Conn. 1967) (presently on appeal to the United States Supreme Court) Ramos v. Health & Social Services Bd., F. Supp. (Wis. 1967) Harrell v. Tobriner, F. Supp. (D.C. 1967).

to say, there would be some increase in cost. It is axiomatic that Pennsylvania does save some money now by excluding residents of less than one year. But the constitutional test of equal protection is not satisfied by considerations of minimal financial expediency alone. To be sure, the State may reduce or even eliminate entirely welfare payments if it chooses to conserve resources in this fashion; it may turn all beggars from its doors. But it may not arbitrarily turn away some who are in need while bestowing its charitable favors on others. There must be some otherwise legitimate purpose for excluding members of the class who are in fact deprived of the protection and privileges of existing laws. It is not enough to say that the class is excluded because money is saved.

Needy newcomers are no less needy because they are newly arrived. They are no less residents of the State because they have only lately begun to reside there. And they are no less entitled to enjoy the public welfare benefits of which every needy resident of Pennsylvania may partake simply because they have experienced their critical need soon after migrating to their new home.

We do not seek to substitute our judgment for that of the Pennsylvania Legislature. We merely find as an indisputable conclusion of fact, as well as of law, that the Legislature itself has ascribed no proper purpose to the one-year classification. If the classification is without purpose, it is arbitrary *per se* and offends the Equal Protection Clause.

The Pennsylvania residence requirement constitutes a manifest violation of the Equal Protection Clause;

accordingly, the Commonwealth will be enjoined from its further enforcement.

(s) Joseph S. Lord, III

DECREE

And Now, this 18th day of December 1967, it is Ordered and Decreed that:

(1) Defendants are permanently enjoined from enforcing Section 432 (6) of the "Public Welfare Code," Act of June 13, 1967, P. L. ..... (Act No. 21), and from withholding relief benefits from plaintiffs because of the terms of that section;

(2) The enforcement of this injunction is stayed pending prompt application to the Supreme Court for such further stay as that Court deems proper, pending appeal, Provided that a notice of appeal is filed within the time and in the manner prescribed by law;

(3) The preliminary injunction entered on June 1, 1967, respecting the named individual plaintiffs and extended to the named intervening plaintiffs on November 14, 1967, is contined in force pending the final disposition of this permanent injunction.

By the Court
Joseph S. Lord, III.
J.
Michael H. Sheridan
J.

Sheridan, *District Judge,* concurring.

I concur in holding that the Pennsylvania one-year residence requirement violates the Equal Protection Clause, and must be enjoined from further enforcement. I do not believe that any and all time limitations would be constitutionally interdicted. Rather, I am not convinced that on the present record a rational basis or legitimate purpose can be found in the budget-making function of the Legislature. The record reveals no other basis or purpose which would justify a one-year residence requirement in this kind of legislation.

Michael H. Sheridan

(s) Kalodner

Kalodner, *Circuit Judge,* dissenting.

By legislative enactment forty states of the Union and the District of Columbia[1] impose a one-year residence requirement as a condition of eligibility to qualify for public assistance grants to needy families with children.

The Congress of the United States, in enacting legislation providing for federal contributions to such state administered public assistance programs has in specific terms provided that states may establish a one-year residence eligibility requirement.[2]

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[1] District of Columbia Public Assistance Act of 1962, Title 3, Chapter 2, D.C. Code; §3-203, "Eligibility for public assistance", enacted by Congress on October 15, 1962.

[2] Section 602(b), 42 U.S.C.A.

The majority now holds that the one-year residence requirement imposed by the Pennsylvania statute [3] is unconstitutional under the Equal Protection Clause of the 14th Amendment because in its view it "has no logical basis and is wholly arbitrary in its application to needy residents of the Commonwealth."

In striking down the Pennsylvania statutory provision, the majority has, in sum, substituted its judgment for that of the Pennsylvania legislature, the legislatures of its thirty-nine sister states, and last enacted the federal contribution statute and the District of Columbia statutes.

The majority's action constitutes nothing less than judicial usurpation of the legislative function in presumptious disregard of the doctrine of separation of powers so firmly established since the founding of our Republic and of the teaching of numerous decisions of the Supreme Court of the United States.

In my opinion, the majority's "fact finding" that the statutory one-year residence requirement "has no logical basis and is wholly arbitrary," is entirely without evidentiary premise.

I am of the view that this Court should reject the plaintiffs' contention that the Pennsylvania statute is in contravention of the Fourteenth Amendment because the plaintiffs have failed to rebut the presumption of its constitutionality by proof that the statute "does not rest upon any reasonable basis, but is essentially arbitrary." Lindsley v. Natural Carbonic Gas Co., 220 U. S. 61, 79 (1911).

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[3] Section 432(6) of the Pennsylvania Public Welfare Code, Act of June 13, 1967.

Discussion of the views stated must be prefaced by a statement of these settled principles to which a federal court must adhere in determining whether a statute contravenes the Fourteenth Amendment:

> ". . . [T]he Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others," and "The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective." [4]
>
> "State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality" and "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." [5]
>
> "Every presumption is to be indulged in favor of faithful compliance by Congress with the mandates of the fundamental law," and "Courts are reluctant to adjudge any statute in contravention of them." [6]
>
> "One who assails the classification" in a state statute "must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary." [7]

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[4] McGowan v. Maryland, 366 U.S. 420, 425 (1961).
[5] Id. 425, 426.
[6] United States v. Butler, 297 U.S. 1, 67 (1936).
[7] Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78, 79 (1911).

> "A statute is not invalid under the Constitution because it might have gone farther than it did . . ." [8]
>
> ". . . 'reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind.' " [9]
>
> "Normally, the widest discretion is allowed the legislative judgment in determining whether to attack some, rather than all, of the manifestations of the evil aimed at; and normally that judgment is given the benefit of every conceivable circumstance which might suffice to characterize the classification as reasonable rather than arbitrary and invidious." [10]
>
> Federal courts are now endowed with authority to determine whether the Congressional [legislative judgment] . . . is sound or equitable, or whether it [. . .] well or ill with the purposes of the Act," and the [. . .] or unwisdom" of a statute is an irrelevant factor in determining the issue of its constitutionality.[11]

The distilled essence of the stated principles is that legislatures are endowed with a wide range of discretion in enacting laws which affect some of its residents differently from others;[12] "every presumption" of constitutionality must be accorded by courts

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[8] Rochen v. Ward, 279 U.S. 337, 339 (1929).
[9] Morey v. Doud, 354 U.S. 457, 465 (1957).
[10] McLaughlin v. Florida, 379 U.S. 184, 191 (1964).
[11] Flemming v. Nestor, 363 U.S. 603, 611 (1960).
[12] Except in instances where the differences are based on race, color or religion. Loving v. Virginia, 388 U.S. 1 (1967).

to a challenged law and the challenger bears the burden of proving that the law is irrational and "essentially arbitrary"; a statutory discrimination will not be declared unconstitutional "if any state of facts reasonably may be conceived to justify it"; the circumstance that a law "might have gone further than it did" in remedying a public social problem does not make it unconstitutional; and the "wisdom or unwisdom," soundness or unsoundness of the legislative judgment are irrelevant considerations in determining the issue of constitutionality.

The majority has not applied the stated principles in holding that the Pennsylvania one-year residence requirement contravenes the Fourteenth Amendment.

Its threshhold errors are (1) failure to take into account the wide range of discretion vested in the Pennsylvania legislature; (2) failure to accord to the challenged statute the presumption of constitutionality; and (3) failure to give effect to the doctrine that a state may enact laws which affect some of its residents differently from others when the difference is not based on racial or religious considerations.

The majority has structured its ruling on these stated conclusions:

> ". . . [We] are totally at a loss to discern what purpose, if any, the Pennsylvania Legislature has ascribed to the one-year residence requirement;"
>
> the ". . . division of Pennsylvania residents into two classes: those who have lived in the State for one year and those who have lived in

> the State for less than one year . . . has no apparent purpose";
>
> ". . . many of the burdensome budgetary and administrative problems" of public welfare officials "would be substantially alleviated by the removal of this bottleneck in the processing of applicants";
>
> ". . . the added cost to the Commonwealth of helping the now excluded class would be relatively insignificant."

With respect to these "conclusions" this must be said:

The majority's failure to "discern" the legislative purpose in enacting the one-year residence requirement and its further failure to see any "apparent purpose" into "the division of Pennsylvania residents into two classes," do not afford an affirmative legal basis for its ultimate fact-finding that "Plaintiffs' evidence showed that the requirement of one year's residence as a condition to the receipt of public assistance has no logical basis and is wholly arbitrary in its application to needy residents of the Commonwealth."

Nor do the majority's conclusions that (1) Pennsylvania's "burdensome budgetary and administrative problems . . . would be substantially alleviated" if the legislature had not enacted the one-year residence requirement, and (2) ". . . the added cost to the Commonwealth of helping the now excluded class would be relatively insignificant," provide a premise for its holding of unconstitutionality. These conclu-

sions are merely "judgment" conclusions which in effect substitute the judgment of a court for the judgment of the legislature. As earlier stated, the "wisdom or unwisdom" of a statute is an irrelevant consideration in determining the issue of unconstitutionality.

Coming now to my view that the challenged Pennsylvania statute must be held constitutional because the plaintiffs have failed to rebut the presumption of its constitutionality by adducing evidence that the statute "does not rest upon any reasonable basis but is essentially arbitrary."

The "evidence" relied on by the majority is not by any stretch of the imagination "evidence" within the meaning of that term. The majority has treated as "evidence" its "loss to discern" any "purpose" in the enactment of the legislation, and its "judgment" conclusion that Pennsylvania's "burdensome budgetary and administrative problems . . . would be substantially alleviated" if the challenged residence requirement had not been enacted. The speculative evidence that the "added cost to the Commonwealth of helping the now excluded class would be relatively insignificant" is irrelevant to the determination of the constitutionality of the legislation.

The following "state of facts reasonably may be conceived to justify" the challenged statutory discrimination:[13]

The Pennsylvania Legislature annually enacts a budget for the following year which must limit the

[13] McGowan v. Maryland, 366 U.S. 420, 426.

total of its appropriations to its estimated annual tax revenue, inasmuch as Pennsylvania's Constitution limits the Commonwealth's borrowing capacity to $1,000,000.

The Pennsylvania Legislature appropriated [$199,-800.00] of state revenues for public assistance grants for the fiscal year ending June 30, 1968—a significant percentage of the Commonwealth's annual budget.

The Legislature in its budget-making is required to make such an appropriation for public assistance as can be reasonably and intelligently estimated on the basis of these factors:

1. The estimated yield of state taxes.

2. The number of its residents currently receiving public assistance grants. They include needy families with dependent children, indigent aged and blind, permanently disabled persons between the ages of 18 and 64, and those who need assistance in the payment of bills for in-patient hospital and nursing home care, doctor, dentist, nursing and drug expenses.[14]

3. Increase in cost-of-living expenses of those on public assistance rolls which make necessary increased allotments.

4. Increase in the number of those receiving indigent aged assistance in view of the extended life expectancy experienced in recent years.

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[14] The skyrocketing increase in hospitalization and medical expense during the past two years alone is evidenced by the fact that the legislative allowance for these items alone leaped from $38,600,000 in the fiscal year ending June 30, 1967 to $61,200,000 for the fiscal year ending June 30, 1968.

It is a conceivable fact that in light of the forego-ıg factors the Pennsylvania Legislature enacted the ne-year residence eligibility requirement to serve ›redictive purposes in making its appropriations for ›ublic assistance.

The foregoing establishes that the Pennsylvania ne-year residence eligibility requirement "cannot be ondemned as so lacking in rational justification as o offend due process." Flemming v. Nestor, 363 J.S. 603 (1960). In that case the Supreme Court ex-›licitly stated, at page 612, that the factor of resi-lence "can be of obvious relevance to the question of ›ligibility." It did so in ruling constitutional Sec-ion 202(n) of the Social Security Act, 42 U.S.C.A. §402(n), which provides for termination of old-age, ;urvivor, and disability insurance benefits payable to, ›r in certain cases in respect of, an alien individual who is deported under §241(a) of the Immigration ınd Nationality Act, 8 U.S.C.A. §1251(a), on any one of certain grounds specified in §202(n).

It is pertinent to call attention to the fact that Congress in enacting the Social Security Act provided, in Section 202(t), 42 U.S.C.A. §402(t), for termina-tion of benefits payable under the Act to any alien beneficiary who had resided outside the United States for more than six months.

For the reasons stated, I am of the opinion that the one-year residence eligibility requirement of Section 432(6) of the Pennsylvania Public Welfare Code, Act of June 13, 1967 does not contravene the Fourteenth Amendment.

This must be added. The majority's opinion does not advert to the plaintiffs' alternative claim that the one-year residence eligibility requirement is unconstitutional because it abridges their right of freedom to travel from one state to another.

In my opinion that alternative claim is so specious and unfounded that it does not merit extended discussion. It is only necessary to say that the Pennsylvania statute does not "prohibit" travel into the Commonwealth as evidenced by the facts that the plaintiffs in the instant case were freely permitted entry. The fact that the one-year eligibility requirement may operate to affect a decision to travel into Pennsylvania cannot by any stretch of the imagination be construed as a "statutory" bar to travel.