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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 813

BERNARD SHAPIRO, Commissioner of Welfare of the State of Connecticut,

Appellant,

—v.—

VIVIAN MARIE THOMPSON,

Appellee.

BRIEF OF AMERICAN CIVIL LIBERTIES UNION, AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA, AND CONNECTICUT CIVIL LIBERTIES UNION, *AMICI CURIAE*

Interest of *Amici*

The American Civil Liberties Union, and its Southern California and Connecticut affiliates, file this brief, with consent of the parties, because we believe that laws which prohibit receipt of state benefits, otherwise generally available, on the basis of length of residency within the state, deny the equal protection of the laws, violate the Commerce Clause, and impair the right to travel. Though the brief is nominally confined to examination of the Connecticut statute involved in No. 813, its argument bears directly on *Washington* v. *Harrell,* No. 1134, and *Reynolds* v. *Smith,* No. 1138, and we ask the Court to consider the brief in relation to those cases as well.

Statement of the Case

This action was brought in the United States District Court for the District of Connecticut under Title 28, United States Code, sections 2281 and 2284. Appellee sought a declaration that Chapter 299, section 17-2d, of the Connecticut General Statutes violates the Constitution of the United States, and requested an injunction against the enforcement of the statute, and payment of moneys unconstitutionally withheld. The action was heard by a three-judge district court.

The court found the facts as stipulated to by the parties. In June, 1966, appellee moved from Boston, Massachusetts, to Hartford, Connecticut. Her purpose in moving was to live near her mother. As the mother of one child, she had been receiving Aid to Dependent Children (ADC) from the City of Boston. Boston discontinued this aid in September because of appellee's change of residence. When she applied for similar assistance to appellant, Commissioner of Welfare of the State of Connecticut, he denied ADC to her on November 1, 1966, because although she was otherwise eligible she had not resided in Connecticut for one year prior to her application. The one-year residence requirement is stated in Conn. Gen. Stat. section 17-2d:

> When any person comes into this state without visible means of support for the immediate future and applies for aid to dependent children under chapter 301 or general assistance under part 1 of chapter 308 within one year from his arrival, such person shall be eligible only for temporary aid or care until arrangements are made for his return, provided ineligibility for aid to dependent children shall not continue beyond the maximum federal residence requirement.

The Social Security Act prohibits all federal financial assistance to state plans for aid to needy families with children if such plans impose residence requirements in excess of the federally prescribed limits.[1] (There is no contention herein that Connecticut's residence requirements are in excess of the federal limits.)

The Welfare Department of the State of Connecticut has promulgated regulations construing the term "person . . . without visible means of support for the immediate future" contained in section 17-2d:

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

Connecticut Welfare Manual, Vol. 1, Ch. 2, section 219.1.

The regulations further provide:

> 1. If the application for assistance is filed within one year after arrival in Connecticut, the applicant must establish that he was self-supporting upon arrival and for the succeeding three months thereafter; or
>
> 2. If the application for assistance is filed within one year after arrival in Connecticut, the applicant must clearly establish that he came to Connecticut with a bona fide job offer; or

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[1] 42 U. S. C. §602(b).

> 3. If the application for assistance is filed within one year after arrival in Connecticut, the applicant must establish that he sought employment and had sufficient resources to sustain his family for the period during which a person with his skill would normally be without employment while actively seeking work. Personal resources to sustain his family for a period of three months is considered sufficient. Those who come to Connecticut for seasonal employment such as work in tobacco or short term farming are not deemed to have moved with the intent of establishing residence in Connecticut.

Connecticut Welfare Manual, Vol. 1, Ch. 2, section 219.2.

Under these statutes and regulations, Connecticut withholds ADC for one year to newly arrived residents unless they come to Connecticut with substantial employment prospects, or enough resources to sustain the family, or began their journey from a state having a reciprocal interest compact act for welfare services (Conn. Gen. Stat. section 17-21a, *et seq.,* discussed *infra*). Plaintiff came to Connecticut with neither the prospect of employment nor the necessary resources, and she did not come from a state having an interstate compact statute for welfare services.

These exceptions to Connecticut's residence restrictions ("self-supporting," "bona fide job offer," "personal resources") invert the usual criteria for determining the need for assistance. The normal ground for assistance is the lack of independent means of sustenance. See Conn. Gen. Stat. section 17-2 and 42 U. S. C. section 601 (Social Security Act).

ARGUMENT

I.

Appellant's withholding of aid to appellee denies her the equal protection of the laws.

A. ***The Discriminatory Classifications:***

The Connecticut welfare statutes and regulations under consideration establish two classes of residents (among those otherwise qualified for aid): (1) those who have resided in Connecticut for over one year; and (2) those who have not. The latter class is further subdivided into: (a) those who have migrated from states having a reciprocal interstate compact statute for welfare services, as does Connecticut (Conn. Gen. Stat. section 17-21a, *et seq.;* see discussion *infra*); (b) those who are sufficiently self-supporting under the above-quoted statute (section 17-2d) and regulations; and (c) all others. Welfare benefits are given to all classes except that subclass last named.

Connecticut, in dispensing welfare services thus discriminates between residents on the basis of (1) their length of residence; and (2) if they have been residents for less than a year, on the basis of (a) what their immediately preceding state of residence was, and (b) whether they have the capacity to be self-supporting (the existence of such capacity being a basis for *giving* aid, rather than *withholding* it). Each criterion of discrimination is without rational justification, inflicts unfair costs and penalties upon persons requiring assistance, and conflicts with the national goal of maintaining, in the large free trade area formed by the several states, the residential mobility necessary for economic growth and full employment.

B. ***The Governing Standards of Equal Protection:***

Although neither the common law nor the state or federal constitutions have thus far been held to require a state to provide welfare benefits, if the state chooses to provide such benefits it cannot arbitrarily withhold them from certain classes of people. *Sherbert* v. *Verner,* 374 U. S. 398 (1963) (statute denying state unemployment compensation benefits to Seventh Day Adventist unable to find work because her religion prevented working on Saturday held unconstitutional); see also *Speiser* v. *Randall,* 357 U. S. 513 (1958).

Although a state legislature is free to make classifications in the application of a statute this Court has left no doubt that the classification must 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 such basis." *Gulf, Colorado and Santa Fe Railway Co.* v. *Ellis,* 165 U. S. 150, 155 (1896). "[A] statutory discrimination must be based on differences that are reasonably related to the purposes of the Act in which it is found." *Morey* v. *Doud,* 354 U. S. 457, 465 (1956). And in applying this test to state action under the equal protection clause, the adverse economic and social impact of that action is to be measured and appraised. See *Brown* v. *Board of Education,* 347 U. S. 483, 492-94 (1954).

C. *The Connecticut ADC Residence Requirements Bear No Reasonable Relation to the Goals of Connecticut's Welfare Legislation; and in Any Event the Purpose of These Requirements Are Constitutionally Impermissible:*

The Connecticut statutes and regulations under consideration impose a discrimination on Connecticut residents of less than one year which has no reasonable relation to the purposes of the legislation governing Aid to Dependent Children. This discrimination must be put to close scrutiny for two reasons: (1) the very lives of appellee's children are involved, for the ADC benefits denied herein are intended to provide subsistence; and (2) discrimination among residents of a state traditionally has been regarded with suspicion. See *Truax* v. *Raich,* 239 U. S. 33 (1915); *Oyama* v. *California,* 332 U. S. 633 (1948); *Carrington* v. *Rash,* 380 U. S. 89 (1965).

Two three-judge courts other than the court below have provided a thorough analysis of the possible purposes of the residence requirement. They concluded that the residence requirement has no reasonable purpose in welfare aid, and thereby denies to welfare applicants not meeting it the equal protection of the laws. In *Green* v. *Department of Public Welfare,* 270 F. Supp. 173, 178 (D. Del. 1967), the court held:

> We therefore conclude that the one-year residency requirement in 31 Del. C. §504, and other provisions of the Code relevant thereto, create an invidious distinction as to the class represented by plaintiffs and are therefore in violation of the equal protection clause.

Harrell v. *Tobriner,* Civil Action No. 1497-67 (D. D. C. 1967), also held that the District of Columbia one-year

residence requirement violates the Equal Protection Clause. In *Ramos* v. *Health and Social Services Board,* 276 F. Supp. 474 (E. D. Wis. 1967), and *Smith* v. *Reynolds,* Civ. Action No. 42419 (E. D. Penn. 1967), the courts issued preliminary injunctions on the ground that similar residence requirements were in violation of the equal protection clause. In *Mantell* v. *Dandridge,* —— F. Supp. —— (D. C. Md. Oct. 24, 1967), the court issued a temporary restraining order against the enforcement of a similar residence requirement in Maryland.

The purpose of the statutes and regulations under consideration obviously is to provide children without any means of financial support money payments to be used for the basic essentials of subsistence.[2] The corollary purpose of this kind of aid is to maintain and strengthen family life and to enable parents or relatives of the children to care for the children in a family environment as nearly normal as possible.[3] For people such as appellee who do

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[2] See Conn. Gen. Stat. §17-2:

> The welfare commissioner shall administer the law concerning state paupers, assistance for the aged, the blind and the permanently and totally disabled, and to dependent children and welfare of children *who require the care, protection or discipline of the state.* (Emphasis added.)

[3] *Cf.* 42 U. S. C. §601 (Social Security Act):

> For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. . . .

not meet the residence requirement, this purpose is not realized. A resident of Connecticut for six months who is indigent and without means by which to support herself and her children is no less needy than an indigent who has resided in Connecticut for one year.[4] The denial of assistance for an entire year to otherwise qualified recipients only erodes the values which the program tries to promote. Withholding aid to needy children for one year may mean that when the aid is given it is too late to prevent the sundering of a family, too late to prevent malnutrition or exposure, too late to prevent a boy or girl from succumbing to crime.

The only possible purposes of the one-year residence requirement are: (1) to "protect the state treasury" by preventing an influx of people who migrate to Connecticut for the principal purpose of obtaining higher welfare benefits than they received in their former places of residence; (2) to prevent people who cannot support themselves from

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[4] *Cf.* Hyde [General Director, National Travelers Aid Associational], Foreword to *Residence Laws: Road Block to Human Welfare* (Symposium) 3 (1956) (quoting from Statement of Principles on Residence Laws, March 23, 1956, National Travelers Aid Association):

> Were residence laws merely a paper anachronism, there might be no harm in allowing them to remain on the books, as a kind of socio-legal curiosity. Unfortunately, their effect is not on paper but on people. Day in and day out, human beings are deprived of essential services and opportunities, not because they don't deserve them, but merely because of the accident of how long they happen to have lived in a particular place.
>
> * * * * *
>
> [A] person who has exercised the right of free movement should be on an equal footing with all others; . . . human needs such as food, clothing, shelter, and medical care should be met as such, regardless of whether the person in need is a long-established resident of the community, a newcomer to the community or in transit to some other place. . . .

coming (for whatever reason) to Connecticut; (3) to encourage recent arrivals who have become unable to support themselves to leave; (4) to provide an objective test to determine whether an applicant is a domiciliary; and (5) for administrative convenience and efficiency. Connecticut states frankly that the principal, if not sole, purpose of its one-year residence requirement is to protect its treasury by discouraging entry of those who come to Connecticut and are in need of welfare benefits.[5] *Thompson* v. *Shapiro,*

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[5] The Brief of the State of California as *Amicus Curiae on Behalf of Appellant,* claims that the purpose of California's residency requirement "is not as is Connecticuts' [sic] to prevent in-migration of indigents" (p. 5) in order to protect its fisc. In describing California's "different" purpose, the Brief then cites California Welfare and Institutions Code section 11004, which provides that the Code be administered "with due consideration for the needs of applicants and the safeguarding of public funds," and concludes that California's legislative purpose is proper, whatever the status of Connecticut's.

California's attempt to draw such a distinction in purpose is labored. Obviously, the only conceivable way in which California's residence requirement could "safeguard public funds" is either (a) to discourage in-migration or (b) simply not to pay new entrants who have nevertheless chosen to change their residence—*i.e.,* to preserve the treasury by restricting welfare funds to "insiders," and shutting out "outsiders." *Neither* purpose is constitutionally permissible. California's statement of purpose is thus simply a euphemism for "We will save money by excluding *strangers* from the benefits we dispense to the *in-group,*" and that goal is essentially the same as that of Connecticut's residence test.

For California to state blandly in defense of residence tests that it is simply "protecting its budget" is thus to argue in a circle. It could protect its budget by withholding aid from minority groups while dispensing it to others; but no one gainsays the constitutional invalidity of such exclusions. We do not and cannot rationally dispute the proposition that California is trying to save money. But it cannot do so in violation of Constitutional standards, and whether there have been such violations is precisely the issue herein. *Amici* believe that to guard a state treasury by establishing arbitrary and

270 F. Supp. 331, 336-37 (D. Conn. 1967). This appears to include purposes (1) through (3).

Connecticut itself apparently believes not only that its residence requirement conflicts with the basic purposes of ADC (and indeed with the purposes of any welfare assistance) but that the supposed "justifications" for the requirement are without foundation, for in its *Interstate Compact on Welfare Services* (Conn. Gen. Stat. sections 17-21a, *et seq.*) it has (a) legislatively declared that restrictive residence requirements are "barriers" to virtually any kind of needed assistance and to migration (Art. I); and (b) enacted an *automatic* reciprocity agreement (Arts. III and VI) whereby *all* residence tests for *all* welfare services are abolished (without further legislative, executive or administrative action) for migrants from *any* and *all* states which have or enact similar welfare reciprocity laws:

> INTERSTATE COMPACT ON WELFARE SERVICES
>
> ARTICLE I
>
> The policy of the states party to this compact is to make welfare services available on a reciprocal basis under this compact and *to eliminate barriers caused by restrictive residence or settlement requirements of the several states.* . . . This compact shall be open for joinder by any state of the United States and the Dis-

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irrational distinctions among residents otherwise qualified for assistance violates the Fourteenth Amendment.

In any event, the *effects* of such residence requirements are either (a) to discourage in-migration directly or (b) to penalize it unfairly, thus burdening entrants who stay or forcing their removal (the latter being a direct attack on in-mobility). Since these effects are the reasonable and probable consequences of the residence test, California's disclaimer of evil intent may be ignored.

trict of Columbia.[6] (Conn. Gen. Stat. section 17-21a) (Emphasis added.)

Connecticut's complaint of a threat to its treasury is thus scarcely credible; it seems more likely that its residence test has no purpose, and is simply a holdover from less enlightened days of prejudice against outsiders. If and when all other U. S. jurisdictions enact a similar compact, Connecticut will in effect—without any further official action on its part—have no residence requirement for migrants from anywhere in the United States.

In any event, a state's purpose in seeking to protect its treasury by any of these three means is not a valid constitutional basis for discrimination. In *Edwards* v. *California,* 314 U. S. 160 (1941), a California statute making it a crime knowingly to bring an indigent into the state was declared unconstitutional, over objections by the State of California that extensive immigration was creating a substantial financial problem (opinion of the Court, 314

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[6] ARTICLE III

(a) No person who has removed himself from one party state to another party state shall be ineligible for a welfare service in such other party state because of failure to meet that state's residence or settlement requirements for eligibility. The cost of providing a welfare service to any person made eligible therefor by reason of this compact shall be charged within the state in accordance with the laws of such state. . . .

ARTICLE VI

(a) This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein. . . .

See also Conn. Gen. Stat. §§17-10, 32(g), 106; 1 Regulations of Connecticut State Agencies, §17-2d-2.

U. S. at 173). As Mr. Justice Jackson said in his concurring opinion (314 U. S. at 185):

> Any measure which would divide our citizenry on the basis of property into one class free to move from state to state, and another class that is poverty-bound to the place where he has suffered misfortune, is not only at war with the habit and custom by which our country has expanded, but is also a short-sighted blow at the security of property itself.

This Court has recently held that the possible dissipation of public moneys does not justify discrimination among individuals who otherwise have the same relationship with the state. *Sherbert* v. *Verner,* 374 U. S. 398, 406-07 (1963). See also *Toomer* v. *Witsell,* 334 U. S. 385 (1948).

Even assuming, *arguendo,* that protection of the public purse is a valid purpose for the residence requirement, the facts are that the public purse is not endangered because few people move to another state solely to obtain welfare. The contrary contention assumes that poor people throughout the country have considerable knowledge of the welfare laws of the various states and take them into consideration in a decision to move. The facts are otherwise.

The Social Welfare Department of the State of New York found that in one year only two per cent of all public assistance recipients had lived in New York for less than a year. Kasius, *What Happens in a State Without Residence Requirements,* in *Residence Laws: Road Block to Human Welfare* 19-20 (1956). A lengthy study of public assistance in New York found that "the present laws [which contain no residence requirement] are sufficient to protect the taxpayer without penalizing the unfortunate." *State of New*

York, Moreland Commission on Welfare, Public Welfare in the State of New York, 27-28 (1963). See also Hyde, *The Trouble with Residence Laws,* 16 *Public Welfare* 103, 105 (1958). The Kasius study concluded on the problem under discussion that "to assume that people are influenced to move or not to move, according to the availability of help on a relief basis, is to misunderstand the dynamics of human behavior." (Kasius, *supra,* at p. 20.)

Rhode Island, which abolished all residence requirements during World War II, found that despite the fact that it paid higher welfare benefits than surrounding states, its welfare cost declined during the period in which there were no residence requirements. Leet, *Rhode Island Abolishes Settlement,* 18 *Soc. Serv. Rev.* 281, 283-84 (1944). Leet states that the Rhode Island State Welfare Department was unable to locate a single individual who had moved into the state in order to secure assistance. (Leet, *supra,* at 283.) See also, *New York State Department of Welfare, The Movement of Population and Public Welfare in New York State* 13 (1958); Falk, *Social Action on Settlement Laws,* 18 Soc. Serv. Rev. 288, 294 (1944).

Even if we assume that some people move to Connecticut to enjoy a greener welfare pasture, and even if we further assume that a state may properly deny welfare benefits to persons who come with that intent, the one-year residence requirement is not a reasonable means to achieve that purpose. It has the effect of a conclusive presumption that all people who need aid within a year of arrival have come for that purpose. It not only denies the necessities of life to people who have been so motivated but also imposes such denial on others who have come for different reasons. Furthermore, the main brunt of the denial of aid is borne

by those who have no responsibility for the decision to migrate—the children. To deny needed aid to them under such circumstances is clearly arbitrary and unreasonable. The instant case, in which there is no evidence that Mrs. Thompson came to Connecticut to obtain welfare benefits, is a perfect illustration of the over-inclusive breadth of the residence requirements. As was stated in *Oyama* v. *California,* 332 U. S. 633, 646-47 (1947): "[A]ssuming, for the purpose of argument only, that the basic prohibition is constitutional, it does not follow that there is no constitutional limit to the means which may be used to enforce it." Denying welfare to the relatively few people who may migrate to the state to obtain welfare benefits (even if this were a valid goal) does not justify a one-year residence requirement which denies the necessities of life to the many who migrate to a state for other reasons. See generally tenBroek, *The Constitution and the Right of Free Movement* 15 (1955):

> Length-of-residence requirements in public welfare violate the equal protection command of the Fourteenth Amendment. Public welfare aids and services are granted for the purpose of meeting needs. Newcomers have these needs as well as long-time residents. They therefore stand in the same relationship to the purpose of the law as do long-time residents. Under the Equal Protection Clause they must be treated alike.

One study reported that the administrative cost of investigating cases to enforce residence laws costs more money than is saved by the residence requirement. Certainly, there is no showing in the instant case that a substantial amount of public funds would be saved by retaining the residence requirement. *State of New York,*

Moreland Commission on Welfare, Public Welfare in the State of New York, 28 (1963).

Another possible purpose of the residence requirement is to provide an objective method of proving that the applicant is a domiciliary, that is, that he has come to the state with the intent to remain there indefinitely. This assumes, of course, that one of the valid purposes of the welfare legislation is to provide benefits only to those who will have some relatively permanent relationship to the state. Assuming, *arguendo,* that purpose is valid, the evidence is overwhelming that the residence requirement is not needed to prove a domiciliary status. The residence requirement is over-reaching in that such a requirement prevents many applicants from obtaining assistance even though they are clearly living in the state with an intention to remain indefinitely. There is no evidence to show that such is not the intention of Mrs. Thompson. In the light of the often immediate need of applicants for food, clothing and shelter, the one-year residence requirement is a constitutionally unreasonable test for determining the intention aspect of domicile. More accurate and less burdensome alternatives are available to ascertain an individual's true intentions. Other factors may be investigated, such as examining reasons for a person's entering the state.

Closely aligned with the possible purpose of providing an objective test for determination of domicile is the possible purpose of efficiency in administration. It may be contended that such a waiting period avoids payments tainted with fraud or based on insufficient information. (See *Green* v. *Department of Public Welfare of State of Del.,* 270 F. Supp. at 177.) Whatever arguments may be

legitimately made to support a waiting period for all applicants, regardless of length of residence, they cannot reasonably be used to support a provision denying benefits to all needy and otherwise eligible applicants who have resided in the state less than one year and granting benefits to applicants similarly situated but who have resided in the state for more than one year. Connecticut has not and cannot demonstrate that the one-year residency requirement is in any sense necessary to the proper administration of its welfare laws. "As this court has held in analogous situations, constitutional deprivations may not be justified by some remote administrative benefit to the state." *Harman* v. *Forssenius,* 380 U. S. 528, 542 (1964). See also *Carrington* v. *Rash,* 380 U. S. 89, 96 (1965).

D. *Connecticut's Residence Requirements Inhibit the Mobility of the Groups for Which Mobility Is Most Essential, Are Therefore Incompatible With the Goals of an Open Economy, and Hence Are Irrational and Violate the Equal Protection Clause:*

1. Preface:

In attempting to protect its treasury, either by trying to prevent an influx of people coming to obtain higher welfare benefits or endeavoring generally to keep out people who cannot support themselves, Connecticut is impeding the mobility and the right to travel from state to state of those people who need to exercise that right the most. It is in the interest of the impoverished individual, as well as society, that he be able to leave the place where he has been unable to find opportunity and move to an area in which he may become a more productive member of society. These observations are elaborated in the next subsection.

The consequences of Connecticut's capricious residence classifications in granting welfare aid are thus severe and require analysis in order to determine the rationality of these classifications under the Equal Protection Clause. If the economic and social consequences of unequal treatment are injurious, that unequal treatment is unreasonable and in conflict with the Equal Protection Clause (cf. *Brown* v. *Board of Education, supra,* 347 U. S. 483, 492-94 (1954)). In the instant case, these consequences conflict with the manifest policies of the nation in promoting economic growth and full employment, and interfere with the implicit demands of an open economy and of the free market and free trade area established by the nation as a means to its goal of progress. These basic policies—and the means embraced to achieve them—have been reflected in the federal government's actions since the nation's birth.

We do not know what proportion of interstate migrants (whether to Connecticut or elsewhere) know of the applicable residence requirements prior to moving; nor is it necessary, in this action, to determine it. Whether or not the migrant has such knowledge, the effect of the requirements is to burden him unfairly and impede his mobility. If he has this foreknowledge, the requirements may deter his moving; if he does not, they may also deter or prevent a permanent move by forcing a "removal"[7] to his home state after he migrates and discovers his ineligibility. In any case, if he effects a change of residence, they penalize him for having chosen to be mobile and to remain in his new state. The foreknowledge, or lack of it,

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[7] See Conn. Gen. Stat. §17-2d, quoted *supra,* p. 2 providing that one who is ineligible under the residence requirement and the exceptions thereto "shall be eligible only for temporary aid or care until arrangements are made for his return. . . ."

concerning residence requirements is consequently immaterial. If a cost or penalty is placed on mobility this will either reduce it, burden it unfairly, or some degree of the two.

2. The Importance of Residential Mobility:

a. *In general:*

A high degree of residential mobility is an essential element of an open economy, characterized by free markets and free trade, and is indispensable to economic growth and full employment. See, *e.g.,* Bakke, Introduction to Soc. Sci. Research Council, *Labor Mobility and Economic Opportunity (Essays)* 3 (1954):

> The free movement of labor is in large part responsible for the flexibility with which millions of people and an amazing number and variety of jobs have been matched, for the vast potential of enterprise, initiative, incentive, invention, and for the self-development and acquisition of skills, which contributed greatly to our economic development.

See also Jaffe & Stewart, *Manpower Resources and Utilization: Principles of Working Force Analysis* 339 (1951):

> [I]nternal migration in the United States has been and is today a necessary, if not sufficient, condition to the attainment of full employment . . . . [I]f the growth in economic opportunity fails to keep pace with the growth in the working force, migration or unemployment became the only two alternatives.

Vance [Professor of Sociology, University of North Carolina, Chapel Hill], Statement, in *Hearings Before the*

Select Committee to Investigate the Interstate Migration of Destitute Citizens, House of Representatives, 76th Cong., 3d Sess., Pursuant to H. Res. 63 and H. Res. 491, Part I (July 29, 30, 31 (1940)), page 414:

> Migration is not only a constitutional right of every American citizen; it is an economic necessity in the American economic system. This country is an economic unit with a predominantly national market. Industries, investments, goods, and labor respond to this economic and legal fact by crossing State lines at will. Such movements are necessary to develop, maintain, and stabilize the national economy.[8]

It is difficult indeed to reconcile the urgent demands for mobility made by our free economy with the impediments to it and the penalties for it created by residence requirements.[9]

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[8] See generally Sjaastad, *The Costs and Returns of Human Migration,* 70 Journal of Political Economy 80 (Supp., Oct. 1962, on "Investment in Human Beings"):

> This treatment [by the author] places migration in a resource allocation framework because it treats migration as a means in promoting efficient resource allocation and because migration is an activity which requires resources.

See also Palmer, *Epilogue: Social Values in Labor Mobility,* in Soc. Sci., Research Council, *supra,* at pp. 113-114; LoGatto, *Residence Laws—A Step Forward or Backward?,* 7 *Catholic Lawyer* 101, 109 (1961).

[9] See Kasius, *What Happens in a State Without Residence Requirements,* in *Residence Laws: Road Block to Human Welfare, supra,* at p. 18:

> Practically all states are now engaged in advertising their resources with a view to attracting new residents. Those responsible for these efforts might well be asked how they reconcile their conflicting objectives of promoting the in-migration of people on the one hand and attempting to discourage it

b. *Poverty and immobility:*

Full mobility is particularly crucial—both for the persons involved and for the nation—in low-income groups and those displaced by technology. Indeed, the very eradication of poverty depends in substantial degree upon residential mobility. It has been noted by social scientists that one of the principal varieties of poverty is *insular* poverty —poverty which occurs when entire geographical areas become economically depressed.[10] Plainly, one of the simplest and most efficient ways of alleviating insular poverty is to maximize the opportunities for residents of the "island" to travel to areas of greater economic opportunities and industrial expansion. See Leet [Administrator of Public Assistance, Department of Social Welfare, Rhode Island], Testimony, in *Hearings, supra,* at pp. 141-42:

> The whole principle of local responsibility breaks down because the places where the greatest number of people in need [exist] are in stranded localities, where there are no tax sources to support them. The trends of migration are from the States of low economic opportunity to those of greater economic opportunities, and by and large that trend is a desirable thing. . . . It is probably better for the entire Nation that they move to an area where the possibilities of employment are greater. . . . I think it is very bad for the whole Nation

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on the other. When a State (or its industries) thus invites people to seek new opportunities, it can expect to draw a small number of persons who in the course of a year may become sick, disabled, jobless, or otherwise dependent through no fault of their own. Industrial progress creates its own social problems. These problems must be faced for what they mean as a moral as well as a legal responsibility.

[10] See Galbraith, *The Affluent Society* 326 (College Ed. 1960).

to have settlement laws that have the effect of chaining people, like serfs in the Middle Ages, to the soil on which they happen to be born.[11]

3. The Inhibitory Effect of Residency Requirements:

A residency requirement penalizes persons in need of public assistance for the act of changing their state of residence. It exacts as the penalty for migrating the needed aid income withheld on a discriminatory basis from recent entrants. The settlement requirement thus greatly deters the permanent relocation of those who might otherwise migrate in search of a better job or better living conditions. See Harvith, *The Constitutionality of Residence Require-*

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[11] *Cf.* Lorimer, in Testimony and Statement, in *Hearings, supra,* at pp. 24, 13-14, 34:

> Some people have burst forth from areas suffering from the slow rot of economic deterioration, without awaiting the assurance of any real opportunity anywhere else, only to encounter new times of frustration. . . . These people, I think, may well be characterized as the economic refugees of our very imperfect economic codes . . . (p. 24). The poorest families, the poorest areas, and the poorest States, where the ratio of children to the supporting adult population is highest, are absolutely unable to provide health and educational advantages equal to those available in more prosperous communities. As a result, the children growing up in rural areas are subject to the demoralization of disease, malnutrition, and inadequate education. . . . We are confronted with a vicious circle: cultural retardation, excessive fertility, population pressure, and poverty. We must discover ways of breaking this vicious chain of forces (pp. 13-14). [I]t has become a primary responsibility of the Federal Government to effect further advances in health, education and standards of living, which will both equip those who are going to remain in areas that are now depressed to achieve economic and social advance in their own communities and *at the same time equip those who must move elsewhere to participate effectively in the social and economic life of the communities into which they move* (p. 34). (Emphasis added.)

ments for General and Categorical Assistance Programs, 54 Calif. L. Rev. 567, 587 (1966):

> [F]or persons unable to live without public assistance for the required period, a residence test does bar interstate travel. . . . [A] clear distinction should be made between those persons whose only reason for migrating is to obtain higher assistance payments, and those persons who will be deterred from migrating if residence requirements in the new state would prevent them from receiving, for even a short period of time, their present level of assistance. The latter are not motivated by any desire to get higher payments, but must be included in an enumeration of persons prevented from migrating by residence tests (pp. 579-80). The constitutional guarantee of freedom of movement, under the commerce clause or otherwise, may require a state to extend its assistance programs to nonresidents. Persons presently receiving assistance in their home state will be deterred from traveling to and through other states if they may thereby risk termination of assistance from their old home state, without qualifying for assistance in states they visit. Even if inconsistent determinations as to residence are avoided, travel is discouraged unless the traveler can be assured of assistance in the state where he needs it (p. 592).

At least one kind of welfare program has expressly recognized and sought to avert the obviously severe reduction in mobility entailed by loss of aid upon migration: In general, persons unemployed may move to another state and continue to draw unemployment compensation from

the state in which they had established the right to it. A major purpose of this interstate benefit system is to encourage mobility. See Caine, *Interstate Benefit Payment Plan,* 19 Employment Security Review 14, 15 (April, 1952):

> An effectively administered Interstate Benefit Program can also play an important part in solving the manpower problem that confronts our nation today. Workers who are unemployed because of shortages of material in one area, or who desire better work opportunities, are less reluctant to migrate to areas where there are better employment possibilities in defense industries because there is a cushion of unemployment insurance if they are not able to find employment promptly.

At a time when the nation is struggling to overcome the degrading and stultifying effects which poverty has on our society, these residence requirements (which severely limit the right of a human being, because he is poor, to move to another state) nullify the purpose of this effort.[12] Welfare payments, including those to recent arrivals in the state, are a form of "investment in people," and in the long run benefit the national economy as well as the recipients personally, by increasing consumer demand and creating jobs for private enterprise, and thus promoting economic growth. State interference with the flow of income to those in need and eligible for assistance thus retards the national goal of a continuously expanding economy. (See generally National Manpower Council (per Henry David), *supra,* at p. 114.)

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[12] See 42 U. S. C. §2701 which declares the purpose of the Economic Opportunity Program.

> Finally, we should note that the migrant is a person who not only responds to increased economic opportunity by moving from one area to another but also helps to create economic opportunity in the area receiving him. We shall not pursue this topic further here, except to point out that the migrant is a consumer as well as a producer—a mouth as well as a pair of arms. The immigrant, by increasing the size of the consuming population in the area to which he has migrated, increases the demand for consumers' goods and services there and, hence, tends to increase economic opportunity in that area. This is particularly true in an expanding economy where additional labor is required to exploit economic potentialities. So far as the exporting and receiving countries are concerned, the migration from one to the other tends to improve the balance of labor in relation to economic opportunity. Jaffe & Stewart, *supra,* at p. 321.

This Court, particularly during the past twenty years, in dozens of cases unnecessary to cite, has enforced the Constitution so as to prevent discrimination against the poor which forecloses and withholds the opportunities they so desperately need. To reverse the decision of the three-judge court in the instant case would be a regrettable step backward in the national effort to ameliorate the living conditions of the poor and to maintain a continuously expanding economy.

II.

The Connecticut residence requirement abridges privileges and immunities of citizens of the United States.

The first section of the Fourteenth Amendment to the United States Constitution provides in part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . . .

There could be no privilege of national citizenship more obvious than the right to travel from one state to another within the nation. If we deny the right or make it difficult for a United States citizen to move from one state to another we divest the right to travel of much of its value and meaning. In *Edwards* v. *California, supra,* the rationale of the majority for striking down the statute was that the Commerce Clause was violated. However, Justices Jackson, Douglas, Black and Murphy would have rested the unconstitutionality of the statute on a violation of the Privileges and Immunities Clause based upon the abridgment of the right to travel.

This Court has quieted any doubts that might have remained about the existence of the constitutional right of interstate travel. In *United States* v. *Guest,* 383 U. S. 745, 759 (1966), this Court ruled that: "Although there have been recurring differences in emphasis within the Court as to the source of the constitutional right of interstate travel, there is no need here to canvass those differences further. All have agreed that the right exists." See *Zemel* v. *Rusk,* 381 U. S. 1, 14 (1965); *Aptheker* v. *Secretary of*

State, 378 U. S. 500, 505-06 (1964); *Kent* v. *Dulles,* 357 U. S. 116, 126-27 (1958).

As Mr. Justice Jackson said concurring in *Edwards* (314 U. S. at 183):

> [I]t is a privilege of citizenship of the United States, protected from state abridgment, to enter any state of the union, either for temporary sojourn or for the establishment of permanent residence therein, and for gaining resultant citizenship thereof. If National citizenship means less than this, it means nothing.

While it is true that the statutes and regulations under discussion do not expressly prohibit the right to move from one state to another, as a practical matter the person who is in need of welfare cannot move. At the very least, the residence requirement *abridges* such travel or makes it extremely burdensome. While prior "right to travel cases" have been concerned with express prohibition of travel, *United States* v. *Guest, supra,* makes it clear that *discouragement* of interstate travel also abridges privileges of national citizenship.

To deny a benefit of such crucial importance to the poor as public assistance or aid to dependent children because of failure to satisfy residence requirements is to rob the right to travel of much of its value. See LoGatto, *supra,* at page 109, quoting tenBroek, *The Constitution and the Right of Free Movement,* 12 (1955):

> One very competent student of the problem of free movement and its constitutional protection feels very strongly that an indispensable element of the right of free movement is the right to be on an equal footing

> with established residents of the community. "If you may be denied substantial rights after arrival, if you may be barred from the common callings and resources of the community available to others, if opportunities of life and livelihood may be withheld from you on a discriminatory basis, then the right to go there is emptied of all substance and meaning" [tenBroek, *supra,* at page 15].

The instant statutes and regulations deny privileges of United States citizenship and discriminate against people who need the privileges and the equal treatment more than any other class of people in our country.

III.

Connecticut's residence requirements for aid to dependent children violate the Commerce Clause of the Constitution by imposing a substantial and unreasonable burden on interstate commerce.

A. *Economic Protectionism by States (Whether Inter Se or Against Foreign Commerce) Is Prohibited by the Commerce Clause; the States Are Therefore Not Entitled to Erect Barriers to the Travel or Transportation of Persons or Property Across Their Borders:*

Economic protectionism has no place in the nation's community of states. The Union was intended to be, as far as possible, a free and open trade market, without trade barriers, and with the maximum possible mobility of labor. See, e.g., *Memphis Steam Laundry Cleaner* v. *Stone,* 342 U. S. 389 (1952), in which the court invalidated a Mississippi tax upon the privilege of soliciting business for a laundry not licensed therein stating at p. 395:

> The Commerce Clause created the nation-wide area of free trade essential to this country's economic welfare by removing state lines as impediments to intercourse between the states. The tax imposed in this case made the Mississippi state line into a local obstruction to the flow of interstate commerce that cannot stand under the Commerce Clause.

See also *Baldwin* v. *G. A. F. Seelig, Inc.,* 294 U. S. 511 (1935) (held invalid portion of New York statute making applicable to milk imported from other states system of minimum prices to be paid by dealers to producers and prohibiting sale in New York unless prices maintained).

The states thus have no right to erect barriers to the travel or movement of persons or property across their borders, whether by physical exclusion or penal sanctions; or by exacting a payment (tariffs, duties, taxes) for entry; or by requiring an entrant to forego income for a certain period as a condition precedent to being treated like other residents, as herein. In particular, they may not do so in order to protect their economies at the possible expense of other states, or to isolate themselves from the problems of other states. Thus, in *Edwards* v. *California,* 314 U. S. 160 (1941), the Court invalidated a statute making it a crime knowingly to transport indigents into the State. The decision was grounded upon the Commerce Clause (U. S. Const., Art. I, Sec. 8), the Court stating at pp. 173-74:

> We have repeatedly and recently affirmed, and we now reaffirm, that we do not conceive it our function to pass upon "the wisdom, need, or appropriateness" of the legislative efforts of the States to solve such difficulties [arising from internal migration]. [citation]

> But this does not mean that there are no boundaries to the permissible area of State legislative activity. There are. And none is more certain than the prohibition against attempts on the part of any single State to isolate itself from difficulties common to all of them by restraining the transportation of persons and property across its borders. It is frequently the case that a State might gain a momentary respite from the pressure of events by the simple expedient of shutting its gates to the outside world. But, in the words of Mr. Justice Cardozo: "The Constitution was framed under the dominion of a political philosophy less parochial in range. It was framed upon the theory that the peoples of the several States must sink or swim together, and that in the long run prosperity and salvation are in union and not division." *Baldwin* v. *Seelig,* 294 U. S. 511, 523.[13]

The economic rationale of free trade is too well known and too well established to bear lengthy discussion. We shall simply note the terse observation in Samuelson, *Economics,* 545 (7th ed. 1967) that "One of the reasons the United States is so prosperous is that ours is so *large* a free trade area." (Emphasis in original.)[14]

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[13] Cf. *Crandall* v. *Nevada,* 6 Wall. (73 U. S.) 35, 49 (1868) (concurring opinion of Clifford, J., referring to the state tax upon egress of persons using commercial transportation which was invalidated by the majority): "I am clear that the state legislature cannot impose any such burden upon commerce among the several states. Such commerce is secured against such legislation in the states by the Constitution, irrespective of any Congressional action."

[14] See also *H. P. Hood & Sons* v. *Du Mond,* 336 U. S. 525, 530-531, 533 (1949); *Duckworth* v. *State of Arkansas,* 314 U. S. 390, 400-401 (1941) (Jackson, J., concurring).

Although the instant statutes and regulations do not exact a money price for human entry, they require the entrant to forego income to which other residents in need are entitled, and greatly delay the time when he will receive the same entitlement. They are, in effect, "invisible tariffs." *Cf.* Samuelson, *supra,* at page 750:

> Finally, we should mention the so-called "invisible tariff." In many countries—and the United States is no exception—the complicated administration of the customs can be as bad as the monetary duty that has to be paid, or worse. If an importer's shipments are unduly delayed or if a foreigner's exports to us are refused admittance for complicated reasons of health or of failure to comply with arbitrary regulations, then such red tape can be as harmful to trade as outright tariffs or quotas.

The equivalent discrimination against interstate migration cannot be countenanced under the Commerce Clause.

> Of course, taxation was (and is) not the only problem. State and local regulations, too, may favor the part at the expense of the whole. To guard against these difficulties was a prime purpose of the Constitution. It has not been without success. Indeed, there are those who find the genius of American industry not in Big Technology (or some special capacity of our businessmen) but in the incentive of a Big Open Market. (Mendelson, in his Epilogue in Frankfurter, *The Commerce Clause Under Marshall, Taney and Waite,* 118-19 (1937).)

B. *Connecticut's Protectionist Residence Tests Impede Residential Mobility. They Thus Constrict Interstate Travel and Unlawfully Burden Interstate Commerce.*

The discussion above (section I-D) concerning the immobilizing effect of the instant residence requirements is fully applicable at this point. The integrity of the free trade area intended by the framers of the Constitution in creating the commerce clause is seriously compromised by the *"barriers caused by restrictive residence or settlement requirements"* (in the words of the State of Connecticut in its Interstate Compact on Welfare Services (Conn. Gen. Stat. section 17-21a, Art. I, *supra*))—barriers which inhibit mobility and penalize interstate travelers who change their state of residence. Connecticut's residence tests for welfare services should thus be disallowed as inconsistent with the commerce clause.

CONCLUSION

> It [a state restriction on interstate travel by the poor] 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. (Douglas, J., concurring in *Edwards* v. *California, supra,* 314 U. S. at 181.)

For all of the foregoing reasons, *amici* respectfully urge this Court to affirm the judgment of the United States District Court.

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