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TABLE OF CITATIONS

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1967
No.

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,

Appellees

On Appeal from the United States District Court for the Eastern District of Pennsylvania

JURISDICTIONAL STATEMENT

The appellants, pursuant to the United States Supreme Court Rules 13(2) and 15, file this their statement of the basis upon which it is contended that the Supreme Court of the United States has jurisdiction on a direct appeal to review the final decree of permanent injunction in question, and should exercise such jurisdiction in this case.

OPINION BELOW

The Opinion of the United States District Court for the Eastern District of Pennsylvania which is the subject of this appeal is not yet reported. A copy of the Opinion is attached hereto as Appendix A.

JURISDICTION

This action was brought by the appellees (plaintiffs) in the United States District Court for the Eastern District of Pennsylvania under 28 U.S.C. 1343, 42 U.S.C. 1393, 28 U.S.C. 2281, 2284, and 28 U.S.C. 2201, 2202 to declare Section 432(6) of Act No. 21 of the Pennsylvania Legislature approved June 13, 1967 [1] unlawful and unenforceable as it contravenes the United States Constitution, and to enjoin appellants (defendants) from enforcing said statute against appellees.

Section 432(6) of Act No. 21 of the Pennsylvania Legislature, approved June 13, 1967, has been held constitutional by the District Court for the Middle District of Pennsylvania on January 29th, 1968.

A special three judge court was convened pursuant to 28 U.S.C. 2281, 2284. After hearing an opinion was rendered on December 18, 1967 holding that portion of Section 432(6) relating to durational residence requirement unconstitutional and enjoining appellants from enforcing

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[1] Act No. 21 of the Pennsylvania Legislature, approved June 13, 1967, known as the "Public Welfare Code" is a codification of welfare provisions in Pennsylvania.

The durational residence requirement contained in Section 432(6) of that Act is the same as that previously contained in the Act of June 24, 1937, P. L. 2051, Section 8.1, as amended by the Act of August 26, 1965.

This case arose under the provision prior to the codification in the Public Welfare Code of 1967, however, reference hereafter will be to the new Section 432(6) in the codification.

that section. Thereafter a notice of appeal was filed with the District Court on January 2, 1968.

The jurisdiction of the Supreme Court to review by direct appeal is conferred by 28 U.S.C. 1253. The following decisions sustain the jurisdiction of this court to review a judgment on direct appeal from a three judge district court:

United States v. Georgia Public Service Commission, 371 U.S. 285;

American Federation of Labor v. Watson, 327 U.S. 582.

STATUTES INVOLVED

The statute of the Commonwealth of Pennsylvania involved is Act No. 21 of the Pennsylvania Legislature, approved June 13, 1967, as follows:

Section 432:

(6) 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.

. . .

QUESTION PRESENTED

A. Whether Section 432(6) of the Pennsylvania Public Welfare Code requiring one year's residence as a condition to eligibility for public assistance violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

STATEMENT OF THE CASE

Appellees are Juanita Smith, individually, and her minor children John Smith, Tabitha Miller, Sophia Paynter, William Paynter and Voncell Paynter. Appellee Juanita Smith and other plaintiffs from the date of their birth and until December, 1966 resided in the State of Delaware. Since the second week of December 1966, appellees have all resided at 2859 Amber Street, Philadelphia, Pennsylvania.

On February 20, 1967, appellees made application for public assistance and received a grant of $115.00. A second grant in the same amount was received two weeks later on March 10, 1967.

On March 13, 1967, appellee Juanita Smith was informed by the County Board of Assistance that assistance to her and her children would be terminated. This action was taken because appellees did not satisfy the statutory requirement of one year's residence immediately preceding their application.

This suit was filed on March 31, 1967 to declare the Act of June 24, 1937, P. L. 2501, Section 8.1, as amended, and now contained in the Act No. 21 of the Pennsylvania Legislature approved June 13, 1967, Section 432(6), unconstitutional and to preliminarily enjoin defendants from enforcing the said section and to make said injunction permanent after hearing. At the same time appellees moved to convene a three judge District Court under 28 U.S.C. Sections 2281 and 2284 and to allow appellees to proceed in forma pauperis under 20 U.S.C. Section 1915.

On March 31, 1967, the appellees were granted leave to proceed in forma pauperis and their motion for a temporary restraining order was denied.

Hearings were held on May 3, 1967 and May 29, 1967. Appellees' motion that the action be maintained as a class action was granted by District Judge Joseph S. Lord, III, on May 31, 1967.

The court made findings of facts and conclusions of law on June 1, 1967 and issued a preliminary injunction against the defendants as to Juanita Smith and her minor children.

On October 3, 1967, appellees' motion to extend the preliminary injunction to the class was denied.

On December 18, 1967, the court handed down its opinion declaring Section 432(6) of the "Public Welfare Code", Act No. 21 of the Pennsylvania Legislature approved June 13, 1967, unconstitutional as a violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

THE QUESTION PRESENTED IS SUBSTANTIAL

In 1940 a durational residence requirement was held to be constitutional in *People ex rel. Heydenreich v. Lyons,* 347 Ill. 557, 30 N.E. 2d 46. Shortly thereafter the Supreme Court of the United States in *Edwards v. California,* 314 U.S. 164, declined to decide the question; the Court said at p. 174:

> "The nature and extent of its (the State's) obligation to afford relief to newcomers is not here involved".

After these decisions there was a complete absence of adjudication on the issue until the year of 1967. In that year, a number of cases raised the issue of the constitutionality of duration residence requirements for State Public Welfare.

This Court in *Carrington v. Rash,* 380 U.S. 89 and *McLaughlin v. Florida,* 379 U.S. 184 has said that the test to be applied to legislation under the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States is:

> ". . . whether the classifications drawn in a statute are reasonable in light of its purpose".

However, in applying this test, the courts have not reached uniform consensus. Such a durational residence requirement has been held unconstitutional in *Thompson v. Shapiro,* 270 F. Supp. 331 (D. Conn.); prob. juris noted U.S. (1968), which involves the identical issue as presented herein and in which this Honorable Court

has noted jurisdiction. Other cases involving this issue are:

Green v. Department of Public Welfare, 270 F. Supp. 173 (D. Del.);

Harrell v. Tobriner, F. Supp. (D.D.C.).

There not only is a conflict of opinion among the decisions concerning durational residence requirements of different States but also a conflict between the District Courts in Pennsylvania.

Smith v. Reynolds, F. Supp. (E.D. Pa.) in the Eastern District Court for Pennsylvania on December 18, 1967 held Section 432(6) of the Pennsylvania Welfare Code unconstitutional and *Waggoner v. Rosenn*, F. Supp. (M.D. Pa.) in the Middle District Court for Pennsylvania on January 29, 1968 held that Section 432(6) (the section involved here), was constitutional on exactly the same issue. (A copy of that opinion is attached thereto as Appendix C).

The issue involved here is one of national importance since nearly forty (40) States have such durational residence requirements with respect to all or at least some welfare benefits.

CONCLUSION

The history of the adjudication of this question, the existing conflict between the District Courts, and particularly those within Pennsylvania, require a final determination of the matter. Therefore, it is submitted that this Court should review this case and allow presentation of briefs and oral arguments.

Respectfully submitted,
EDGAR R. CASPER
Deputy Attorney General
EDWARD FRIEDMAN
Counsel General
WILLIAM C. SENNETT
Attorney General

APPENDIX A

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

Civil Action No. 42419

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

v.

Roger A. Reynolds, Mayer I. Blum, Herbert R. Cain, Jr., Katherine M. Kallick, Rosalie Klein, Elfred 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

OPINION

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

By: Joseph S. Lord, III, District Judge

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

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

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

[2] The Deputy Attorney General stated for the record at the conclusion of the second hearing: "If I may say so, Your Honor, the witnesses that Mr. Gilhool [plaintiffs' counsel] called are the very people that I would rely on for my facts. The facts would be exactly the same." N.T. 135.

Thus, the uncontradicted evidence is to the effect that:

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

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

(3) The cost to the Commonwealth of providing public assistance to those to whom it is now refused because they have not been residents of the State for at least one year would be an insignificant portion of the present welfare budget—about one-half of one percent—and half of

this amount would be absorbed by the Federal Government.

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

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

It is elementary constitutional doctrine that the Equal Protection Clause of the Fourteenth Amendment prohibits a State or instrumentalities of the State from invidious discrimination among its citizenry. Reitman v. Mulkey, 387 U.S. 369. There is, of course, no constitutional right to receive public welfare any more than there is a constitutional right to public education or even public police protection. However, if the State chooses to provide such public benefits, privileges, and prerogatives, it cannot arbitrarily exclude a segment of the resident population from their enjoyment. It is for this reason that classifica-

tion in State statutes which purport to exclude from coverage one or more classes of individuals who would otherwise qualify for the advantages and opportunities conferred by the Legislature must be examined in order to determine whether there is any legitimate purpose for the distinction; whether an important and constitutionally cognizable State interest inheres in the classification, or whether on the other hand, the exclusion is purely arbitrary. Loving v. Virginia, 388 U.S. 1 (1967); Carrington v. Rash, 380 U.S. 89, 93 (1965); McLaughlin v. Florida, 379 U.S. 184, 1960 (1964). If the distinction is arbitrary, then the statute deprives the citizens so excluded of equal protection of the State's laws and of the benefits which those laws may impart. A discrimination without rational basis and without legitimate purpose or function is inherently invidious, and hence constitutionally interdicted.

In the context of the present case, we are totally at a loss to discern what purpose, if any, the Pennsylvania Legislature has ascribed to the one year residence requirement. To require a period of one year's residence as a condition to the receipt of public assistance results in the division of Pennsylvania residents into two classes: those who have lived in the State for one year and those who have lived in the State for less than one year. Such a distinction has no apparent purpose. See Green v. Department of Public Welfare, 270 F. Supp. 173 (Del. 1967).[3] The Attorney General does not, of course, contend that its purpose is to erect a barrier against the movement of indigent persons into the State or to effect their prompt

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

departure after they have gotten there and begun to realize the disadvantage of second-class citizenship. Such a purpose would be patently improper and its implementation plainly impermissible. The right to travel freely without deterrence is inherent in the notion of a unified nation, and no State may exclude citizens migrating from other States, whatever the reason for the migration. Edwards v. California, 314 U.S. 160 (1941); United States v. Guest, 383 U.S. 745 (1966). In any event, the proof mutually accepted by both sides in this case is that deletion of the residence requirement would not result in an influx of destitute relief-seekers.

Nor is there any contention that the residence condition enhances the administrative effectiveness of the Public Assistance Act. To the contrary, all of the evidence is to the effect that many of the burdensome budgetary and administrative problems which are currently encountered by welfare officials in the conduct of the public assistance program would be substantially alleviated by the removal of this bottleneck in the processing of applicants. Moreover, the added cost to the Commonwealth of helping the now excluded class would be relatively insignificant. Needless to say, there would be some increase in cost. It is axiomatic that Pennsylvania does save some money now by excluding residents of less than one year. But the constitutional test of equal protection is not satisfied by considerations of minimal financial expediency alone. To be sure, the State may reduce or even eliminate entirely welfare payments if it chooses to conserve resources in this fashion, it may turn all beggars from its doors. But it may not arbitrarily turn away some who are in need while bestowing its charitable favors on others. There must be some otherwise legitimate purpose for excluding members

of the class who are in fact deprived of the protection and privileges of existing laws. It is not enough to say that the class is excluded because money is saved.

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

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

The Pennsylvania residence requirement constitutes a manifest violation of the Equal Protection Clause; accordingly, the Commonwealth will be enjoined from its further enforcement.

(s) Joseph S. Lord, III

DECREE

And Now, this 18th day of December 1967, it is ordered and decreed that:

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

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

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

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

CONCURRING OPINION

Sheridan, District Judge, concurring.

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

Michael H. Sheridan

DISSENTING OPINION

Kalodner, Circuit Judge, dissenting

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

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

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

In striking down the Pennsylvania statutory provision, the majority has, in sum, substituted its judgment for that of the Pennsylvania legislature, the legislatures of its thirty-nine sister states, and last but not least, the Congress of the United States, which enacted the federal contribution and the District of Columbia statutes.

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

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

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

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

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

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

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

> ". . . [T]he Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others", and "The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective."[4]
>
> "State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality" and

[4] McGowan v. Maryland, 366 U.S. 420, 425 (1961).

"A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."[5]

"Every presumption is to be indulged in favor of faithful compliance by Congress with the mandates of the fundamental law", and "Courts are reluctant to adjudge any statute in contravention of them."[6]

"One who assails the classification" in a state statute "must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."[7]

"A statute is not invalid under the Constitution because it might have gone farther than it did. . . ."[8]

". . . 'reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind.' "[9]

"Normally, the widest discretion is allowed the legislative judgment in determining whether to attack some, rather than all, of the manifestations of the evil aimed at; and normally that judgment is given the benefit of every conceivable circumstance which might suffice to characterize the classification as reasonable rather than arbitrary and invidious."[10]

Federal courts are not endowed with "authority to determine whether the Congressional [legislative]

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[5] Id. 425, 426.

[6] United States v. Butler, 297 U.S. 1, 67 (1936).

[7] Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78, 79 (1911).

[8] Roschen v. Ward, 279 U.S. 337, 339 (1929).

[9] Morey v. Doud, 354 U.S. 457, 465 (1957).

[10] McLaughlin v. Florida, 379 U.S. 184, 191 (1964).

> judgment . . . is sound or equitable, or whether it comports well or ill with the purposes of the Act", and the "wisdom or unwisdom" of a statute is an irrelevant factor in determining the issue of its constitutionality.[11]

The distilled essence of the stated principles is that legislatures are endowed with a wide range of discretion in enacting laws which affect some of its residents differently from others;[12] "every presumption" of constitutionality must be accorded by courts to a challenged law and the challenger bears the burden of proving that the law is irrational and "essentially arbitrary"; a statutory discrimination will not be declared unconstitutional "if any state of facts reasonably may be conceived to justify it"; the circumstance that a law "might have gone further than it did" in remedying a public social problem does not make it unconstitutional; and the "wisdom or unwisdom", soundness or unsoundness of the legislative judgment are irrelevant considerations in determining the issue of constitutionality.

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

Its threshhold errors are (1) failure to take into account the wide range of discretion vested in the Pennsylvania legislature; (2) failure to accord to the challenged statute the presumption of constitutionality; and (3) failure to give effect to the doctrine that a state may enact laws which affect some of its residents differently from

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[11] Flemming v. Nestor, 363 U.S. 603, 611 (1960).

[12] Except in instances where the differences are based on race, color or religion. Loving v. Virginia, 388 U.S. 1 (1967).

others when the difference is not based on racial or religious considerations.

The majority has structured its ruling on these stated conclusions:

> ". . . [W]e are totally at a loss to discern what purpose, if any, the Pennsylvania Legislature has ascribed to the one-year residence requirement";
>
> the ". . . division of Pennsylvania residents into two classes: those who have lived in the State for one year and those who have lived in the State for less than one-year . . . has no apparent purpose";
>
> ". . . many of the burdensome budgetary and administrative problems" of public welfare officials "would be substantially alleviated by the removal of this bottleneck in the processing of applicants";
>
> ". . . the added cost to the Commonwealth of helping the now excluded class would be relatively insignificant".

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

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

Nor do the majority's conclusions that (1) Pennsylvania's "burdensome budgetary and administrative prob-

lems . . . would be substantially alleviated" if the legislature had not enacted the one-year residence requirement, and (2) ". . . the added cost to the Commonwealth of helping the now excluded class would be relatively insignificant", provide a premise for its holding of unconstitutionality. These conclusions are merely "judgment" conclusions which in effect substitute the judgment of a court for the judgment of the legislature. As earlier stated, the "wisdom or unwisdom" of a statute is an irrelevant consideration in determining the issue of unconstitutionality.

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

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

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

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

The Pennsylvania Legislature annually enacts a budget for the following year which must limit the total of its appropriations to its estimated annual tax revenue, inasmuch as Pennsylvania's Constitution limits the Commonwealth's borrowing capacity to $1,000,000.

The Pennsylvania Legislature appropriated $199,800,000 of state revenues for public assistance grants for the fiscal year ending June 30, 1968—a significant percentage of the Commonwealth's annual budget.

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

1. The estimated yield of state taxes.

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

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

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

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

It is a conceivable fact that in light of the foregoing factors the Pennsylvania Legislature enacted the one-year residence eligibility requirement to serve *predictive purposes* in making its appropriations for public assistance.

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

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

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

This must be added. The majority's opinion does not advert to the plaintiffs' alternative claim that the one-year residence eligibility requirement is unconstitutional

because it abridges their right of freedom to travel from one state to another.

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

APPENDIX B

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

Civil Action No. 42419

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

v.

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

FINDINGS OF FACT, DISCUSSION AND CONCLUSIONS OF LAW

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

By: Joseph S. Lord, III, District Judge

Findings of Fact

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

2. Defendants, with the exception of William C. Sennett, Attorney General of the Commonwealth of Pennsylvania, are variously charged with the powers and duties of administering public assistance, determining the eligibility of all applicants, superintending the public assistance program, and establishing rules, regulations, and standards for administration by County Boards of Assistance.

3. The Act of June 24, 1937, P. L. 2051, §§9(a)(2) and 9(d), as amended, 62 Purd. Stat. §2508.1(6), provides that assistance shall be granted only to or in behalf of a resident of Pennsylvania who has resided therein for at least one year immediately preceding the date of application.

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

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

6. Plaintiffs intend to reside permanently in Pennsylvania.

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

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

9. On March 13, 1967, plaintiff Juanita Smith was informed by the County Board of Assistance that assistance to her and her children would be terminated.

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

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

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

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

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

Discussion

Requisite to the granting of a preliminary injunction is a showing that the plaintiff will suffer irreparable injury and a balancing of the "conveniences of the parties

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

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

Conclusions of Law

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

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

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

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

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

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

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

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

DECREE

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

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

By the Court:
Joseph S. Lord, III,
J.

APPENDIX C

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

Civil Action No. 9841

Leila Waggoner, individually and Lenore Marie Waggoner, Anita Diane Waggoner, Susan Elaine Waggoner, Theresa Anne Waggoner, Ronald James Waggoner, Jamie Leah Waggoner, and Sharon Michelle Waggoner, by Leila Waggoner, their mother and next friend, all of Pittsburgh, Pennsylvania, individually and on behalf of all others similarly situated,

Plaintiffs

v.

Max Rosenn, Secretary of Public Welfare of the Commonwealth of Pennsylvania,

Defendant

OPINION

Before: Harry E. Kalodner, Circuit Judge, and Michael H. Sheridan, Chief Judge, and Frederick V. Follmer, District Judge

By: Harry E. Kalodner, Circuit Judge:

In this class action plaintiffs challenge the constitutionality of the one-year residency requirement imposed by Section 432(6) of the Pennsylvania Public Welfare Code, Act of June 13, 1967 P. L. (Act No. 21), as a condition of eligibility for public assistance grants to needy families with children.[1] They urge that the stated residency requirement (1) denies them due process, and equal protection of the laws accorded by the Fifth and Fourteenth Amendments to the Constitution, and (2) abridge their "right to move freely from state to state" in violation of Art. I, Section 8 of the Constitution.

Defendant denies that the residency requirement of the Pennsylvania Public Welfare Code deprives plaintiffs of their constitutional rights as alleged and moves to dismiss the complaint for failure to state a claim upon which relief can be granted, Rule 12(b)(6), Fed. Rules Civ.

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[1] Section 432(6) provides:

"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; (iii) is a married woman residing with a husband who meets the requirement prescribed in subclause (i) or (ii) of this clause; or (iv) is a child less than one year of age whose parent, or relative with whom he is residing, meets the requirement prescribed in subclause (i), (ii) or (iii) of this clause or resided in Pennsylvania for at least one year immediately preceding the child's birth. Needy persons who do not meet any of the requirements stated in this clause and who are transients or without residence in any state, may be granted assistance in accordance with rules, regulations, and standards established by the department."

Proc., 28 U.S.C.A., or, in the alternative, moves for summary judgment in his favor on the ground that there is no genuine issue as to any material fact. Rule 56. Ibid.

Applicable to our consideration of the issues presented are these settled principles to which a federal court must adhere in determining whether a statute contravenes Constitutional guarantees:

> ". . . [T]he Fourteenth Amendment permits the States a wide scope of discretion in enacting laws which affect some groups of citizens differently than others", and "The constitutional safeguard is offended only if the classification rests on grounds wholly irrelevant to the achievement of the State's objective."[2]
>
> "State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality" and "A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it."[3]
>
> "Every presumption is to be indulged in favor of faithful compliance by Congress with the mandates of the fundamental law", and "Courts are reluctant to adjudge any statute in contravention of them."[4]
>
> "One who assails the classification" in a state statute "must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."[5]

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[2] McGowan v. Maryland, 366 U.S. 420, 425 (1961).

[3] Id. 425-426.

[4] United States v. Butler, 297 U.S. 1, 67 (1936).

[5] Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78, 79 (1911).

"A statute is not invalid under the Constitution because it might have gone farther than it did. . . ."[6]

". . . 'reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind.' "[7]

"Normally, the widest discretion is allowed the legislative judgment in determining whether to attack some, rather than all, of the manifestations of the evil aimed at; and normally that judgment is given the benefit of every conceivable circumstance which might suffice to characterize the classification as reasonable rather than arbitrary and invidious."[8]

Federal courts are not endowed with "authority to determine whether the Congressional [legislative] judgment . . . is sound or equitable, or whether it comports well or ill with the purposes of the Act", and the "wisdom or unwisdom" of a statute is an irrelevant factor in determining the issue of its constitutionality.[9]

The distilled essence of the stated principles is that legislatures are endowed with a wide range of discretion in enacting laws which affect some of its residents differently from others;[10] "every presumption" of constitutionality must be accorded by courts to a challenged law and the challenger bears the burden of proving that the law is irrational and "essentially arbitrary"; a statutory

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[6] Roschen v. Ward, 279 U.S. 337, 339 (1929).

[7] Morey v. Doud, 354 U.S. 457, 465 (1957).

[8] McLaughlin v. Florida, 379 U.S. 184, 191 (1964).

[9] Flemming v. Nestor, 363 U.S. 603, 611 (1960).

[10] Except in instances where the differences are based on race, color or religion. Loving v. Virginia, 388 U.S. 1 (1967).

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

Applying the principles stated to the instant situation, we are of the opinion that the plaintiffs have failed to rebut the presumption of constitutionality of the challenged Pennsylvania statute by a "showing" (1) that "it does not rest upon any reasonable basis, but is essentially arbitrary", Lindsley v. Natural Carbonic Gas Co., 320 U.S. 61, 79 (1911); and (2) that the Pennsylvania Legislature transgressed its permissible "wide scope of discretion" in enacting laws which affect some groups of citizens differently than others", McGowan v. Maryland, 366 U.S. 420, 425 (1961).

The following "state of facts reasonably may be conceived to justify"[11] the challenged statutory discrimination.

The Pennsylvania Legislature annually enacts a budget for the following year which must limit the total of its appropriations to its estimated annual tax revenue, inasmuch as Pennsylvania's Constitution limits the Commonwealth's borrowing capacity to $1,000,000.

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

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[11] McGowan v. Maryland, 366 U.S. 420, 426 (1961).

1. The estimated yield of state taxes which are the sole source of Pennsylvania's public assistance funds. The Pennsylvania Legislature appropriated $199,800,000 of state revenues for public assistance grants for the fiscal year ending June 30, 1968—a significant percentage of the Commonwealth's annual budget.

2. The number of its residents currently receiving public assistance grants. They include needy families with dependent children, indigent aged and blind, permanently disabled persons between the ages of 18 and 64, and those who need assistance in the payment of bills for in-patient hospital and nursing home care, doctor, dentist, nursing and drug expenses.[12]

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

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

It is a conceivable fact that in light of the foregoing factors the Pennsylvania Legislature enacted the one-year residence eligibility requirement to serve *predictive purposes* in making its appropriations for public assistance.

The foregoing establishes that the Pennsylvania one-year residence eligibility requirement "cannot be condemned as so lacking in rational justification as to offend

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

due process". Fleming v. Nestor, 363 U.S. 603, 612 (1960). In that case the Supreme Court explicitly stated, at page 612, that the factor of residence "can be of obvious relevance to the question of eligibility". It did so in ruling constitutional Section 202(n) of the Social Security Act, 42 U.S.C.A. §402(n), which provides for termination of old-age, survivor, and disability insurance benefits payable to, or in certain cases in respect of, an alien individual who is deported under §241(a) of the Immigration and Nationality Act, 8 U.S.C.A. §1251(a), on any one of certain grounds specified in §202(n).

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

Of greater moment here is the fact that Congress, in enacting legislation providing for federal contributions to state-administered public assistance programs, provided that states may establish a one-year residence eligibility requirement.[13] Thirty-nine states of the Union have enacted a one-year residence requirement as a condition of eligibility to qualify for public assistance grants to needy families with children, similar to the Pennsylvania provision, and Congress has done so in the District of Columbia Public Assistance Act of 1962.[14]

The one-year residence requirement in the Connecticut, Delaware, Pennsylvania and District of Columbia acts has been ruled unconstitutional by three-judge District

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

[14] Title 3, Chapter 2, D.C. Code, §3-203(a)(b) (1967), "Eligibility for public assistance", enacted October 15, 1962.

Courts in 1967: Thompson v. Shapiro, 270 F. Supp. 331 (D. Conn.); Green v. Department of Public Welfare, 270 F. Supp. 173 (D. Del.); Smith v. Reynolds, F. Supp. (E.D. Pa.); Harrell v. Tobriner, F. Supp. (D.D.C.). The court was unanimous only in Green; dissenting opinions were filed in the other cases cited. It may be noted that the writer of this opinion dissented in Smith v. Reynolds, and that Chief Judge Sheridan, who is here dissenting, was a member of the majority in that case.[15]

We have taken into consideration the contrary views expressed in the foregoing cases. We can only say that the courts therein have substituted their judgment for that of the legislatures of forty states and the Congress of the United States as expressed in the enactment of the District of Columbia Public Assistance Act and Section 602(b), 42 U.S.C.A. of the Social Security Act, which, in providing for federal contributions to state-administered public assistance programs specified that states may establish a one-year residence eligibility requirement. We can only say that we regard the substitution of judicial judgment for that of legislative judgment as nothing less than judicial usurpation of the legislative function in disregard of the doctrine of separation of powers so firmly established since the founding of our Republic, and of the teaching of numerous decisions of the Supreme Court.

There remains this, too, to be said, with respect to the plaintiffs' asserted claim that the one-year residence eligibility requirement is unconstitutional because it abridges their right of freedom to travel from one state to another

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[15] The Supreme Court of the United States on January 15, 1968 granted review in Thompson v. Shapiro, 270 F. Supp. 331 (D. Conn. 1967), sub. nom. Shapiro v. Thompson.

in contravention of the interstate commerce clause of the Constitution, Article I, Section 8.

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

For the reasons stated we hold that the one-year residence requirement as a condition of eligibility for public assistance grants to needy families, provided by Section 432(6) of the Pennsylvania Public Welfare Code, Act of June 13, 1967, is constitutional. The plaintiffs' complaint will be dismissed for failure to state a claim upon which relief can be granted.

Sheridan, Chief Judge, dissents.

Harry E. Kalodner,
Circuit Judge.

ORDER

And Now, to wit, this 29 day of January, 1968, it is ordered that plaintiff's complaint, in the above entitled matter, be and the same is hereby dismissed.

And it is so ordered.

Harry E. Kalodner,
Circuit Judge.
Frederick V. Follmer,
District Judge.