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# IN THE SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1967**

# No. 1138

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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,

*Appellants,*

—v.—

JUANITA SMITH, individually, and by her, her minor children, JOHN SMITH, TABITHA MILLER, SOPHIA PAYNTER, WILLIAM PAYNTER, VONCELL PAYNTER, and on behalf of themselves and all others similarly situated,

and

JOSE FOSTER, individually, and by her, her minor children, JEANETTE FOSTER, ANNIE BEA FOSTER, WILLIAM FOSTER, FRANCES FOSTER,

*Appellees.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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## BRIEF FOR APPELLEES

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### Opinion Below

The opinion of the United States District Court for the Eastern District of Pennsylvania (A. 149) is reported at 277 F. Supp. 65 (1967).

## Constitutional Provisions, Statutes, and Regulations Involved

This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States, Sections 401 and 432(6) of the Pennsylvania Public Welfare Code, Act of June 24, 1937 as codified in the Act of June 13, 1967, Pa. Stat. Ann. tit. 62, secs. 401 and 432(6), and Sections 3150 *et seq.* of the Pennsylvania Public Assistance Manual. The statutes and regulation are printed in Appendix "A", *infra,* pp. 1a through 5a.

## Questions Presented

1. Whether a state may consistent with the Equal Protection Clause of the Fourteenth Amendment condition public assistance to needy residents on one year's continuous residence immediately preceding application?

2. Whether public assistance residence requirements exacted by the District of Columbia and forty-six states of the Federal Union unreasonably burden the right of indigent citizens to move freely among the states and to settle where they choose?

## Statement of the Case

Although appellants blandly assert that appellee Juanita Smith first came to Pennsylvania in December, 1966 (p. 6 of their Brief), the uncontradicted record evidence plainly shows that appellee lived in Pennsylvania from the time she was one month old until 1959 and had attended public schools here (A. 22, 30, 137). Her grandparents lived and

worked in Pennsylvania (A. 22); her father and mother and their brothers and sisters were all born and raised in Pennsylvania and still reside here (A. 36).

Before returning to Pennsylvania appellee with her five minor children lived in a trailer with no running water or electricity (A. 34), in a rural county in Southern Delaware (A. 30). The nearest school was a mile and a half away; the nearest source of water, three miles (A. 34). Appellee worked seasonally processing vegetables in a canning factory (A. 34). She did not pursue her desire to take a nurse's aide training course because the local hospital employed Negroes only for kitchen or maintenance work (A. 35-36).

Appellee and her children came to Pennsylvania just before Christmas, 1966 (A. 30) to rejoin her family (A. 36), to find better education (A. 35) and job opportunities (A. 35-36), and to escape the vestiges of segregation (A. 36). With financial help from her father appellee rented a house (A. 34, 36), and the eldest children entered school (A. 40). In February, when her father had been laid off (A. 36), appellees applied for public assistance (A. 36-37).

Appellees were needy and public assistance was granted (A. 36). After receiving two checks (A. 36), appellees were informed that assistance was terminated (A. 6, 16, 37). On that date, March 13, 1967, appellees were equally needy (A. 6, 16), but a reciprocal agreement between Pennsylvania and Delaware that the County Board of Assistance had thought still in force (A. 74-75) had been cancelled (A. 101-102). Assistance to appellees was terminated solely because they did not satisfy the statutory requirement of one year's residence immediately preceding their application (A. 6, 16, 137).

Private agency resources to maintain appellees were tentative and public assistance was thereafter available to appellees only to finance their return to Delaware (A. 104). The Travelers' Aid Society was the single source of financial help, public or private, available to appellees (A. 51-52). For a brief period the Society aided appellees (A. 44-45), but shortly announced that its aid must also end (A. 39-40, 45-46). Thus without public assistance, appellees could remain in Pennsylvania with no income to maintain themselves (A. 46), separate the family by placing the children in foster care (A. 47, 121-125), or return to Delaware (A. 138).

On March 31, 1967, appellees filed this action, *in forma pauperis* by leave of the Court, seeking preliminary and permanent injunction and declaratory relief on behalf of themselves and all others similarly situated (A. 3-9). The Court, on May 31, 1967, ordered that this action be maintained as a class action on behalf of all persons, citizens of the United States and residents of Pennsylvania, entitled to public assistance except that they have not resided in Pennsylvania during the immediately preceding one year (A. 135). On June 1, 1967, the Court preliminarily enjoined the enforcement of the statutory residence requirement as to appellees Juanita Smith and her minor children (A. 136-140).

On August 28, 1967, appellee Jose Foster with her four minor children returned to Pennsylvania from York County, South Carolina (A. 143). Appellee had lived in Pennsylvania from 1953 to 1965; she was married and became separated here. From 1961 to 1965 appellees Foster received public assistance here.

In the summer of 1965 appellee with her children went to South Carolina to care for her grandfather and her invalid grandmother. After residing in South Carolina for a year, appellee and two of her children qualified for and received public assistance. When her grandfather was hospitalized and her grandmother taken in by another relative, she returned to Pennsylvania to rejoin her closest family and friends and to recover for herself and her children the advantages of urban education and medical care.

Appellee moved in with her sister and brother-in-law and their children, enrolled her children in school, and for two months appellees shared their lean table and now crowded house (A. 141-144). Appellees made application for public assistance and on October 25, 1967, though appellees were in need assistance was refused solely because appellees did not satisfy the statutory requirement of one year's residence immediately preceding their application.

On November 14, 1967, appellees Foster were granted leave to intervene, *in forma pauperis,* as plaintiffs in this action, and a temporary restraining order was issued in their behalf (A. 145-148). The facts as pleaded in the Complaint were admitted and counsel stipulated, *inter alia,* that the testimony at hearing in the main action would be repeated exactly at hearing for plaintiff-intervenors.

On December 18, 1967, the Court below entered its opinion and decree declaring unconstitutional the one year residence requirement and enjoining its enforcement. On January 2, 1968, notice of appeal to this Court was filed.

## Summary of Argument

It is now settled beyond question that governmental benefits created by the state and generally extended to its citizens cannot be withheld arbitrarily or for interdicted reasons. The public assistance program, federally commissioned and shared among all States of the Union, is the only public program providing cash income maintenance to the indigent, principally dependent children and the aged. By statute, government has here undertaken "to maintain and strengthen family life" (42 U.S.C. Sec. 601), and to make indigent citizens able to share in the liberties of association and settlement enjoyed by all citizens. It thus seeks to serve values which in other contexts rise to the dimension of the constitutionally protected and do not admit lightly of governmental interference.

The durational residence requirement establishes an anomalous discrimination between needy residents solely on the basis of the length of their residence. Needy residents of less than one year's duration are rejected, without regard to whether they previously lived in the state, whether they came to join relatives, to seek a better job, to take a job, or whether they had a stable residential pattern. A durational residence requirement confronts needy families, as it did appellees Smith, with the "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." Limitations so inevitably affecting fundamental liberties must be carefully scrutinized.

The statute in question, though of long standing, is not a statute on which the political process has worked or can

be expected to work. The record below establishes the incompatibility of asserted justifications with demonstrated facts and the imperviousness of the legislature to factual showings. Recipients of assistance are a small group of indigents (many of them children) of fluctuating membership, lacking spare resources to invest in the political process. They are the historic victims of prejudice and intolerance, and constitute an instance of the "discrete and insular minorities" to whom Chief Justice Stone referred in his celebrated opinion in *United States* v. *Carolene Products Corp.,* 304 U.S. 144, 152 n.4. It is especially essential in such a context that hypothetical and speculative assumptions not be automatically taken as true and as valid sources of state interest. The state may impose restrictions, but its purposes and the means it chooses must be subject to careful scrutiny.

The statutory discrimination between needy residents solely on the ground of recent residence elsewhere deprives those injured thereby of the equal protection of the laws in violation of the Fourteenth Amendment. Denial of assistance here is plainly at war with the dominant purpose of assistance laws: to provide "assistance to all its needy and distressed . . . promptly and humanely with due regard for the preservation of family life." Pa. Public Welfare Code, Sec. 401. In extensive recent litigation, every conceivable purpose of durational residence restrictions has been tested; all are wanting in constitutional sufficiency.

General and Pennsylvania history alike demonstrate that the *actual* purpose of these laws is to deter the migration of indigent citizens into the state. This is patently an interdicted objective. A series of decisions establish the

illicit character of such an aim, whether "direct" or "indirect." Nor may an asserted desire to protect the public fisc bring the discrimination past constitutional muster. While economy is a valid state objective, there must be a rational, permissible basis for choosing the particular means adopted to limit expense. Absent some independent valid ground for distinction, assistance cannot be withheld from equally needy residents simply because by doing so the state may save money.

Several considerations of administrative convenience have been put forth to justify the classification. The first, a desire to establish predictability of cost for budgeting purposes, is demonstrated to be chimerical by the record in this case, by the facts of the appropriation and budget-making processes, and by the statutory encouragement to the making of reciprocal agreements with sister states setting aside the requirement of durational residence. The belated contention of appellant in this Court, that the statute serves to prevent fraudulent simultaneous collection of assistance from two or more states, has been rejected by several courts. Despite the repeated expressions of prejudices regarding the likelihood of fraudulent claims, the record plainly negates any factual predicate for such a sweeping disqualification of all claims by recent residents.

Nor may the statute be upheld as an administrative substitute for an individualized determination of actual *bona fide* residence in the State. More accurate and equally objective indicia of an applicant's intention to remain in the State indefinitely are commonly available through the detailed and individualized fact-finding incident to the uniform process of eligibility determination. Judged by established principles, the durational residence require-

ment sweeps far too broadly to rest on such remote and hypothetical administrative convenience.

A final justification, here put forth for the first time, seeks to view the one-year residence requirement as an insistence on "some investment in the community as a condition of eligibility" for assistance. This too will not withstand scrutiny. Appellees here, like forty percent of rejected applicants, had long-standing associations with the state to which they have now returned; others, benefited by reciprocal agreements, are eligible despite a total absence of prior association. The line drawn is wholly unresponsive to any supposed "investment" rationale. The fact is that public assistance is simply not an insurance program, and it is impossible to view the suggested conjecture as a substantial, not to say "compelling" state concern.

The fundamental right of all citizens to move freely from state to state and to settle where they choose, grounded on several constitutional provisions, is now established beyond doubt. The durational residence requirement is designed to deny this federal commitment by seeking to discourage the interstate migration of indigent citizens. The "invitation to retaliatory measures," *Edwards* v. *California,* 314 U.S. 160, 176, embodied in a state's adoption of residence requirements, has become a reality with the adoption of such limitations by all but four of the States of the Union. The total effect of this pattern of legislation is to restrict severely the movement of poor persons—to keep the poor where they are.

## ARGUMENT

### I.

**Special Scrutiny of the Public Assistance Durational Residence Requirement Is Required Because It Affects Adversely Persons Subject to Prejudice and Without Recourse to the Political Processes and Because It Drastically Affects Their Fundamental Freedoms.**

It is now beyond question that when the state creates benefits and extends them to its citizens, whether they be regarded as gratuities or privileges or rights, the Constitution runs with them. They cannot be withheld arbitrarily, or for interdicted reasons; they cannot be conditioned on the surrender of Constitutional protections nor can they be withheld to penalize the exercise of Constitutional freedoms. *Frost Trucking Co.* v. *R.R. Com.,* 271 U.S. 583, 594; *United States* v. *Chicago, M., St. P. & P.R.R.,* 282 U.S. 311, 328-29; *Speiser* v. *Randall,* 357 U.S. 513, 518; *Sherbert* v. *Verner,* 374 U.S. 398, 404-406.

This Term for the first time a benefit program federally commissioned and shared among all of the states and territories of the United States, second only to highways and education in money magnitude and second to none in the number of citizens it touches so directly and so intimately, is before the Court.

Public assistance is the only public program providing income maintenance to the indigent (A. 111, 121). It was established as the last vital resource when fortune imposes upon men and all other means of sustenance have

failed.[1] By far the largest number of assistance recipients are children without support; the second largest, the aged (A. 112-113). Pa. Dept. of Public Welfare, *Public Welfare Report* 75 (1966). Virtually all public assistance recipients are unemployable (A. 113-114). *Id.* at 73; Advisory Council on Public Welfare, *Having the Power, We Have the Duty, Report to the Secretary of HEW* 7-10 (1966). At one time or another, one out of every ten Americans will come to public assistance. Keith-Lucas, *Decisions About People in Need* 8 (1957). Once having faced the extremity, the length of time a recipient must continue to claim public assistance averages under two years (A. 115). HEW, *Eligibility of Families Receiving Aid to Families With Dependent Children* vi (1963).

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[1] The public assistance grant program was instituted by Congress in the Social Security Act, 42 U.S.C. secs. 301-06 (old age assistance); secs. 601-09 (aid to families with dependent children); secs. 1201-06 (aid to the blind); secs. 1351-55 (aid to the permanently and totally disabled). Public assistance is to be contrasted with the social insurance programs—old-age, survivors and disability insurance and unemployment compensation—also established by the Social Security Act, 42 U.S.C. secs. 401-25, 501-02. Public assistance was designed to provide for those who did not have the opportunity to accumulate benefits under a social insurance program. Keith-Lucas, *Decisions About People In Need* 7-8 (1957); Leydendecker, *Problems and Policy in Public Assistance* 241-45, 374-48 (1955); Miles, *Introduction to Public Welfare* 5-6, 152, 181 (1949).

All of the states, the District of Columbia, and the three extraterritorial possessions have chosen to establish public assistance grant programs (A. 91, 92). HEW, *Characteristics of State Public Assistance Plans Under the Social Security Act* 117 (Public Assistance Report No. 51, 1964 ed.).

The federal government contributes to the states up to eighty percent and a minimum of fifty percent of the cost of public assistance programs (A. 92, 94). *Id.* at 116; Advisory Council on Public Welfare, *"Having the Power, We Have the Duty", Report to the Secretary of HEW* 36 (1966).

While undoubtedly the most crucial, the money grant is not all the public assistance program provides. All public welfare programs have public assistance as a common denominator: "public assistance in a comprehensive way really underlies the whole social fabric in terms of dealing with the crises people have in life" (A. 115).[2] Social services, high school completion, job training, day care for children during training, and comprehensive out-patient medical services, for example, are available with the assistance grant (A. 108-112).

By statute government has undertaken to serve values which in other contexts rise to the dimension of the Constitutionally protected. Aid to needy families with children, for example, was created by Congress with the declared purpose to "maintain and strengthen family life," and to sustain "self-support and personal independence."[3] 42 U.S.C. Sec. 601. The public assistance chapters of Pennsylvania's Public Welfare Code, in language rehearsed substantially verbatim in all state public assistance laws, declare the same purposes: "providing public assistance to all of its needy and distressed . . . promptly and humanely with due regard for the preservation of family life . . . in such a way . . . as to encourage self-respect, self-dependency and the desire to be a good citizen and useful to society". Pa. Stat. Ann. tit. 62 sec. 401. These same values,

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[2] Since public assistance is the basic support for private welfare programs, private welfare tends to assimilate the restrictions on public assistance, and itself to be unavailable where public assistance is unavailable (A. 52, 111). Steiner, *Social Insecurity: The Politics of Welfare* 8-17 (1966).

[3] "Personal independence" takes emphasis from the construction given the "money payment principle," 42 U.S.C. Sec. 606(b) as an integral part of the purpose of public assistance. HEW, Handbook of Public Assistance Administration, Pt. IV, sec. 5120.

here affirmatively pursued, do not when exercised admit lightly of interference by governments. *Meyer* v. *Nebraska,* 262 U.S. 390, 399, 401; *Pierce* v. *Society of Sisters,* 268 U.S. 510, 534-35; *Griswold* v. *Connecticut,* 381 U.S. 479. This Court has written,

> It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder . . . And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter. *Prince* v. *Massachusetts,* 321 U.S. 158, 166 (1944).

"[T]he integrity of that life", Mr. Justice Harlan has written, "is something so fundamental that it has been found to draw to its protection the principles of more than one explicitly granted Constitutional right." *Poe* v. *Ullman,* 367 U.S. 497, 551-52.

Just as government undertakes by public assistance to enable the exercise of freedoms in the family, it undertakes to make indigent citizens independent and able to share in the liberties protected to all other citizens—whether freely to associate with whomever they wish, *N.A.A.C.P.* v. *Alabama,* 357 U.S. 449, 462, *Louisiana* v. *N.A.A.C.P.,* 366 U.S. 293, 296, or to settle where they see fit, *Corfield* v. *Coryell,* 6 Fed. Cas. 546 (C.C.E.D. Pa.), *Edwards* v. *California,* 314 U.S. 160, *United States* v. *Guest,* 383 U.S. 745.

Yet, the same program has certain limitations which exclude needy citizens from assistance, of which the durational residence requirement is one. To one who comes

fresh to public assistance in mid-Twentieth Century this limitation jars. The durational residence requirement establishes the following anomalies. Two families resident in Pennsylvania each in extremity and equally in need: one here fourteen months is assisted; the other here six months is not.[4] Whether they had previously lived in Pennsylvania as forty percent of the rejected applicants had, whether they came to join relatives as did sixty percent of the rejected applicants, to seek a better job as did sixty-four percent, or to take a job as did thirty-seven percent, whether they had stable residential patterns as did the half of the applicants who had lived for over five years in the state from which they came (A. 84-85), matters not. The applicants are in need but they have been resident here less than one year. If the applicants chance to have come from one of the 17 states with which Pennsylvania has a reciprocal agreement (A. 99) and to fit the assistance category in which reciprocity prevails (A. 100-101, Pl. Ex. 1), no matter the time they have been here, their previous association with the Commonwealth, or their reasons for coming, in need they will be assisted.

In a statute directed to assisting the needy, the durational residence limitation bars needy residents from assistance. As the Goodrich Committee noted when it proposed a design for public assistance in Pennsylvania: "There is . . . danger of 'pauperizing' the recipients of public aid through . . . belated help, . . . degrading their standard of living, undermining their health, destroying their hope of self-maintenance and their self-respect". Pa.

[4] Half of the families rejected because of the residence requirement had lived in Pennsylvania more than six months before they applied for assistance; two-thirds, more than two months (A. 85).

Comm. on Public Assistance and Relief, *A Modern Public Assistance Program for Pennsylvania* 11 (1936). In a statute devoted to preserving family life, the durational residence limitation strains the solidarity of the family. Separation of the children into foster care, which exacts no residence requirement, was lightly suggested by appellants below (A. 47, 74, 121-24). The family in extremity and without income thus faces dissolution. In a statute directed to sustaining the independence of the indigent, the durational residence limitation effectively binds eight million recipients of public assistance to the state of their present residence (A. 89, 106). They can seek no new associations, they cannot return to old, nor can they choose to follow better opportunities.

The durational residence limitation confronts needy families with the "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" (A. 138). See the opinion of the Court in *Harrell* v. *Tobriner,* —— F. Supp. —— (D.C.A. 64). Once public assistance is established, limitations on its availability by the exclusion of equally needy persons inevitably affects fundamental liberties and, therefore, must be carefully scrutinized.

A venerable statute, as appellant and numerous *amici* insist, is here in question. But its very long history and unchallenged existence evidence, as does the record herein, that it is not a requirement upon which the political processes have worked. As the argument *infra* indicates, justification of the requirement cannot survive the facts. Nonetheless, as the Director of the Bureau of Assistance Policies and Standards, Pennsylvania Office of Public Assistance

testified below, a legislature presented with such facts has not acted. Public opinion and sentiment about assistance to persons who have not been residents and a fear that it will greatly increase costs have precluded such legislative action (A. 96-99, 105-07).

Indeed, the public assistance residence limitation is not a statute upon which the political processes can be expected to work. Public assistance recipients have little political power. They are a small number of citizens in an affluent society; many of them are children. They are not a constant group, but a minority whose membership fluctuates. Recipients do not have resources to spare from the task of maintaining themselves, to invest in the political process. Moreover, public assistance recipients are the subjects of prejudice from the public at large and from legislators. Most persons are disposed to regard them with little toleration or concern.[5] The isolation of public assis-

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[5] The initial establishment of a public agency is a consequence of a collective political decision in which low-income people are not likely to have been . . . political actors. The framing of statutes establishing public benefits for low-income people typically reflects the attitudes of other groups which *are* effective political proponents . . . . The dominant view of the poor among the American middle class is that they are defective, morally as well as in other ways, and are likely to take advantage of public beneficence. Cloward and Piven, *The Professional Bureaucracies: Benefit Systems as Influence Systems,* in *The Role of Government in Promoting Social Change* (Proceedings of Columbia University School of Social Work Conference 1965).

See Steiner, *Social Insecurity: The Politics of Welfare,* chs. 1, 2 and 9 (1966); Lyford, *The Airtight Cage* (1966); Elman, *The Poorhouse State* (1966); Bell, *Aid to Dependent Children* (1965).

On the virtually prohibitive costs to the poor of recourse to the political processes, see Dahl, *Who Governs,* chs. 20-21 (1961) and Lane, *Political Life,* ch. 16 (1959).

On the pre-history of public assistance, evidencing similar patterns of prejudice and non-responsive law making, and its relation-

tance recipients from the political process is even more severe for those affected by a residence limitation. They are beyond the boundaries of the state and when they are within the state and confronted with the residence limitation they are necessarily in crisis to sustain life.

Even if the residence limitation did not implicate the fundamental freedoms it does, strict scrutiny of the limitation would be required since this limitation, like limitations affecting public assistance recipients generally, is surely subject to the principle given expression in Chief Justice Stone's celebrated footnote in *United States* v. *Carolene Products Co.*, 304 U.S. 144, 152-153:

> [P]rejudice against discrete and insular minorities may be a special condition, which tends seriously to curtail the operation of those political processes ordinarily to be relied on to protect minorities, and which may call for a correspondingly more searching judicial inquiry.

The point here is not that public assistance as such is a fundamental right, or even as argued above that its limitation necessarily restricts the exercise of fundamental liberties. It is not that legislation affecting certain issues is subject to special scrutiny, but that as legislation affects certain persons, "discrete and insular minorities," subject to "prejudice," and hence without effective recourse to the "political processes," the legislature will be held to a higher

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ship to the shape of contemporary public assistance, seen ten Broek, *California's Dual System of Family Law: Its Origin, Development and Present Status*, 16 Stan. L. Rev. 257, 900 (1964) and 17 Stan. L. Rev. 614 (1965); Abbott, *Public Assistance: American Principles and Policies* (1940).

standard of rationality. It is not that the legislature is driven out of the area, but that its purposes and the means it chooses will be subject to more careful scrutiny.[6] Public assistance recipients are such a minority[7] and legislation affecting their interests must be carefully scrutinized. It is essential in such a context that hypothetical and speculative assumptions, often reflecting only hostility, prejudice and stereotypes, not be automatically taken as true and as valid sources of state interest.

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[6] Amsterdam, *Federal Constitutional Restrictions on the Punishment of Crimes of Status, Crimes of General Obnoxiousness, Crimes of Displeasing Police Officers and the Like,* 3 *Crim. L. Bull.* 205, 233 (1967).

[7] Public assistance recipients are no more in a position to influence the legislative process than the citizens whose interest in a national bank was protected in *McCulloch* v. *Maryland,* 4 Wheat. 316, 428. Indeed they have considerably less influence than the outsiders such as those in *McCulloch* who, though outsiders, had some economic strength they might wield inside the state. Cf. *Cooley* v. *Wardens of Port of Philadelphia,* 12 How. 299, 315; *Robbins* v. *Shelby Taxing District,* 120 U.S. 489, 499; *Wheeling Steel Corp.* v. *Glander,* 337 U.S. 562. They are much in the position ascribed to Jehovah's Witnesses in *Minersvilles School Dist.* v. *Gobitis,* 310 U.S. 586, 606-07 (Stone, C.J., dissenting); cf. *Barnette* v. *W. Va. St. Bd. of Educ.,* 319 U.S. 624, 628. Certainly assistance recipients have fewer "practical opportunities for exerting their political weight at the polls" than the citizen plaintiffs in *Baker* v. *Carr,* 369 U.S. 186, 258-59 (Clark, J., concurring); compare 369 U.S. at 248 (Douglas, J., concurring).

## II.

**The Denial of Public Assistance to Needy Residents of Pennsylvania Solely Because They Do Not Satisfy the Durational Residence Requirement Violates the Equal Protection Clause.**

The durational residence requirement discriminates between (1) persons who have been residents of the state for one year or more, who may receive assistance when they become needy, and (2) persons who are residents of the state but for less than a year, who may not. Appellees and the class they represent are denied assistance because, while they are presently needy residents of the state, they have not been residents long enough, but too recently resided in another state.

In addressing classifications under the Equal Protection Clause this Court has invoked two well-established standards. As the Court said in *Gulf, Colorado, and Santa Fe Ry. Co.* v. *Ellis,* 165 U.S. 150, 155:

> [T]he attempted classification . . . must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such purpose.

*McLaughlin* v. *Florida,* 379 U.S. 184, 190; *Carrington* v. *Rash,* 380 U.S. 89, 93; *Loving* v. *Virginia,* 388 U.S. 1, 9. When a classification touches fundamental rights and liberties or bears against persons without effective recourse to the political processes it must meet a higher standard of

rationality. To survive close scrutiny under the Equal Protection Clause the classification "bears a heavy burden of justification," *McLaughlin* v. *Florida,* 379 U.S. 184, 196; "some overriding statutory purpose" must "clearly" appear, *id.* at 192; "remote administrative benefit to the State" will not suffice, *Carrington* v. *Rash,* 380 U.S. 89, 96. The classification "must be shown to be necessary" to the accomplishment of a permissible state objective, *Loving* v. *Virginia,* 388 U.S. 1, 11.

The purpose of the chapter of the Pennsylvania Public Welfare Code is clear. Section 401 thereof states:

> It is hereby declared to be the legislative intent to promote the welfare and happiness of all the people of the Commonwealth, by providing public assistance to all of its needy and distressed; that assistance shall be administered promptly and humanely with due regard for the preservation of family life . . . and that assistance shall be administered in such a way and manner as to encourage self-respect, self-dependency and the desire to be a good citizen and useful to society. Pa. Stat. Ann. tit. 62, sec. 401.

Appellees and their class were residents of the Commonwealth; they were in need and fully entitled to assistance but for the durational residence requirement. Their circumstances placed them well within the purpose of the statute. Presence here for less than one year did not make appellees any less "needy and distressed." Denial of assistance to them would have frustrated the declared purposes of the public assistance law by preventing "prompt" assistance to some of the Commonwealth's needy residents. This is the antithesis of "humane" and as argued *supra* it works against

"preservation of family life," "self-respect" and "self-dependency." See *Green* v. *Department of Public Welfare,* 270 F. Supp. 173, 177 (D. Del.).

Moreover, the Court below held, "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." 277 F. Supp. at 67 (A. 152). The durational residence requirement has been challenged in twenty-one courts below; every conceivable purpose therefor has been surveyed and as the following indicates has been properly found wanting.

A. *To Deter Indigent Citizens from Entering the State: The Real Purpose.*

The Attorney General does not contend, as the Court below notes, that the purpose of the residence requirement 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." 277 F. Supp. at 67-68 (A. 154). Yet such is patently the real purpose of the residence requirement.

Length-of-residence requirements derive from Elizabeth's Poor Laws and from the Settlement Act of 1662, 14 Car. 2, whose preamble declared:

> The necessity, number and continual increase of the poor, not only within the cities of London and Westminster, but also through the whole kingdom is very great and exceedingly burdensome. [*By*] *reason of some defect in the law, poor people are not restrained*

*from going from one parish to another.* [Emphasis added.][8]

In 1936, a year before the enactment of Pennsylvania's residence requirement, the Pennsylvania Superior Court sustained an order directing the removal of a citizen likely to become a public charge to the poor district of the county of his "settlement." *Anderson* v. *Miller,* 120 Pa. Super. 463, 182 Atl. 742 (1936). An opinion of the Attorney General of Pennsylvania shortly after the enactment of the residence requirement construed it strictly, because "any other conclusion would tend to attract the dependents of other states to our Commonwealth." 1937-38 Official Opinions of the Attorney General, No. 240, pp. 109-110.[9] To this day the Commonwealth which denies public assistance to recent residents will pay for their return to the state from whence they came and so informs every rejected applicant (A. 104). Pennsylvania Public Assistance Manual, Sec. 3154.12.[10] And as the testimony below indicates, it is the Legislature's "fear" of an influx of poor persons to the state that sustains the residence requirement (A. 97-99).

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[8] For the lineage of residence requirements and full argument as to their real purpose, see ten Broek, *California's Dual System of Family Law; Its Origins, Development, and Present Status,* 16 Stan. L. Rev. 257, 258-91, esp. 267 (1964), and the Brief *Amicus* of the Center on Social Welfare Policy and Law herein.

[9] In Pennsylvania, opinions of the Attorney General, particularly opinions contemporary to enactments, are entitled to great weight in determining the intention of the legislature, as is the settled practice of the agency charged with the execution of the statute. Pennsylvania Statutory Construction Act, Pa. Stat. Ann. tit. 46, sec. 551.

[10] Compare Pennsylvania's hortatory and exemplary removal provisions with the "compulsory" removal provisions of other states, Mandelker, *Exclusion and Removal Legislation,* 1956 Wis. L. Rev. 57.

Such a purpose is interdicted and its pursuit plainly impermissible. The right to travel freely from state to state and to settle is inherent in the notion of a unified nation and no state may exclude citizens migrating from other states whatever the reasons for migration. *Edwards* v. *California,* 314 U.S. 160; *United States* v. *Guest,* 383 U.S. 745; *Corfield* v. *Coryell,* 6 Fed. Cas. 546 (C.C.E.D. Pa.).

The States, appellants and *amici,* attempt to distinguish the purpose of the durational residence requirements from the purpose of the asserted "direct bar on access to the State" in *Edwards.* The *Edwards* statute, however, provided: "Every person, firm or corporation, or officer or agent thereof that *brings or assists in bringing* into the State any indigent who is not a resident of the State, knowing him to be an indigent person, is guilty of a misdemeanor." 314 U.S. at 171 (emphasis added). The Attorney General of California made it eminently clear that the statute as such did not bar indigents from entering the state. "It does not in terms exclude any indigent person, nor does it in effect exclude any indigent family." Brief of the Attorney General of California, p. 47; and see pp. 3, 4-8, 27, 29-30, 32. Appellant in *Edwards* did not argue that the statute directly barred migration into the state; rather it deterred or impeded or hampered. Brief of Appellant, pp. 15, 16, 21. The indigent Duncan from whose perspective *Edwards* was decided was, of course, in California; he was no more excluded, or even deterred, by the California statute than were appellees by the durational residence requirement. The *Edwards* statute was unconstitutional not because it directly barred entry but because its purpose was patently clear. 314 U.S. at 174.

Since the purpose of the durational residence requirement is to deter indigents from entering the state, the statute falls before the Equal Protection Clause for that purpose is Constitutionally interdicted.[11]

B. *To Protect the State's Fisc.*

What concerns appellant and *amicus* states is their misimpression that, as the Brief of California, p. 2 puts it, the Courts below have concluded "that a statute which has for its purpose protection of the state's fiscal responsibility is per se . . . unconstitutional." No court below so held. To be sure, protecting the state's purse *by excluding indigent newcomers* was held unconstitutional *per se*. *Smith* v. *Reynolds,* 277 F. Supp. at 68 (A. 154); *Harrell* v. *Tobriner,* —— F. Supp. —— (D.C. A. 71) (Bazelon, C.J., concurring); *Thompson* v. *Shapiro,* 270 F. Supp. at 336-37 (Conn. A. 26-27); *Green* v. *Department of Public Welfare,* 270 F. Supp. 173 (D. Del.). Saving money is, of course, not impermissible; but saving money alone is not, nor has it ever been, sufficient reason to sustain a statute in face of an equal protection challenge.

[11] If the purpose were permissible, the uncontradicted record evidence is that citizens do not migrate to secure public assistance (A. 84-85). Nor does the elimination of residence requirements result in any great influx of indigent newcomers (A. 94-95, 98). See the opinion below, 277 F. Supp. at 66, 68 (A. 150-51, 154). The residence requirement thus rests arbitrarily on disproved factual assumptions. The facts are more extensively set out in the Brief *Amicus* of the Center on Social Welfare Law and Policy herein and in the Brief of Appellees in *Washington* v. *Harrell,* No. 1134. See Roland J. E. Artigues, *A Study of Residence Requirements and Reciprocal Agreements in the Public Assistance Program in Pennsylvania* (unpub. doc. diss. U. of Pa. Sch. of Soc. Work 1959). The failure of the Legislature to recognize fact and its presistent unfounded fear is further testimony to the impervious character of prior conceptions about assistance recipients and the poor and the closed state of the political processes as to them.

As the court below correctly held,

> [T]he constitutional test of equal protection is not satisfied by considerations of minimal financial expediency alone . . . . 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. 277 F. Supp. at 68 (A. 155).

Certainly a state may classify to save money. The only Constitutional point is that the line drawn must rest on some independent rational ground. Allocation of resources no less than other substantive legislative action is governed by the Equal Protection Clause. See, *e.g., Griffin* v. *School Board,* 377 U.S. 218. If appellants were right in their contention (Addendum A to Appellants' Brief, p. 30) that allocation of limited resources as such or their conservation is sufficient purpose to justify the classification here, *any* classification would be justifiable. The classification in *Brown* v. *Board of Education,* 349 U.S. 294 (compare *Aaron* v. *Cooper,* 358 U.S. 1, 13), for example, or in *Rinaldi* v. *Yeager,* 384 U.S. 305 would have been impeccable.[12]

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[12] The injuries visited upon public assistance recipients in the name of the conservation of resources are infamous. See, *e.g., Welfare—To Save Money or People?,* N.Y. Times, May 14, 1967, Pt. IV, p. 5, cols. 1-4. See *Collins* v. *State Board of Social Welfare,* 248 Iowa 369, 81 N.W.2d 4 (1957) (holding maximum family grants a violation of equal protection). *Cf. Parrish* v. *Civil Service Comm'n.,* 66 Cal. 2d 260, 425 P. 2d 223, 27 Cal. Reptr. 623 (1967) (holding public assistance recipients protected from unreasonable search and seizure designed solely to reduce the rolls of the eligible recipients).

The basis of classification proffered here would allow the state to withhold public assistance from, *e.g.,* all redheads, or from every fiftieth applicant or from every person who applies on the second Friday of the month. Such classifications would undoubtedly protect the state's fisc, but they rest on distinctions without difference. They would fall as arbitrary. The very point of the cases from *Frost Trucking Co.* v. *R.R. Com.,* 271 U.S. 583 to *Sherbert* v. *Verner,* 374 U.S. 407 is that the state once having resolved to extend benefits cannot arbitrarily withhold them. Absent some independent, permissible ground for distinction, public assistance cannot be withheld from equally needy residents simply because by doing so the state may save some money.

C. *To Serve Predictive Purposes in Budgeting for Public Assistance.*

Appellants urge certain administrative considerations to justify the classification among residents. The first, budget predictability, was found in the dissenting opinion below to comprise the "state of facts [which] reasonably may be conceived to justify" the discrimination (A. 163).[13]

At the hearing in this case in uncontradicted testimony embraced by appellants' counsel (A. 129, 150), the Director of the Bureau of Assistance Policies and Standards of the Pennsylvania Office of Public Assistance stated that the elimination of the residence requirement would not complicate the budgetary process (A. 95). The Director testified that the cost of providing assistance to recent residents who are needy would be $1,637,500 in the first year, as compared with a total public assistance budget of $336,-

[13] See the same Judge's opinion for the Court in *Waggoner* v. *Rosenn,* —— F. Supp. —— (M.D. Pa. 1968).

557,000 (A. 94-95). This estimate is grounded, *inter alia,* in the experience of states which have no residence requirement (A. 94-95, 98-99) and in the constant number of rejected applicants over recent years (A. 83). The Department's predictions on the cost of other policy changes have proved exceptionally accurate (A. 95). Indeed, the Director testified, the administration of the residence requirement imposes considerable burdens (A. 96, 99-103, 104). As the Court below found, "[a]dministrative costs and budgetary problems would actually be significantly decreased if the residence requirement were abolished." 277 F. Supp. at 66 (A. 152). "[A]ll of the evidence is to [this] effect." 277 F. Supp. at 68 (A. 154).[14]

Not only is the postulated purpose of budget predictability betrayed by the record in this case, but it is not even a reasonably "conceivable" justification for the one-year residence requirement.[15] For twenty-two years, from

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[14] The evidence and the findings of the Court were to the same effect in *Thompson* v. *Shapiro,* 270 F. Supp. at 338 (Conn. A. 28). See also *Harrell* v. *Tobriner,* —— F. Supp. at —— (D.C. A. 68).

[15] Other conceptions of the budget process assertedly germane to predictability and urged in the dissent, 277 F. Supp. at 71-72 (A. 163-165), are similarly erroneous. Cost of living increases in Pennsylvania public assistance grants, *e.g.,* are not automatic (A. 164), nor indeed do they occur with any regularity. Pa. Dept. of Public Welfare, *Public Assistance Allowances Compared with the Cost of Living at a Minimum Standard of Health and Decency* (1967). The number of aged persons receiving public assistance in Pennsylvania is not increasing (A. 164), but has decreased from 101,557 recipients in 1942 to 44,973 in 1966 and has been decreasing steadily each year, as the record shows (A. 113). Pa. Dept. of Public Welfare, Public Welfare Report, 65 (1966). The $22,600,000 increase in medical assistance expenditures in 1967-1968 (A. 164) was caused by the establishment of an entirely new program under Title XIX of the Social Security Act. The new Medical Assistance program, Pa. Stat. Ann. tit. 62, sec. 443 (Supp. 1967), was created by the legislature with no fully relevant prior experience and has been financed without any necessity to borrow against the Commonwealth's debt limit.

1937 when public assistance was established until 1959, the legislature of the Commonwealth met in fiscal session only biannually and the budget was a two year budget. Administrative Code, Act of April 9, 1929, as amended, Pa. Stat. Ann. tit. 71, sec. 221. The Commonwealth has reciprocal agreements with seventeen states granting assistance to residents of those states who may come to Pennsylvania (A. 99-103). Pursuant to Section 432 (6)(ii) of the Public Welfare Code, these agreements are sought by the Commonwealth without regard to season and clearly without concern about predictability (A. 100-101). Predictability is no more a question with respect to needy residents who have been here less than a year than it is with respect to needy residents here more than a year.[16] If the state has a serious interest in predictability, then a one-year waiting period for every applicant would seem Constitutionally required. See *Ramos* v. *Health and Social Services Board,* —— F. Supp. —— (E.D.Wis. 1967) (Slip Opinion pp. 9-10); *Thompson* v. *Shapiro,* 270 F. Supp. at 338 (Conn. A. 28).

Budget predictability, therefore, falls even as a conceivable purpose to justify the durational residence requirement. Before the more careful scrutiny required of this classification, it must certainly fall. Budget predictability presents at best a "remote administrative benefit" to the state and, hence, is insufficient to justify the classification.

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[16] The postulation of predictability commits the fallacy of assuming that recent residents who apply for assistance will still be needy one year hence (contrast A. 115) and still in the state (contrast A. 45-46, 104, 138). The vast majority of applicants for assistance next year undoubtedly are residents who will not have been needy until that time (A. 95, 115) and who therefore will not apply until then. The likelihood of recent residents being needy in the future is no greater nor any less than long-time residents.

*Oyama* v. *California,* 332 U.S. 633, 646-47; *Carrington* v. *Rash,* 380 U.S. 89, 96; *Harman* v. *Forssenius,* 380 U.S. 528, 542-43; *Rinaldi* v. *Yeager,* 384 U.S. 305, 310.

D. *To Prevent Fraud.*

For the first time in this case appellants in this Court urge that the residence requirement be sustained as a reasonable administrative device for the prevention of fraud. Appellants' Brief, p. 15.

Three Courts have held the durational residence requirement an insufficiently rational means to attain this postulated purpose. *Green* v. *Department of Public Welfare,* 270 F. Supp. at 177; *Thompson* v. *Shapiro,* 270 F. Supp. at 338 (Conn. A. 28); *Harrell* v. *Tobriner,* —— F. Supp. at —— (D.C. A. 68-69). As these Courts found there are common means to prevent fraud which do not so broadly disqualify needy citizens. Such a broad proscription is not deemed necessary when applicants have come from a state with which Pennsylvania has a reciprocal agreement.[17] Normal verification procedures then suffice.

Fear of fraud and the charge of its likelihood constantly prejudices public assistance recipients.[18] Nothing in the record here, or elsewhere, warrants such a fear. See *Sherbert* v. *Verner,* 374 U.S. 398, 407. The straightforward fact is that the rate of client error of any sort in eligibility determinations in Pennsylvania is only 2.8 percent and, of this, one percent is not wilful; the national rate is com-

[17] See also *Fox* v. *Michigan Employment Security Comm'n.,* 379 Mich. 579, 153 N.W. 2d 644 (1967) striking down a classification in unemployment compensation which the state defended as preventing duplicate payments and fraud.

[18] See *Parrish* v. *Civil Service Comm'n.,* 66 Cal. 2d 260, 57 Cal. Rptr. 623 (1967).

parable. HEW, *Eligibility of Families Receiving Aid to Families with Dependent Children* (Report Requested by the Senate Appropriations Committee) ii, viii, 16 (1963).

The durational residence requirement has not been shown necessary to the suggested purpose. *Loving* v. *Virginia,* 388 U.S. 1, 11. At best, the state has a "remote" and insufficient administrative benefit. *Oyama* v. *California,* 322 U.S. at 646-47.

E. *To Test Residence.*

No question is raised here regarding the power of the Commonwealth to limit public assistance to residents of Pennsylvania. It was common ground below that appellees were residents of Pennsylvania (A. 3, 16, 137, 150).[19]

While not raised in this case, it has been suggested that the durational residence requirement is a proper objective test of residence. The Delaware Court has addressed the suggestion.

> [T]he one year period is a constitutionally unreasonable test for determining the 'intention' aspect of domicile, assuming such was its purpose. More accurate alternatives are available to ascertain an individual's true intentions without exacting the protracted waiting period with its dire economic and social consequences to certain individuals living in the state. 270 F. Supp. at 177-78.

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[19] The Federal Handbook of Public Assistance Administration, Pt. IV, sec. 3620 defines residence as follows: "[A person] shall be considered to have his residence at the place where he is living if he is living there voluntarily and not for a temporary purpose, that is, with no intention of presently removing therefrom."
The Pa. Public Assistance Manual, sec. 3151.11 provides: "A person has residence in Pennsylvania for assistance purposes if he makes his home here."

More accurate and equally objective indicia of the present intent of an applicant to remain in the state indefinitely are easily and commonly available through the fact-finding process of eligibility determination. Such indicia as the following are characteristically conclusive in Pennsylvania courts: whether the family is together and where it abides, where the children are enrolled in school, where close relatives live, and where personal effects are located, where a car is registered and a driver licensed. *In re Stabile,* 348 Pa. 587, 36 Atl. 2d 451 (1944); *In re Publicker's Estate,* 385 Pa. 403, 123 Atl. 2d 655, 661-62 (1956); *Anderson* v. *Miller,* 120 Pa. Super. 463, 182 A. 742 (1936). Such facts must be presented to the caseworker by all applicants for assistance, recent residents or not, to prove eligibility. Pa. Public Assistance Manual, Sec. 3100 et seq.; Pa. Dept. of Public Welfare, *"What to Bring With You,"* DPA Form 11 (1959). By the same token, they are sufficient to establish *bona fide* residence.

The durational residence requirement is not reasonably directed to the postulated purpose and it sweeps too broadly. As with the postulated purposes considered *supra,* "remote administrative benefit" to the state will not sustain the classification. See especially, *Harman* v. *Forssenius,* 380 U.S. at 543; *Carrington* v. *Rash,* 380 U.S. at 98.

F. *To Secure Investment in the Community as a Condition of Eligibility.*

Appellants, again for the first time on appeal, postulate a "legislature insisting on some investment in the community as a condition of eligibility" for assistance. Appellants' Brief, p. 14.

Such a purpose is not finely served by the durational residence requirement. The requirement is both too broad and too narrow reasonably to measure or to exact investment. Appellees (A. 22, 30), like forty percent of the rejected applicants (A. 85), had lengthy prior residence in the community to which they had now returned. Like sixty percent of the rejected applicants (A. 85), appellees had relatives in this community. Others who come to Pennsylvania and are assisted under the reciprocal agreements, may have had no such prior association. The rejected applicants are residents; they pay sales taxes and, through their landlord, property taxes, even as recipients themselves do. Fully half of those rejected because of the residence requirement have been here six months (A. 85). A resident needy in April and denied assistance until December is hardly likely to have made any larger investment come December.[20]

On this record and in the face of these discrepancies it is difficult even to conceive that the imposition of the residence requirement has such a purpose. Certainly the exaction of a prior investment in the state before need will be met does not appear a "compelling" interest of the state. The contribution of any resident to the Commonwealth in less than a year is so conjectural, and the contribution at the close of a year so marginally different, that the very great injury imposed on needy residents by

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[20] Contrary to appellants' suggestion at p. 14 that one must have for a year "channell[ed] privately originated finances into the Community's streams of commerce" to qualify for assistance, nothing in the statute or in the regulations so suggests or requires. See Pa. Public Assistance Manual, secs. 3150 *et seq.* Contrast *Harrell* v. *Tobriner,* —— F. Supp. at —— (D.C.A. 70, n. 19) (an applicant resident in the District for over a year but in a public institution).

the denial of assistance must on any careful scrutiny outweigh any possible interest of the state.

Moreover, public assistance is simply not an insurance program.[21] In its own terms public assistance is designed to assist the needy and *thereby* "to promote the welfare and happiness of all the people of the Commonwealth." Public Welfare Code, Pa. Stat. Ann. tit. 62 sec. 401. The unassisted needy resident's plight harms the people of the state, whatever his prior investment. The declared interest of the state is served only by granting assistance to needy residents when they are needy.

## III.

### Durational Residence Requirements Unreasonably Burden the Right Freely to Move From State to State and to Settle, Affronting the Premises of the Federal System.

It is now settled that since we are one Nation under the Constitution all citizens have a fundamental right freely to move from state to state. *United States* v. *Guest,* 383 U.S. 745. Definition of this right began with the opinion of Mr. Justice Washington on circuit in *Corfield* v. *Coryell,* 6 Fed. Cas. 546, 551-52 (C.C.E.D. Pa. 1823).[22] The court there confined the privileges and immunities of citizens of the several states to those which are "in their nature, funda-

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[21] For the place of public assistance in the scheme of the Social Security Act, see n. 1 *supra.*

[22] In one part, 6 Fed. Cas. at 553-55, this case drew the very boundary between Pennsylvania and Delaware beyond which the Commonwealth here sought to restrict appellee Smith and her children.

mental; which belong, of right, to the citizens of all free governments." First among them, "[t]he right of a citizen of one state to pass through, or to reside in any other state, for purposes of trade, agriculture, professional pursuits, or otherwise."

In *United States* v. *Guest,* 383 U.S. 745, 757, this Court unanimously held: "The constitutional right to travel from one State to another . . . occupies a position fundamental to the concept of our Federal Union." As earlier in *Crandall* v. *Nevada,* 6 Wall. 35, 48-49, the Court took as its guide the statement of Chief Justice Taney in the *Passenger Cases,* 7 How. 283, 492:

> For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, [we] must have the right to pass and repass through every part of it without interruption, as freely as in our own States.

The right freely to move and to settle derives from several clauses of the Constitution, each a touchstone of federalism.

The right is protected as a privilege and immunity of national citizenship. Rooted in *Corfield* v. *Coryell, supra,* it received its fullest statement in the concurring opinions in *Edwards* v. *California,* 314 U.S. 160, 177, 181, adopted by the Court in *United States* v. *Guest,* 383 U.S. at 758. *Edwards* held protected not the mere right to cross state lines or simply a momentary sojourn but the right to settle. As Justice Jackson stated, "[I]t is a privilege of citizenship of the United States . . . to enter any state . . . for the establishment of permanent residence therein." 314 U.S. at 183. Justice Douglas found the *Edwards* statute

infirm because it "would prevent a citizen . . . from seeking new horizons in other States." 314 U.S. at 181. Justice Byrnes found it necessary in the prevailing opinion to consider, and disallow, the asserted purpose of the statute, to meet "problems of health, morals, and especially finance, the proportions of which are staggering," 314 U.S. at 173, a purpose germane not to a mere right to cross borders but to a right to stay.

The right to move and to settle is a liberty protected by the Due Process Clauses. Indeed it is a liberty "closely related to the rights of free speech and association." *Aptheker* v. *Secretary of State,* 378 U.S. 500, 517; *Kent* v. *Dulles,* 357 U.S. 116, 125-26. Finding that the movement cases adopt the analysis of liberty set out by Chafee, Mr. Justice Harlan concurring in part in *United States* v. *Guest,* 383 U.S. 745, 769-70, wrote:

> 'Already in several decisions the Court has used the Due Process Clause to safeguard the right of the members of any race to reside where they please inside a state, regardless of ordinances and injunctions. Why is not this clause equally available to assure the right to live in any state one desires? And unreasonable restraints by the national government on mobility can be upset by the Due Process Clause in the Fifth Amendment . . . Thus the "liberty" of all human beings which cannot be taken away without due process of law includes liberty of speech, press, assembly, religion and also liberty of movement.' 383 U.S. at 770, quoting Chafee, *Three Human Rights in the Constitution of 1787* 192-93 (1956).

The primary purpose of the Privileges and Immunities Clause of Art. IV, Sec. 2, is to "fuse into one nation a

collection of independent, sovereign states." *Toomer* v. *Witsell,* 334 U.S. 385, 395. Not only does this clause bar discrimination against citizens of other states "where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other states," *id.* at 396, but it prohibits legislation affecting citizens of the respective states as will "substantially or practically put a citizen of one state in a condition of alienage when he is within or removes to another state." *Blake* v. *McClung,* 172 U.S. 239, 256. A discrimination "so great that its practical effect is virtually exclusionary" will not be countenanced. *Toomer* v. *Witsell,* 334 U.S. at 397.[23]

The durational residence requirement denies this federal commitment. The purpose of the residence requirement, its very design, is to discourage indigent citizens from migrating. See Argument *supra* at Sec. II.C. In *Edwards* v. *California,* 314 U.S. 160, this Court struck down a statute which had the same purpose and which no more than the statute here (see pp. 23-24 *supra*) impeded the freedom to move and to settle. In *Edwards* the Court was particularly concerned with the aggregation of restrictions on that freedom. Justice Byrnes wrote, "The prohibition against trans-

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[23] Relying on *New York* v. *O'Neill,* 359 U.S. 1, 6, the Connecticut Court regarded Art. IV, Sec. 2 as inapplicable to the plaintiff there who was a citizen of the state. *Thompson* v. *Shapiro,* 270 F. Supp. at 334 (Conn. A. 21). But here as in *Toomer* v. *Witsell, supra,* the discrimination runs to non-citizens as well.

The essential constitutional assertion of one nation rests also on the State Citizenship Clause of the Fourteenth Amendment and on the Equal Protection Clause itself as well. As Mr. Justice Brennan has written, "[T]he Equal Protection Clause, among its other roles, operates to maintain this principle of federalism." *Allied Stores of Ohio* v. *Bowers,* 358 U.S. 522, 532-33 (concurring for himself and Harlan, J.). See also *Truax* v. *Raich,* 239 U.S. 33, 41-43.

porting indigent non-residents into one state is an open invitation to retaliatory measures, and the burdens upon the transportation of such persons become cumulative." 314 U.S. at 176. That invitation to retaliation is a reality here (A. 106-107, Pl. Ex. No. 3). Forty-six of the fifty states and the District of Columbia exact a durational residence requirement for public assistance (A. 91-93). The effect of Pennsylvania's requirement does not end with its discriminatory impact upon needy persons presently residing in Pennsylvania. With similar length-of-residence requirements in forty-six states and the District of Columbia, its effect is severely to restrict the freedom of movement of numerous poor persons. While some of the eight million citizens receiving public assistance might be willing to forfeit assistance for a substantial period in exchange for the opportunities which a new place of residence might offer, the collective impact of durational residence requirements is, bluntly, to make the poor stay put.

Virtually none of the eight million public assistance recipients, aged, blind, disabled, children and those who must care for them, are employable (A. 112-114). Pa. Dept. of Public Welfare, *Public Welfare Report* 73 (1966); Advisory Council on Public Welfare, *"Having the Power, We Have the Duty", Report to the Secretary of HEW* 7-10 (1966). For recipients, public assistance is the last resource; income maintenance to the indigent is available from no other public program (A. 111, 121), nor from any private program (A. 52, 111). It is not surprising therefore that durational residence requirements reduce recipients to immobility. The Director of the Bureau of Assistance Policies and Standards of the Pennsylvania Office of Public Assistance was prepared to testify below that citizens who

were receiving assistance in Pennsylvania but who wished to move to another state could and did not because of that state's residence requirement (A. 89, 106). The Court indicated that such facts were so clear as to require no proof (A. 89, 94).[24]

The United States is a federation characterized by mobility. This mobility serves the strength of the nation and the wishes of individual citizens to share in that strength. Each year nearly seven million people move from state to state. "[To] divide our citizenry . . . into one class free to move from state to state and another class that is poverty-bound to the place where it has suffered misfortune is . . . at war with the habit and custom by which our country has expanded. . . . " *Edwards* v. *California,* 314 U.S. at 185 (Jackson, J. concurring). As Justice Douglas there said,

> [T]o allow . . . an exception to be engrafted on the rights of national citizenship would be to contravene every conception of national unity. . . . It would permit those who were . . . indigents . . . to be relegated to an inferior class of citizenship. It would prevent a citizen because he was poor from seeking new horizons in other states. It might thus withhold from large segments of our people that mobility which is basic to any guarantee of freedom of opportunity." 314 U.S. at 181.

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[24] See *Bull* v. *Board of Directors of the South Carolina Board of Public Welfare,* C.A. No. 68-308 (E.D. S.C. filed Apr. 22, 1968) (an action seeking an injunction against South Carolina's residence requirement brought by a husband and wife, presently residents of Pennsylvania, both now receiving Aid to the Blind here, who for medical reasons have been advised to settle in a warmer climate and who wish to return to the county of the husband's birth and early adulthood).

As the cases discussed herein hold, the state must have a most substantial interest so to burden the right to move and to settle. As argued above at Sec. II, it has none.

## Conclusion

The Court should hold that the durational residence requirement deprives appellees and the class they represent of the equal protection of the laws and constitutes an unreasonable burden on the right freely to move and to settle. The decision below should be affirmed.

Respectfully submitted,

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**APPENDIX**

## APPENDIX "A"

PA. STAT. ANN. TIT. 62, SEC. 401 (SUPP. 1967)

It is hereby declared to be the legislative intent to promote the welfare and happiness of all the people of the Commonwealth, by providing public assistance to all of its needy and distressed; that assistance shall be administered promptly and humanely with due regard for the preservation of family life, and without discrimination on account of race, religion or political affiliation; and that assistance shall be administered in such a way and manner as to encourage self-respect, self-dependency and the desire to be a good citizen and useful to society.

PA. STAT. ANN. TIT. 62, SEC. 432(6) (SUPP. 1967)

Assistance may be granted only to or in behalf of a person residing in Pennsylvania who (i) has resided therein for at least one year immediately preceding the date of application; (ii) last resided in a state which, by law, regulation or reciprocal agreement with Pennsylvania, grants public assistance to or in behalf of a person who has resided in such state for less than one year . . . .

PA. PUBLIC ASSISTANCE MANUAL, SECS. 3150 *et seq.*

The following regulations on residence are based on the Public Assistance Law, Act of June 24, 1937, P.L. 2051; the Uniform Transfer of Dependents Act, Act of April 23, 1941, P.L. 20; and the interpretations of these laws by the Department of Justice.

3151 PENNSYLVANIA RESIDENCE

3151.1 *Definitions*

3151.11 *Pennsylvania Residence*

A person has residence in Pennsylvania for assistance purposes if he makes his home here, or if he regards Penn-

sylvania as his home during his temporary absence from Pennsylvania. . . .

3151.2 *Residence Requirements for Assistance Purposes*

3151.21 *Applicant*

An applicant meets the residence requirements for assistance if he is *residing in Pennsylvania at the time of application,* and if one of the following circumstances exists:

a. The person has resided in Pennsylvania for one year immediately before the application. Temporary absence does not interrupt residence in Pennsylvania.

b. The person has not resided in Pennsylvania for one year immediately before application, but the person:

(1) Was last a resident of a state that by law, regulation or reciprocal agreement with Pennsylvania, grants assistance without regard to the period of residence (3150 Appendix I gives the pertinent information); . . .

3153 Requests From Out-of-State Agencies

The County Office has the authority and responsibility to determine whether a person has Pennsylvania residence for assistance purposes and to provide the information to an out-of-state agency when requested. . . .

3154 Temporary Assistance to Non-Residents

The Public Assistance Law provides for the granting of assistance to a needy homeless or transient without nullifying the legislative requirement on residence. As used in 3154, a homeless or transient means any person who does not have residence in Pennsylvania for assistance purposes.

A homeless or transient person is eligible for assistance only as set forth below.

Assistance includes medical care under the conditions in 3911.3 and payment for burial under the conditions in 3723.3.

3154.1 *Resident of Another State*

3154.11 *Has Plans for Self-Support*

A person, who has a plan for self-support that appears real and immediate, is eligible for one one-time grant while the facts are being verified.

If the facts confirm the plan and the source of self-support makes it necessary for the person to move outside the County, the person is eligible for only one grant and only for the purpose of reaching his destination.

If the facts confirm employment and the person does not have to move outside the county to accept the employment, the person is eligible for one one-time grant pending employment, and if employed within one week, such other one-time grants as may be necessary until he receives his initial pay.

If the facts do not confirm the plans, the person may be eligible for further assistance as a homeless or transient person only if he decides to return to the state where he has residence.

3154.12 *Has No Plan for Self-Support*

If the person wants to return to the state he claims to be his home state, he is eligible for no more than four one-time grant(s) while his residence or settlement for assistance purposes in that state is being verified. The County Office requests the appropriate agency in the other state to make this determination. In addition to the information on residence, the County Office asks for other information that may be helpful to the person in making and carrying out his plan to return. The County Office does not request "authorization to return."

The request to the other state should include the following information about the person:

a. Address(es) while in that state.

b. Place(s) of employment.

c. Names and addresses of people in that state who know him.

d. Approximate date he last left the state.

If the other state confirms the person's residence claim and he still wants to go there, he is eligible for a grant for the purpose of reaching his destination.

If the person decides not to go to the other state, or if the other state does not reply before the last day covered by the fourth one-time grant, or if the other state makes a finding that the person does not have residence or settlement in that state for assistance purposes, he is ineligible for further assistance as a homeless or transient person unless 3154.11 or 3154.2 applies.

3154.2 *Stateless Person*

As used in 3154, a stateless person is one who has not established residence in any state for assistance purposes.

A person who claims he is stateless and whose claim is apparently justified by the facts, or a person who has been found to be stateless, is eligible for assistance as a homeless or transient person only if the regulations in 3154.11 apply.

3154.3 *Computing the Grant*

3154.31 *Grant While Facts are Being Verified*

Each grant is for seven days or less, as needed.

The amount of the one-time grant(s) for each person is the prorated amount of the county's maximum monthly allowance per person for room and meals in restaurants (3253.3).

3154.32 *Grant to Reach Destination*

The grant to reach destination includes the actual minimum cost of all of the following items that the person needs:

a. Transportation to his destination by the most economical means of travel.

b. Food en route and for one day after arrival, at the rate of $2.00 a day per person.

c. Lodging en route, if necessary.

3154.4 *Report on Transients*

Occasionally a homeless or transient person or family seems to be traveling about from place to place primarily to try to get assistance that is available to transients; and only incidentally for such other reasons as looking for work or getting back home or to friends or relatives where help may be available. If, in the judgment of the County Office, a homeless or transient person or family applying for assistance appears to be a "deliberate repeater," the County Office reports promptly to State Office on such persons. The report gives appropriate information under such headings as: date of contact; name(s) of transient(s); age(s) or birthdate(s); descriptions; address(es); social security number(s); occupation(s); veteran's status; relatives; clearance with other agencies; story including attitude or behavior during contact; disposition of application; basis for thinking transient is "deliberate repeater." The original of the report is sent to the Director, Bureau of Assistance Services, no later than the day after the person or family applied. If State Office has reports indicating that a transient has applied for assistance more than once and may be a "deliberate repeater," all County Offices will be promptly notified.

*Residence and Temporary Assistance to Non-Residents*

(See opposite) ☞

## RECIPROCAL STATES

Appendix I provides the following information:

a. States that by law, regulation, or reciprocal agreement with Pennsylvania grant assistance without regard to the period of residence.
b. The types of assistance covered.
c. Other known factors in the reciprocal states' regulations which affect a person's eligibility; this information should be helpful in planning with persons who intend to move out of the state.

### Codes

I - Reciprocity Conditioned by Intent - The State grants assistance to a person from Pennsylvania without regard to length of residence, if the person intends to establish residence in the State.

I# - Same as I, but the granting of assistance depends upon the availability of limited funds.

I## - Same as I, except that Pennsylvania recipients only are covered.

A - Reciprocity Conditioned by the Right to Authorize Return - The State grants assistance to a person from Pennsylvania without regard to length of residence, but reserves the right if the person has not lived in the State one year and if it is to the person's best interest, to authorize the person's return to the State where he has residence.

| Reciprocal States | OAA | ADC | GA | BP-AB | AD |
|---|---|---|---|---|---|
| Alaska | | I | | | |
| Arkansas | | | I# | | |
| Connecticut | I | I | | I | I |
| Rev.* Delaware | | | | I | |
| Georgia | | I | | | |
| Hawaii | A | A | I | A | I |
| Idaho | I | I | | I | I |
| Maine | I## | I## | | I## BP-M only 2/ | I## |
| Michigan | I## | | | I## | |
| Minnesota | | I | | | |
| Mississippi | | | | I | |
| New Hampshire | I## | I## | | I## | I## |
| | | | | BP-M only 2/ | |
| New Jersey | | I 3/ | | I BP-M only 2/ | |
| New York | I 1a/ 1b/ | I 1b/ 1c/ | I 1b/ 1c/ | I 1b/ | I 1b/ |
| | | | | | I |
| Rhode Island | I | I | | I | I |
| South Carolina | | | I | | I |
| Virgin Islands | I | I | I | I | I |
| Wisconsin | I | | | I | |

1a/ A person may receive OAA in a nursing home in New York, only if all necessary arrangements have been made through the local (N.Y.) commissioner of public welfare before the individual is admitted to the home, or before any contract is made with the home for his care.

1b/ A person who has come into New York solely for the purpose of qualifying for public assistance is not eligible for any category of assistance. If he entered the state 6 months or more before the date of application, he is considered to have entered for a purpose other than to receive public assistance.

1c/ A person who has come into New York State is not eligible for Home Relief or ADC if he is "undeserving of and ineligible for assistance"-i.e., if he is found capable of working but either is not employed or has not submitted a certificate from the appropriate local employment office that there is no job opening for him. If found to be "undeserving and ineligible," the applicant may be provided by New York with transportation to return to another state or another county, or temporary assistance in New York until "other plans eliminating need in this State" are in effect.

2/ Reciprocity on residence for persons applies only to eligibility for BP-M. Such persons will be eligible for BP-B only after meeting the regular residence requirements.

3/ New Jersey continues ADC up to 2 months following the month in which a recipient removes to another State.

On the death of a recipient of this category of assistance, if he has assets, the local unit shall send prompt notice and full information on these facts to the appropriate local unit of the other State, if the recipient is known to have received this category of assistance formerly from the other State.