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Constitutional Law: State Residence Requirements for Welfare Aid Held Unconstitutional

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denied the advantages of the recent Supreme Court decisions, the burden will be diminished and the discrimination or inequality of justice will be reduced once the docket is brought up to date. Furthermore, once adequate standards are established, the number of appeals should be greatly reduced below the current level.

As a matter of social policy this decision is undoubtedly of great value. Efforts to bring the poor into the mainstream of American life and integrate them into the vast body of the middle class is a primary goal of the law. Giving the poor greater equality before the law will help to do this, for nothing could be more calculated to ostracize the poor or minority groups than inequitable treatment resulting from the inability to afford counsel. The rule of this case must be adopted and further extended to include the later phase of preparing the motion for collateral attack.

Constitutional Law: State Residence Requirements for Welfare Aid Held Unconstitutional

Plaintiff, an indigent mother, moved from Boston, Massachusetts, to Hartford, Connecticut, in order to live near her mother. Because of her change in residence, Boston discontinued the welfare payments which she had been receiving.[1] Her application for similar aid in Connecticut was denied because she had not met that state's one-year residence requirement which applies to all persons entering the state without visible means of support for the immediate future.[2] On her challenge of the statute, the federal district court *held* the one-year residence requirement unconstitutional because it abridged the right to travel through a state and to establish a residence therein, in violation of the privileges and immunities clause of the fourteenth amendment, and because it denied equal protection of the laws in violation of the fourteenth amendment. *Thompson v. Shapiro*, 270 F. Supp. 331 (D. Conn. 1967).

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1. Plaintiff had been receiving benefits under the Aid to Dependent Children (ADC) program in Boston. ADC programs are financed jointly by the state and federal governments, with each contributing about one-half the cost. *See generally* Harvith, *The Constitutionality of Residence Tests for General and Categorical Assistance Programs*, 54 CALIF. L. REV. 567 (1966).

2. CONN. GEN. STAT. ANN. § 17 (Supp. 1966). The Connecticut State Welfare Department defines the words "without visible means of support for the immediate future" as:

1. Persons or families who arrive in Connecticut without specific employment.

On a challenge of a similar statute in 1940 in *People ex rel. Heydenreich v. Lyons*,[3] the Illinois Supreme Court held valid a three-year residence requirement for applicants for public assistance. The opinion concluded that since a state has no constitutional or common law obligation to provide public benefits, it has wide discretion in setting conditions for its distribution.[4] The court rejected the argument that the statute denied equal protection of the laws, stating that the fourteenth amendment required only that such a classification be reasonably related to a legitimate purpose.[5] The legitimate purpose was found to be an attempt to prevent the state ". . . from becoming a haven of the transient poor seeking the most advantageous statutory provision granted those requiring assistance and, perhaps, thereby reducing the aid to which permanent residents of Illinois should justly have first claim . . . ."[6] The three-year residence requirement was held to be reasonably related to this purpose.

A New York case[7] of the same vintage, where a removal statute[8] was challenged as unconstitutional, is relevant to the question of the validity of residence requirements since it also involved unequal treatment of certain citizens on the ground that they were new arrivals as opposed to permanent residents. The majority dismissed the appeal for procedural reasons,[9] but a

2. Those arriving without regular income or resources sufficient to enable the family to be self-supporting in accordance with Standards of Public Assistance.
3. "Immediate future" means within three months after arriving in Connecticut.
[Support from others does not satisfy the requirements of the law.]
270 F. Supp. at 333.

3. 374 Ill. 557, 30 N.E.2d 46 (1940), *noted in* 8 U. CHI. L. REV. 544 (1941). Several other suits have been brought in the past year challenging similar statutes. *See* Green v. Department of Pub. Welfare, Civil No. 3349 (D. Del., June 28, 1967) (statute unconstitutional); Harrell v. Board of Comm'rs, Civil No. 1497-67 (D.D.C., June 19, 1967) (plaintiff's challenge not considered). Cases pending on the same issue include Alexander v. California Dep't of Social Welfare, Civil No. 47041 (N.D. Cal., filed May 10, 1967); Barley v. Board of Comm'rs, Civil No. 1579-67 (D.D.C., filed June 20, 1967); Smith v. Reynolds, Civil No. 42419 (E.D. Pa., filed June 1, 1967); Waggoner v. Gunderman, Civil No. 67-40 (W.D. Pa., Jan. 1967).

4. 374 Ill. at 565, 30 N.E.2d at 51; *see also* 8 U. CHI. L. REV. 544 (1941).

5. 374 Ill. at 564, 30 N.E.2d at 51.

6. *Id.* at 566, 30 N.E.2d at 51.

7. *In re* Chirillo, 283 N.Y. 417, 28 N.E.2d 895 (1940).

8. The statute allowed New York to "remove" petitioner to his former place of residence in Ohio because he was a burden on the New York welfare program. *Id.*

9. The court held that where, as here, the intent and scope of

three-judge minority would have allowed the appeal and sustained the constitutionality of the statute. The minority rejected arguments that the statute violated the fourteenth amendment, stating that the due process clause of that amendment required only reasonableness.[10]

Prior to *Heydenreich*, several cases in analogous areas held that freedom of interstate travel is constitutionally protected,[11] although the courts are not in agreement as to the source of that right. Accordingly several types of restrictions on interstate travel have been struck down. In *Edwards v. California*,[12] the Court found that since the movement of people is "commerce" within the meaning of the commerce clause,[13] freedom of travel is derived from that clause and cannot be abridged by the states. Thus the Court struck down a state statute making it a misdemeanor to knowingly bring an indigent nonresident into the state. The Court further reasoned that the national character of the union required that no state be allowed to isolate itself from the national problem of aid to the poor.[14] Four justices concurred on the ground that freedom of travel was a right of national citizenship and was therefore protected by the privileges and immunities clause of the fourteenth amendment.[15]

In several cases involving passports, the Supreme Court has further established that the right to travel is constitutionally protected and has provided at least a partial answer to the question of what type of statute or regulation unconstitutionally re-

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the statute as well as its constitutionality were involved, a direct appeal on constitutional grounds from the County Court was improper. *Id.*

10. *Id.* at 431-32, 28 N.E.2d at 901. The minority felt that the historical background and present conditions showed the need for, and reasonableness of, the statute. Furthermore, it was the minority's position that the equal protection clause was not violated because all persons receiving public benefits were supported equally; and the privileges and immunities clause was not violated since the statute did not prevent a person from coming into the state but applied only when he sought public benefits. *Id.* at 432-38, 30 N.E.2d at 901-04.

11. Crandall v. Nevada, 73 U.S. (6 Wall.) 35 (1867) (state tax on each person leaving the state by common carrier struck down); Passenger Cases, 48 U.S. (7 How.) 283 (1849) (state statutes imposing taxes on arriving alien passengers invalid under commerce clause).

12. 314 U.S. 160 (1941).

13. *Id.* at 172. *See* Caminetti v. United States, 242 U.S. 470, 491 (1917).

14. 314 U.S. at 174-75.

15. *Id.* at 178, 182. Privileges and immunities derived from national citizenship are protected by the fourteenth amendment, while those derived from state citizenship are not. Slaughter-House Cases, 83 U.S. (16 Wall.) 36, 74 (1872).

stricts that right. In *Kent v. Dulles*,[16] the Secretary of State denied passports to persons who refused to file affidavits disavowing alleged Communistic beliefs and associations. The Court did not reach the constitutional issue of whether Congress can deny a person the right to travel because of his beliefs and associations, since it held that Congress had clearly not delegated such power to the Secretary[17] by the statutes[18] in question. However, the Court did comment that "[t]he right to travel is a part of the 'liberty' of which the citizen cannot be deprived without due process of law . . . ."[19]

In another passport case, *Aptheker v. Secretary of State*,[20] the Court again found the basis of the right to travel to be the "liberty" guaranteed by the fifth amendment. Reaching the constitutional issue directly, the Court struck down section 6 of the Subversive Controls Act of 1950[21] which made it unlawful for any member of a Communist organization to apply for or use a passport. The Court held that the Act was too broad and indiscriminate in its restriction of the right to travel, and violated the fifth amendment in that it applied without regard to whether the accused knew or believed that he was associated with a Communist organization.[22]

Kent and *Aptheker* were modified by *Zemel v. Rusk*,[23] which upheld a State Department ban on travel to Cuba.[24] The Court stated that the fact that freedom of travel cannot be abridged without due process of law as required by the fifth amendment does not mean that it cannot be abridged under any circumstances. In a dissenting opinion, Justice Douglas argued that first amendment freedoms of speech and association suffer if the

16. 357 U.S. 116 (1958).

17. The Court held that the Secretary of State was authorized under the Act to restrict passports only for reasons relating to the applicant's citizenship or his participation in an unlawful activity; since the grounds asserted by the Secretary did not fall within these two categories, the Act provided the secretary with no power to impose such a restriction. 375 U.S. at 127.

18. 22 U.S.C. § 211(a) (1964); 8 U.S.C. § 1185 (1964).

19. 357 U.S. at 125.

20. 378 U.S. 500 (1964).

21. 50 U.S.C. § 785 (1964).

22. 378 U.S. at 510.

23. 381 U.S. 1 (1965).

24. Passport Act of 1926, 22 U.S.C. § 211(a) (1964), states that: "The Secretary of State may grant and issue passports . . . under such rules as the President shall designate and prescribe for and on behalf of the United States. . . ." The Court held that prohibition of travel to Cuba by the Executive was within the rulemaking power granted by this Act. 381 U.S. at 7.

freedom of travel is abridged. Therefore, no restriction upon travel should stand unless a clear countervailing national interest can be demonstrated.[25]

In the recent case of *United States v. Guest*,[26] the Court held that the right of free travel is protected from infringement by individuals as well as governments, when it sustained the convictions of six individuals for conspiring to deprive Negroes of their constitutional right to travel among the states.[27] The Court stated that while there have been differences in emphasis within the Court as to the source of the right to travel, there has been no disagreement as to the existence of such a federal right, independent of the fourteenth amendment; therefore, state action need not be shown.[28]

While the above cases establish that the right to travel is constitutionally protected, they do not consider the issue of whether residence requirements constitute an abridgement of that right. Several cases in which residence requirements have been upheld in relation to voting eligibility indicate that at least some residence requirements are not considered to be such an abridgement. In *Lassiter v. North-Hampton County Board of Elections*,[29] the court indicated that a residence requirement is an obvious example of the type of factor which a state may consider in determining qualifications of a voter.[30] The argument

25. *Id.* at 26. Where first amendment freedoms are involved, even a legitimate governmental purpose cannot be pursued by means which broadly stifle individual liberties when employment of a narrower statute can achieve the same purpose. Shelton v. Tucker, 364 U.S. 479, 488 (1960). *See also* NAACP v. Button, 371 U.S. 415 (1963); Sala v. New York, 334 U.S. 558 (1948); Cantwell v. Connecticut, 310 U.S. 296 (1940).

26. 383 U.S. 745 (1966).

27. The indictment charged defendants with conspiring to deprive Negroes of their right to travel and use instrumentalities of interstate commerce by shooting, beating, and killing Negroes, and by other forms of violence and threats of violence. *Id.* at 748.

28. *Id.* at 757. The Articles of Confederation expressly protected freedom of travel, stating that ". . . the people of each state shall have free ingress and regress to and from any other state. . . ." The Constitution however, makes no mention of "free ingress and regress." One writer concludes that the draftsmen of the Constitution left the phrase out because it was considered to be embodied in substance elsewhere in the Constitution. He states that in view of the draftsmen's opposition to state tariff and immigration laws, it is clear that they did not intend to reject the substance of the phrase. Z. CHAFEE, THREE HUMAN RIGHTS IN THE CONSTITUTION OF 1787, at 185 (1956).

29. 360 U.S. 45 (1959).

30. *Id.* at 51 (dicta). *See also* Smith v. Allwright, 321 U.S. 649 (1944).

that a one-year residence requirement for voting in a local election is a denial of equal protection under article IV, section 2[31] was rejected in *Drueding v. Devlin*.[32] The right to vote in national elections, which has its foundation in the Federal Constitution,[33] may also be conditioned on a fixed period of residence.[34] In addition, residence requirements have been upheld in relation to divorce jurisdiction[35] and university admission and tuition.[36] The above cases thus indicate that residence requirements are not within the class of restrictions prohibited as abridgements of free travel.

In the instant case the State argued that the plaintiff was not deprived of her right to travel and settle[37] in Connecticut since she could do so freely, on the condition that she would be ineligible for welfare benefits for one year. The residence requirement was therefore valid, because it was reasonably related to the legitimate legislative purpose of protecting the state welfare fund by discouraging the influx of those who enter the state seeking public benefits.

The court, however, agreed with the plaintiff that Connecticut's residence requirement was unconstitutionally discriminatory, because it arbitrarily classified persons who had recently moved to the state as ineligible for aid.[38] The court adopted the rationale of Justice Jackson's concurring opinion in *Edwards*[39] that a restriction of free travel abridges the privileges and immunities clause of the fourteenth amendment,[40] and that no

31. Article IV, § 2, states that "[t]he Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

32. 234 F. Supp. 721 (D. Md. 1964), *aff'd*, 380 U.S. 125 (1965).

33. Joyner v. Browning, 30 F. Supp. 512, 517 (W.D. Tenn. 1939); *see also* Twining v. New Jersey, 211 U.S. 78 (1908); Wiley v. Sinkler, 179 U.S. 58, (1900); *Ex parte* Yarbrough, 110 U.S. 651 (1884).

34. Van Berkel v. Power, 16 N.Y.2d 37, 209 N.E.2d 539, 261 N.Y.S.2d 876 (1965); State *ex rel.* Englehard v. Weber, 96 Minn. 422, 105 N.W. 490 (1905).

35. *See, e.g.*, Stewart v. Stewart, 185 F.2d 436 (D.C. Cir. 1950); Gage v. Gage, 89 F. Supp. 987 (D.D.C. 1950); Clark v. Clark, 79 F. Supp. 722 (D.D.C. 1948); Lorance v. Lorance, 216 Ga. 754, 119 S.E.2d 342 (1961); Gramelspacher v. Gramelspacher, 204 Va. 839, 134 S.E.2d 285 (1964).

36. Meredith v. Fair, 199 F. Supp. 754 (S.D. Miss. 1961).

37. The State apparently conceded that the right to travel includes the right to establish residence in a state. 270 F. Supp. at 335.

38. 270 F. Supp. at 338.

39. 314 U.S. 160, 181-86 (1941) (concurring opinion).

40. 270 F. Supp. at 335-36. The court held that plaintiff's reliance on the privileges and immunities clause of art. IV, § 2 was misplaced, since plaintiff was a citizen of Connecticut. Article IV, § 2 prevents

measure which would restrict one's freedom of travel on the basis of poverty can be upheld as constitutional. The court clearly defined freedom of travel to include the right to establish a residence within a state as well as to pass through it.[41] In addition the court cited the passport cases of *Zemel, Aptheker*, and *Kent* in support of its holding that restrictions on freedom of travel violate the Constitution.[42]

The court conceded that prior "right to travel cases" involved absolute proscriptions on travel, but reasoned that *Guest*[43] had established that the *discouragement* of interstate travel was also prohibited. The court cited *Dombrowski v. Pfister*[44] and *Wolff v. Selective Service Local Board No. 16*,[45] which held unconstitutional actions which had a "chilling" effect on first amendment freedoms, in further support of its holding that freedom of travel includes the right to be free from discouragement against travel. The court then concluded that since the one-year residence requirement for eligibility for ADC has a chilling effect upon this right, it was as unconstitutional as an outright prohibition would be.

In an alternative holding the court rejected the foundation of the *Lyons* decision,[46] that a state may impose residence requirements on applicants for aid because receipt thereof is a privilege and not a right, reasoning that *Sherbert v. Verner*[47] had established that even gratuitous state benefits must satisfy

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only discrimination by a state against citizens of other states in favor of its own citizens. *Id.* at 334.

41. *Id.* at 336. The court quoted Jackson's statement in *Edwards* that freedom of travel includes the right ". . . to enter any state of the Union, either for temporary sojourn or for the establishment of permanent residence therein. . . ." 314 U.S. 160, 183 (1941) (concurring opinion).

42. 270 F. Supp. at 335.

43. 383 U.S. 745 (1966).

44. 380 U.S. 479 (1965). The Court enjoined certain state officials from harassing plaintiff because of his political beliefs. The officials were bringing charges against him under the Louisiana Subversive Activities and Communist Control Law, with no real expectation of a successful conviction, on the ground that these actions discouraged exercise of freedoms of speech and association.

45. 372 F.2d 817 (2d Cir. 1967). The court held that reclassification of students from "deferred" to "available for service" status on the basis of their participation in antiwar demonstrations was unconstitutional. Here again the court's decision was based on the detrimental effect these actions may have on free speech.

46. Notes 3-6 *supra* and accompanying text.

47. 374 U.S. 398 (1963). The Court held that unemployment compensation could not be denied to plaintiff for her refusal to work on Saturday, the Sabbath day of her religion. *Id.* at 406.

equal protection requirements.[48] The court stated that the statute was not reasonably related to the purpose of discouraging entry of those who enter the state for the purpose of seeking public benefits, since the state had not shown that a significant number came for that purpose. Most of the class entering the state came to seek employment, to return after a period of absence, or, as in the instant case, to live near relatives. Moreover, the classification based on a one-year residence, a job, or a cash stake was arbitrary and unreasonable, because the state had not shown that persons with a job or a cash stake would be less of a burden on the state in the long run.[49] Therefore, the statute denied plaintiff the equal protection of the laws.

The court went much further in dicta, stating that even if the statute had been shown to serve a reasonable purpose, it would have been unconstitutional.[50] While a state may restrict distribution of aid in some ways, it ". . . must justify its denial to others by reference to a constitutionally recognized reason."[51]

The dissent argued that the residence requirement was a classification reasonably related to the legislative purpose of discouraging ingress to the state by those who enter for the primary purpose of seeking relief and was therefore within the power of the state to enact.[52] It pointed out that forty state legislatures and Congress have approved similar one-year residence requirements as a prerequisite for welfare benefits. The existence of residence requirements in areas such as student loans, aid to the blind, voting, liquor permits, state civil service employment, divorce actions, and commercial fishing licenses were offered by the dissent as evidence that such requirements have widespread legislative approval and have heretofore been accepted as valid

48. 270 F. Supp. at 338.

49. The Act provided that one who arrived in the state with specific employment or resources sufficient to enable the family to be self-supporting was not subject to the one year requirement.

50. 270 F. Supp. at 338. The court stated that "[e]ven a classification denying aid to those whose sole or principal purpose in entry is to seek aid . . . would not be sustainable."

51. *Id.* The court stated that if the resident requirement were for the purpose of preventing fraud, investigation of indigency, or some other reasonable administrative need, it would be valid. However, the state concluded that the residence requirement was not needed for these purposes.

52. The dissent pointed out that Connecticut provides benefits of $197.00 per month for a family of four, compared to $33.00 per month in Mississippi, $48.00 in Alabama, and a national average of $148.00. Connecticut pays 54% of its total with the federal government contributing the remaining 46%, while four southern states contribute an average of only 17%. *Id.* at 339.

by courts. A declaration that such legislative enactments are invalid ". . . would go far toward completing the annihilation of the police powers . . . ."[53]

While the court's finding that the right of free travel is one of the privileges and immunities of national citizenship protected from state abridgement by the fourteenth amendment and that freedom of travel includes the right to establish residence within a state cannot be seriously questioned,[54] the real issue is whether the type of indirect effect upon free travel caused by the residence requirement is constitutionally prohibited. No previous case has held such an indirect effect on free travel to be an "abridgement" of that right, nor has any prior case held that a state has a constitutional duty to provide optimal conditions for migration into it.

The court's reliance on *Edwards* and *Guest* is misplaced. While *Edwards* does make clear that no state can prohibit or make unlawful travel between the states, it does not condemn all legislative action which may make entry into a state less advantageous than it might otherwise have been. Nor did *Guest* involve discouragement tactics which were as indirect as in the instant case. *Guest* involved the shooting and killing of persons as they used interstate highways, but it did not consider the question of what type of *indirect* restrictions constitute an abridgement of free travel.[55]

The court's reliance on *Dombrowski* and *Wolff* is also very tenuous. Both cases involved the use of otherwise valid procedures to "punish" persons for their exercise of first amendment freedoms.[56] The punishment of a person who has exercised his constitutional right to travel to and settle in Connecticut is clearly not the purpose of the statute.[57]

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53. *Id.* at 340.

54. *See* Edwards v. California, 314 U.S. 160 (1941); United States v. Wheeler, 254 U.S. 281 (1920); Twining v. New Jersey, 211 U.S. 78 (1908).

55. 383 U.S. 745, 760 (1966). See notes 25-26 *supra* and accompanying text.

56. In *Dombrowski*, the Court noted that first amendment rights are particularly sensitive to discouragement or "chilling." 380 U.S. 479, 486-87 (1965). *See also* NAACP v. Button, 371 U.S. 415 (1963); Tugwell v. Bush, 367 U.S. 907 (1961) (per curiam), *affirming* Bush v. Orleans Parish School Bd., 194 F. Supp. 182 (E.D. La. 1961); Gremillion v. United States, 368 U.S. 11 (1961) (per curiam).

57. See note 2 *supra* and accompanying text. The fact that public benefits do become available one year after a new resident's arrival shows that the statute is not intended to and does not operate to "punish" persons for exercising their right to travel.

The majority's position is further weakened by its failure to discuss the effect of Congress' implicit approval of the one-year residence requirement in the Federal Social Security Laws,[58] which provides federal funds to state administered welfare programs on the condition that the residence requirement does not *exceed* one year. Since forty states require one year of residence for eligibility,[59] congressional approval of such statutes can hardly be questioned.[60]

Finally, the alternative holding of the court was a misapplication of the equal protection clause of the fourteenth amendment. Equal protection requires only that the group affected be classified on a basis reasonably related to a valid legislative objective. The objective of the residence statute is not merely to protect the public purse, but to provide an adequate welfare program for permanent Connecticut citizens. To this end, it is reasonable for a state to give preference to permanent residents as opposed to newly arrived citizens (who have not resided in the state for one year), for the purpose of preventing the fund available for permanent residents from being diminished by new arrivals.[61] It is not asking too much of an applicant for public benefits that he first "contribute" one year of citizenship within the state before he becomes eligible to receive such benefits.

The nature of the federal system requires that residence tests be allowed; each state must have the right to create a welfare program primarily for its own permanent residents with safeguards against an influx of persons seeking benefits of the program. In the absence of a federal program to deal with newly arrived residents otherwise eligible for welfare benefits, state residence requirements must be upheld.

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58. 42 U.S.C. § 602(b) (1964).

59. U.S. GOV'T PRINTING OFFICE, CHARACTERISTICS OF STATE PUBLIC ASSISTANCE PLANS UNDER THE SOCIAL SECURITY ACT (1965).

60. The court might have construed the statute to exclude from eligibility only those whose primary purpose in coming to the state was to seek welfare benefits. However, while the court did not give the statute that construction, it did state in dicta that even a statute so construed would be unconstitutional. 270 F. Supp. 338.

61. It is obvious that states with generous benefits programs would suffer by attracting persons from other states seeking higher benefits, and states with very inadequate programs would "gain" by having some welfare recipients move to states with better programs. This would, of course, encourage states with high welfare payments to decrease such payments to prevent an influx of persons, and encourage states with low benefits to maintain them at a low level to encourage welfare recipients to move to states with higher benefits. Welfare benefits would be the prime victims of this result.