MINUTES OF THE MEETING
HUMAN SERVICES SUBCOMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

February 5, 1985

The meeting of the Human Services Subcommittee was called to order by Chairman Cal Winslow on February 5, 1985 at 8:00 a.m. in Room 108 of the State Capitol.

ROLL CALL: All members were present, with the exception of Representative Bradley, who was excused, and arrived at 9:15 a.m.

Chairman Winslow said there will be discussion on the data gathered by the department's legal bureau in relation to the residency requirement court case. After that, the committee will take executive action.

Russ Cater (33:B:008), Chief Legal Counsel for the Office of Legal Affairs for SRS, gave everyone copies of two separate court cases relating to residency requirements for welfare (EXHIBIT 1 & 2). He discussed the case of Memorial Hospital et al. v. Maricopa County et al in regard to inhabitance and residency. His two main points in his presentation:

1) The unconstitutionality is based upon this country's constitution
2) The U.S. Supreme Court has decided this case first in 1969 and again in 1974

He briefly summarized the two cases: Shapiro v. Thompson and Memorial Hospital et al v. Maricopa County et al. He listed the arguments that were presented to the court in the Shapiro v. Thompson case; these arguments are similar to what Montana is concerned with:

1) It was necessary to place a residency requirement;
2) It was necessary to present fiscal integrity of the state welfare program;
3) The rules and restrictions were put in the law to prohibit the influx of people seeking more generous welfare assistance;
4) The residency requirements of one year were based upon the idea of allowing benefits to people who had paid taxes in the state;
5) It would help facilitate the planning of a welfare budget;
6) It would indicate a more objective test for residency;
7) It would minimize fraud;
8) It would encourage early entry in the labor market.

Senator Story (33:B:147) asked Mr. Cater if it would be unconstitutional for Montana to have no general assistance; Mr. Cater thought if Montana did not have a state constitutional provision to this effect, it is necessary to have a program.

Russ Cater pointed out that the two Supreme Court cases dealt with the duration of residency requirement; they did not put any limitations on residency requirements. He said the reason why he made a determination that Montana cannot have a residency requirement is based on the constitution, not on the Supreme Court cases.

A question was directed towards Dave Lewis to what he supposed he could do about it; he said he drafted legislation that would be they only way to approach it since it appears the residency requirement would not stand up in the U.S. Supreme Court. He said the only way to approach the issue is to reduce the eligibility the state does have the authority to establish.

Discussion followed questioning if the wording in the constitution could be changed from 'inhabitant' to 'resident' and if it would hold up. This would only allow for a requirement for people to become residents, which would not take very long if the person lived in Montana for any time at all.

Chairman Winslow asked if residency could be defined in the law; Mr. Cater answered that it can be defined in the law, but if it is pinned down to six months, it would violate the two U.S. Supreme Court cases, which spoke in terms of a durational residency requirement.

Representative Rehberg asked if the time the person is on GA could be limited.

Dave Lewis said by eliminating those able-bodied people under 50 years of age for one year, they would be able to partially cover that shortfall of $7 million.

Mona Jamison (33:B:295), Chief Legal Counsel for the Governor's Office, discussed the issue of residency requirement for GA. She pointed out that in the Shapiro v. Thompson case is the concept of the guarantee for freedom to travel for every citizen. It was that right that underscored the unallowable action of limiting their right. She urged the committee not to establish a residency requirement.

Senator Manning asked if cutting off people under the age of 50 years form GA is discriminatory.

Senator Christiaens said the only way the department could fairly put a lid on the services is to limit the amount that all recipients would be able to receive.

Mona Jamison said the emphasis should be on establishing where the limits should be and perhaps further investigation on the able-bodied people.

Chairman Winslow would like the possibility of seeing some kind of six-month limit for receiving benefits.

Dave Lewis said in 1971 there were approximately 300 single individuals on general assistance; today there is approximately 1,900 total individual cases on GA. He said the average terms that people receive GA is three months.

E X E C U T I V E A C T I O N

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Social Services (EXHIBIT 1)

Representative Rehberg made a motion to accept the executive level of 365.64 FTE in FY86 and FY87 with the understanding that the committee will be handling the modified level issue later.

The motion PASSED.

Representative Rehberg made a motion to accept the LFA current level for personal services of $8,013,693 in FY86 and $8,027,965 in FY87 with the understanding that the committee will be handling the modified level issue later.

The motion PASSED.

Representative Rehberg made a motion to accept the LFA current level for operating expenses of $848,433 in FY86 and $880,126 in FY87.

The motion PASSED.

Representative Rehberg made a motion to accept the executive request for equipment of $11,500 in FY86 and $2,500 in FY87.

The motion PASSED.

Day Care

Representative Rehberg made a motion to accept the LFA current level for day care grants and benefits of $421,247 in FY86 and $441,626 in FY87.

Senator Christiaens mentioned the testimony on how hard it is to get adequate child care and felt that the committee should accept the higher amount.

Senator Manning (34:A:055) made a substitution motion to accept the executive request for day care grants and benefits of $430,271 in FY86 and $457,063 in FY87.

ROLL CALL VOTE

A request for a Roll Call Vote was made (34:A:061). The motion FAILED with a tie vote.

Child Abuse

Senator Manning made a motion to accept the executive request for child abuse funding of $73,245 in FY86 and $73,245 in FY87 .

Senator Story made a substitution motion to accept the LFA current level for child abuse funding of $70,306 in FY86 and $73,821 in FY87.

The motion PASSED with Senator Manning voting NO.

Legal Services

Representative Rehberg made a motion to accept the LFA current level for legal services funding of $100,000 in FY86 and $100,000 in FY87.

Senator Story made a substitute motion to accept the legal services funding of $50,000 in FY86 and $50,000 in FY87. He said the reason he did this was to cut someplace where there was not any danger to life or keeping people in poverty; this was one of the programs that they can safely cut without creating misery.

Senator Christiaens asked if there would be any danger to Title XX funds if this legal services cut would be made; Dave Lewis thought it would cause no danger to federal funds.

The motion PASSED with Representative Bradley and Senator Manning voting NO.

Domestic Violence

Peter Blouke explained that this program was established to be funded through the marriage license fee of $14.00. He said the issue before the committee is how they wish this program to be funded.

Norma Harris said they currently have $130,875 out on contract; the executive came off of this base. She said if the LFA level is accepted, what they would be giving out in FY86 would be less than what they issued in FY85.

Representative Rehberg (34:A:163) made a motion to accept the LFA current level of $124,822 in FY86 and $131,063 in FY87 for domestic violence funding.

Senator Manning made a substitute motion to accept the domestic violence funding of $130,875 in FY86 and $130,875 in FY87.

The substitute motion FAILED with Senator Manning and Representative Winslow voting YES.

The original motion PASSED.

Big Brothers and Sisters

Representative Rehberg made a motion to accept the executive request for Big Brothers & Sisters funding of $217,307 in FY86 and $226,000 in FY87.

The motion PASSED.

Home Health

Representative Rehberg made a motion to accept the executive request for home health funding of $30,047 in FY86 and $31,249 in FY87.

The motion PASSED.

West Yellowstone

Representative Rehberg made a motion to accept the executive request for West Yellowstone funding of $7,150 in FY86 and $7,436 in FY87.

The motion PASSED.

Montana Refugee Program

Representative Rehberg made a motion to accept the executive request for the Montana Refugee Program funding of $250,000 in FY86 and $250,000 in FY87.

There was discussion concerning the influx of refugees coming in the country, and if those numbers are going down.

The motion PASSED.

Subsidized Adoption

Norma Harris pointed out that subsidized adoption is less expensive than foster care because these children would never go into foster care because they have a permanent home.

Representative Rehberg made a motion to accept the executive request for subsidized adoption funding of $161,245 in FY86 and $161,245 in FY87.

The motion PASSED.

Supplemental Security Income (SSI)

Peter Blouke pointed out that the current caseload is already higher than what he had as the current level.

Discussion followed concerning if the committee took the lower amount, what would happen if the cases continue to increase.

Norma Harris said it would be difficult to cut the caseload. She said the individuals would have to be eligible for federal SSI and they get the state SSI supplement when they go into one of five placements.

Chairman Winslow suggested using the LFA inflation factor for the caseload of 4.5 percent in FY86 and 5 percent in FY87.

John Bebee (34:A:568), chief of the Budget, Contracts, and Payments Bureau in the Community Services Division of SRS, gave the breakdown of caseload by each of the five categories under SSI:

		SRS Pays
Residential care	76	$94
Mentally ill group homes	34	94
DD group homes	540	94
Children & adult foster care	152	52.75
DD semi-independent	41	26
TOTAL	843	$260.75

John Bebee also gave the amount of money that the department pays for each one of these five placements on top of what they get from federal SSI.

Peter Blouke explained the caseload with the inflation figured into for the projected caseload:

FY85	841
FY86	879
FY87	923

If these each were multiplied by the average payment, this would result in $901,748 for FY86 and $946,440 in FY87. There is a difference of $23,000 in FY86 and a difference of $42,000 in FY87 from the executive request for a total biennium difference of $61,000.

Dave Lewis said if the caseload projection is wrong or too low, then the department would have to cut back the average payment. He said this would not save any money in the long run.

Senator Manning (34:B:060) made a motion to accept the funding for Supplemental Security INocme of $901,748 in FY86 and $946,440 in FY87.

The motion PASSED.

Representative Rehberg made a motion that it is the intent of the committee to instruct the department of SRS that they need to make the necessary adjustments if the population increased beyond the LFA projections, then the department is to reduce the amount of the benefits to stay within the appropriated level.

The motion PASSED.

Representative Rehberg said he hopes the committee next session for Human Services really takes a look at this, and whoever is there from this committee, to remember this and highlight this, and spend some time on it, because it will be a problem.

Aging

Representative Rehberg made a motion to accept the funding for aging of $4,459,034 in FY86 and $4,472,358 in FY87.

The motion PASSED.

Foster Care

Peter Blouke discussed the three issues under foster care that the committee needs to be aware of.

There was discussion on the number of out-of-state placements for foster care in relation to the number of in-state foster care placements, the White Buffalo Home in Browning being recently reopened.

Peter Blouke explained the committee needs to go through the three issues concerning foster care the same way as they went through those on AFDC, arrive at the committee's intent on the issues, and then Peter, the department and the executive staff will get together to get a final figure that reflects what the committee intended to do.

Representative Rehberg made a motion to accept the LFA current level for foster care funding of $5,206,675 in FY86 and $5,464,504 in FY87. This motion is for Issue #1.

The motion PASSED.

Discussion followed concerning the days of care contracted for in-state and out-of-state placements and the costs involved with these.

The committee has decided to postpone taking action on these two issues for a later date.

Norma Harris gave everyone a handout with a summary of out-of-state placements and the treatment budget issues (EXHIBIT 4). She discussed these figures.

The meeting adjourned at 10:10 a.m.

Cal Winslow

CAL WINSLOW, Chairman

DAILY ROLL CALL

Human Services Subcommittee

49th LEGISLATIVE SESSION -- 1985

Date 2-5-85

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dorothy Bradley		X	
Sen. Chris Christiaens-Vice Chair	X		
Sen. Richard Manning	X		
Rep. Dennis Rehberg	X		
Sen. Pete Story	X		
Rep. Cal Winslow, Chairman	X		

ROLL CALL VOTE

COMMITTEE Human Services Subcommittee

DATE February 5, 1985 BILL NO. _____ TIME 9:00 a.m.

NAME	AYE	NAY
Rep. Dorothy Bradley	X	
Sen. Chris Christiaens--Vice Chair	X	
Sen. Richard Manning	X	
Rep. Dennis Rehberg		X
Sen. Pete Story		X
Rep. Cal Winslow, Chairman		X

Colleen Johnson
Secretary
Colleen Johnson

Cal Winslow
Chairman
Cal Winslow

Motion: A substitute motion to accept the executive request for day care grants and benefits of $430,271 in FY86 and $457,063 in FY87.

Exhibit 1
2-5-85

MEMORIAL HOSPITAL ET AL. *v.* MARICOPA COUNTY ET AL.

APPEAL FROM THE SUPREME COURT OF ARIZONA

No. 72-847. Argued November 6, 1973—
Decided February 26, 1974

This is an appeal from a decision of the Arizona Supreme Court upholding the constitutionality of an Arizona statute requiring a year's residence in a county as a condition to an indigent's receiving nonemergency hospitalization or medical care at the county's expense. *Held:* The durational residence requirement, in violation of the Equal Protection Clause, creates an "invidious classification" that impinges on the right of interstate travel by denying newcomers "basic necessities of life." *Shapiro* v. *Thompson*, 394 U. S. 618. Pp. 253–270.

(a) Such a requirement, since it operates to penalize indigents for exercising their constitutional right of interstate migration, must be justified by a compelling state interest. *Shapiro* v. *Thompson, supra; Dunn* v. *Blumstein*, 405 U. S. 330. Pp. 253–262.

(b) The State has not shown that the durational residence requirement is "legitimately defensible" in that it furthers a compelling state interest, and none of the purposes asserted as justification for the requirement—fiscal savings, inhibiting migration of indigents generally, deterring indigents from taking up residence in the county solely to utilize the medical facilities, protection of longtime residents who have contributed to the community particularly by paying taxes, maintaining public support of the county hospital, administrative convenience in determining bona fide residence, prevention of fraud, and budget predictability—satisfies the State's burden of justification and insures that the State, in pursuing its asserted objectives, has chosen means that do not unnecessarily impinge on constitutionally protected interests. Pp. 262–269.

108 Ariz. 373, 498 P. 2d 461, reversed and remanded.

MARSHALL, J., delivered the opinion of the Court, in which BRENNAN, STEWART, WHITE, and POWELL, JJ., joined. BURGER, C. J., and BLACKMUN, J., concurred in the result. DOUGLAS, J., filed a separate

opinion, *post*, p. 270. REHNQUIST, J., filed a dissenting opinion, *post*, p. 277.

Mary M. Schroeder argued the cause for appellants. With her on the brief was *John P. Frank*.

William J. Carter III argued the cause and filed a brief for appellees.*

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case presents an appeal from a decision of the Arizona Supreme Court upholding an Arizona statute requiring a year's residence in a county as a condition to receiving nonemergency hospitalization or medical care at the county's expense. The constitutional question presented is whether this durational residence requirement is repugnant to the Equal Protection Clause as applied by this Court in *Shapiro* v. *Thompson*, 394 U. S. 618 (1969).

I

Appellant Henry Evaro is an indigent suffering from a chronic asthmatic and bronchial illness. In early June 1971, Mr. Evaro moved from New Mexico to Phoenix in Maricopa County, Arizona. On July 8, 1971, Evaro had a severe respiratory attack and was sent by his attending physician to appellant Memorial Hospital, a nonprofit private community hospital. Pursuant to the Arizona statute governing medical care for indigents, Memorial notified the Maricopa County Board of Supervisors that it had in its charge an indigent who might qualify for county care and requested that Evaro be transferred to the County's public hospital facility. In accordance with the approved procedures, Memorial also

*Sandor O. Shuch and *John J. Relihan* filed a brief for the Legal Aid Society of Maricopa County as *amicus curiae* urging reversal.

claimed reimbursement from the County in the amount of $1,202.60, for the care and services it had provided Evaro.

Under Arizona law, the individual county governments are charged with the mandatory duty of providing necessary hospital and medical care for their indigent sick.[1] But the statute requires an indigent to have been a resident of the County for the preceding 12 months in order to be eligible for free nonemergency medical care.[2] Maricopa County refused to admit Evaro to its public hospital or to reimburse Memorial solely because Evaro had not been a resident of the County for the preceding year. Appellees do not dispute that Evaro is an indigent or that he is a bona fide resident of Maricopa County.[3]

This action was instituted to determine whether appellee Maricopa County was obligated to provide medical care for Evaro or was liable to Memorial for the costs it incurred because of the County's refusal to do so. This controversy necessarily requires an adjudication of the constitutionality of the Arizona dura-

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[1] Ariz. Rev. Stat. Ann. § 11-291 (Supp. 1973-1974).

[2] Section 11-297A (Supp. 1973-1974) provides in relevant part that:

"Except in emergency cases when immediate hospitalization or medical care is necessary for the preservation of life or limb no person shall be provided hospitalization, medical care or outpatient relief under the provisions of this article without first filing with a member of the board of supervisors of the county in which he resides a statement in writing, subscribed and sworn to under oath, that he is an indigent as shall be defined by rules and regulations of the state department of economic security, an unemployable totally dependent upon the state or county government for financial support, or an employable of sworn low income without sufficient funds to provide himself necessary hospitalization and medical care, *and that he has been a resident of the county for the preceding twelve months.*" (Emphasis added.)

[3] Thus, the question of the rights of transients to medical care is not presented by this case.

tional residence requirement for providing free medical care to indigents.

The trial court held the residence requirement unconstitutional as a violation of the Equal Protection Clause. In a prior three-judge federal court suit against Pinal County, Arizona, the District Court had also declared the residence requirement unconstitutional and had enjoined its future application in Pinal County. *Valenciano* v. *Bateman*, 323 F. Supp. 600 (Ariz. 1971).[4] Nonetheless, the Arizona Supreme Court upheld the challenged requirement. To resolve this conflict between a federal court and the highest court of the State, we noted probable jurisdiction, 410 U. S. 981 (1973), and we reverse the judgment of the Arizona Supreme Court.

II

In determining whether the challenged durational residence provision violates the Equal Protection Clause, we must first determine what burden of justification the classification created thereby must meet, by looking to the nature of the classification and the individual interests affected.[5] The Court considered similar durational

[4] Arizona's intermediate appellate court had also declared the durational residence requirement unconstitutional in *Board of Supervisors, Pima County* v. *Robinson*, 10 Ariz. App. 238, 457 P. 2d 951 (1969), but its decision was vacated as moot by the Arizona Supreme Court. 105 Ariz. 280, 463 P. 2d 536 (1970).

An Arizona one-year durational residence requirement for care at state mental health facilities was declared unconstitutional in *Vaughan* v. *Bower*, 313 F. Supp. 37 (Ariz.), aff'd, 400 U. S. 884 (1970). See n. 11, *infra*.

A Florida one-year durational residence requirement for medical care at public expense was found unconstitutional in *Arnold* v. *Halifax Hospital Dist.*, 314 F. Supp. 277 (MD Fla. 1970), and *Crapps* v. *Duval County Hospital Auth.*, 314 F. Supp. 181 (MD Fla. 1970).

[5] *E. g.*, *Weber* v. *Aetna Cas. & Surety Co.*, 406 U. S. 164, 173 (1972); *Dunn* v. *Blumstein*, 405 U. S. 330, 335 (1972).

residence requirements for welfare assistance in *Shapiro* v. *Thompson*, 394 U. S. 618 (1969). The Court observed that those requirements created two classes of needy residents "indistinguishable from each other except that one is composed of residents who have resided a year or more, and the second of residents who have resided less than a year, in the jurisdiction. On the basis of this sole difference the first class [was] granted and second class [was] denied welfare aid upon which may depend the ability . . . to obtain the very means to subsist—food, shelter, and other necessities of life." *Id.*, at 627. The Court found that because this classification impinged on the constitutionally guaranteed right of interstate travel, it was to be judged by the standard of whether it promoted a compelling state interest.[6] Finding such an interest wanting, the Court held the challenged residence requirements unconstitutional.

Appellees argue that the residence requirement before us is distinguishable from those in *Shapiro*, while appellants urge that *Shapiro* is controlling. We agree with appellants that Arizona's durational residence requirement for free medical care must be justified by a compelling state interest and that, such interests being lacking, the requirement is unconstitutional.

III

The right of interstate travel has repeatedly been recognized as a basic constitutional freedom.[7] Whatever

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[6] 394 U. S., at 634. See also *id.*, at 642–644 (STEWART, J., concurring).

[7] *Dunn* v. *Blumstein*, *supra*; *Shapiro* v. *Thompson*, 394 U. S. 618 (1969); see *Wyman* v. *Lopez*, 404 U. S. 1055 (1972); *Oregon* v. *Mitchell*, 400 U. S. 112, 237 (1970) (separate opinion of BRENNAN, WHITE, and MARSHALL, JJ.), 285–286 (STEWART, J., concurring and dissenting, with whom BURGER, C. J., and BLACKMUN, J., joined);

its ultimate scope, however, the right to travel was involved in only a limited sense in *Shapiro*. The Court was there concerned only with the right to migrate, "with intent to settle and abide" [8] or, as the Court put it, "to migrate, resettle, find a new job, and start a new life." *Id.*, at 629. Even a bona fide residence requirement would burden the right to travel, if travel meant merely movement. But, in *Shapiro*, the Court explained that "[t]he residence requirement and the one-year waiting-period requirement are distinct and independent prerequisites" for assistance and only the latter was held to be unconstitutional. *Id.*, at 636. Later, in invalidating a durational residence requirement for voter registration on the basis of *Shapiro*, we cautioned that our decision was not intended to "cast doubt on the validity of appropriately defined and uniformly applied bona fide residence requirements." *Dunn* v. *Blumstein*, 405 U. S. 330, 342 n. 13 (1972).

IV

The appellees argue that the instant county residence requirement is distinguishable from the state residence requirements in *Shapiro*, in that the former penalizes, not interstate, but rather intrastate, travel. Even were we to draw a constitutional distinction between interstate and

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Wyman v. *Bowens*, 397 U. S. 49 (1970); *United States* v. *Guest*, 383 U. S. 745, 757–759 (1966); cf. *Griffin* v. *Breckenridge*, 403 U. S. 88, 105–106 (1971); *Demiraqh* v. *DeVos*, 476 F. 2d 403 (CA2 1973). See generally Z. Chafee, Three Human Rights in the Constitution of 1787, pp. 171–181, 187 *et seq.* (1956).

[8] See *King* v. *New Rochelle Municipal Housing Auth.*, 442 F. 2d 646, 648 n. 5 (CA2 1971); *Cole* v. *Housing Authority of the City of Newport*, 435 F. 2d 807, 811 (CA1 1970); *Wellford* v. *Battaglia*, 343 F. Supp. 143, 147 (Del. 1972); cf. *Truax* v. *Raich*, 239 U. S. 33, 39 (1915); Note, *Shapiro* v. *Thompson*: Travel, Welfare and the Constitution, 44 N. Y. U. L. Rev. 989, 1012 (1969).

intrastate travel, a question we do not now consider, such a distinction would not support the judgment of the Arizona court in the case before us. Appellant Evaro has been effectively penalized for his interstate migration, although this was accomplished under the guise of a county residence requirement. What would be unconstitutional if done directly by the State can no more readily be accomplished by a county at the State's direction. The Arizona Supreme Court could have construed the waiting-period requirements to apply to intrastate but not interstate migrants; [9] but it did not do so, and "it is not our function to construe a state statute contrary to the construction given it by the highest court of a State." *O'Brien* v. *Skinner*, 414 U. S. 524, 531 (1974).

V

Although any durational residence requirement impinges to some extent on the right to travel, the Court in *Shapiro* did not declare such a requirement to be *per se* unconstitutional. The Court's holding was conditioned, 394 U. S., at 638 n. 21, by the caveat that some "waiting-period *or* residence requirements . . . may not be penalties upon the exercise of the constitutional right of interstate travel." The amount of impact required to give

[9] Appellees argue that the County should be able to apply a durational residence requirement to preserve the quality of services provided its longtime residents because of their ties to the community and the previous contributions they have made, particularly through past payment of taxes. It would seem inconsistent to argue that the residence requirement should be construed to bar longtime Arizona residents, even if unconstitutional as applied to persons migrating into Maricopa County from outside the State. Surely, longtime residents of neighboring counties have more ties with Maricopa County and equity in its public programs, as through past payment of state taxes, than do migrants from distant States. This "contributory" rationale is discussed, *infra*, at 266.

rise to the compelling-state-interest test was not made clear.[19] The Court spoke of the requisite impact in two ways. First, we considered whether the waiting period would deter migration:

> "An indigent who desires to migrate . . . will doubtless hesitate if he knows that he must risk making the move without the possibility of falling back on state welfare assistance during his first year of residence, when his need may be most acute." *Id.*, at 629.

Second, the Court considered the extent to which the residence requirement served to *penalize* the exercise of the right to travel.

The appellees here argue that the denial of nonemergency medical care, unlike the denial of welfare, is not apt to deter migration; but it is far from clear that the challenged statute is unlikely to have any deterrent effect. A person afflicted with a serious respiratory ailment, particularly an indigent whose efforts to provide a living for his family have been inhibited by his incapacitating illness, might well think of migrating to the clean dry air of Arizona, where relief from his disease could also bring relief from unemployment and poverty. But he may hesitate if he knows that he must make the move without the possibility of falling back on the State for medical care should his condition still plague him or grow more severe during his first year of residence.

It is true, as appellees argue, that there is no evidence in the record before us that anyone was actually deterred from traveling by the challenged restriction. But neither did the majority in *Shapiro* find any reason "to dispute the 'evidence that few welfare recipients have in fact been

[19] For a discussion of the problems posed by this ambiguity, see Judge Coffin's perceptive opinion in *Cole* v. *Housing Authority of the City of Newport*, 435 F. 2d 807 (CA1 1970).

deterred [from moving] by residence requirements.' Indeed, none of the litigants had themselves been deterred." *Dunn*, 405 U. S., at 340 (citations omitted). An attempt to distinguish *Shapiro* by urging that a durational residence requirement for voter registration did not deter travel, was found to be a "fundamental misunderstanding of the law" in *Dunn*, *supra*, at 339–340: [11]

> "*Shapiro* did not rest upon a finding that denial of welfare actually deterred travel. Nor have other 'right to travel' cases in this Court always relied on the presence of actual deterrence. In *Shapiro* we explicitly stated that the compelling-state-interest test would be triggered by 'any classification which serves to *penalize* the exercise of that right [to travel] . . . .'" (Emphasis in original; footnote omitted.)

Thus, *Shapiro* and *Dunn* stand for the proposition that a classification which "operates to *penalize* those persons . . . who have exercised their constitutional right of interstate migration," must be justified by a compelling state interest. *Oregon* v. *Mitchell*, 400 U. S. 112, 238 (1970) (separate opinion of BRENNAN, WHITE, and MARSHALL, JJ.) (emphasis added). Although any durational residence requirement imposes a potential cost on migration, the Court in *Shapiro* cautioned that some

[11] In *Vaughan* v. *Bower*, 313 F. Supp. 37 (Ariz.), aff'd, 400 U. S. 884 (1970), a federal court struck down an Arizona law permitting the director of a state mental hospital to return to the State of his prior residence, any indigent patient who had not been a resident of Arizona for the year preceding his civil commitment. It is doubtful that the challenged law could have had any deterrent effect on migration, since few people consider being committed to a mental hospital when they decide to take up residence in a new State. See also *Affeldt* v. *Whitcomb*, 319 F. Supp. 69 (ND Ind. 1970), aff'd, 405 U. S. 1034 (1972).

"waiting-period[s] . . . may not be penalties." 394 U. S., at 638 n. 21. In *Dunn* v. *Blumstein*, *supra*, the Court found that the denial of the franchise, "a fundamental political right," *Reynolds* v. *Sims*, 377 U. S. 533, 562 (1964), was a penalty requiring application of the compelling-state-interest test. In *Shapiro*, the Court found denial of the basic "necessities of life" to be a penalty. Nonetheless, the Court has declined to strike down state statutes requiring one year of residence as a condition to lower tuition at state institutions of higher education.[12]

Whatever the ultimate parameters of the *Shapiro* penalty analysis,[13] it is at least clear that medical care is as much "a basic necessity of life" to an indigent as welfare assistance.[14] And, governmental privileges or benefits necessary to basic sustenance have often been viewed as being of greater constitutional significance than less essential forms of governmental entitlements. See, *e. g.*, *Shapiro*, *supra*; *Goldberg* v. *Kelly*, 397 U. S. 254, 264 (1970); *Sniadach* v. *Family Finance Corp.*, 395 U. S. 337, 340–342 (1969). It would be odd, indeed, to find that the State of Arizona was required to afford Evaro welfare assistance to keep him from the discomfort of inadequate housing or the pangs of hunger but could deny him the

[12] See *Vlandis* v. *Kline*, 412 U. S. 441, 452–453, n. 9 (1973).

[13] For example, the *Shapiro* Court cautioned that it meant to "imply no view of the validity of waiting-period *or* residence requirements determining eligibility [*inter alia*] to obtain a license to practice a profession, to hunt or fish, and so forth." 394 U. S., at 638 n. 21.

[14] Dept. of Health, Education, and Welfare (HEW) Report on Medical Resources Available to Meet the Needs of Public Assistance Recipients, House Committee on Ways and Means, 86th Cong., 2d Sess., 74 (Comm. Print 1961). Similarly, President Nixon has observed: "'It is health which is real wealth,' said Ghandi, 'and not pieces of gold and silver.'" Health, Message from the President, 92d Cong., 1st Sess., H. R. Doc. No. 92–49, p. 18 (1971). See also materials cited at n. 4, *supra*.

medical care necessary to relieve him from the wheezing and gasping for breath that attend his illness.[15]

Nor does the fact that the durational residence requirement is inapplicable to the provision of emergency medical care save the challenged provision from constitutional doubt. As the Arizona Supreme Court observed, appellant "Evaro was an indigent person who *required* continued medical care for the preservation of his health and well being . . . ," even if he did not require immediate emergency care.[16] The State could not deny Evaro care

[15] Reference to the tuition cases is instructive. The lower courts have contrasted in-state tuition with "necessities of life" in a way that would clearly include medical care in the latter category. The District Court in *Starns* v. *Malkerson*, 326 F. Supp. 234, 238 (Minn. 1970), aff'd, 401 U. S. 985 (1971), quoted with approval from *Kirk* v. *Board of Regents*, 273 Cal. App. 2d 430, 440, 78 Cal. Rptr. 260, 266–267 (1969), appeal dismissed, 396 U. S. 554 (1970) (emphasis added):

" 'While we fully recognize the value of higher education, we cannot equate its attainment with food, clothing and shelter. *Shapiro involved the immediate and pressing need for preservation of life and health* of persons unable to live without public assistance, and their dependent children. Thus, the residence requirement in *Shapiro* could cause great suffering and even loss of life. The durational residence requirement for attendance at publicly financed institutions of higher learning [does] not involve similar risks. Nor was petitioner . . . precluded from the benefit of obtaining higher education. Charging higher tuition fees to non-resident students cannot be equated with granting of basic subsistence to one class of needy residents while denying it to an equally needy class of residents.' "

See also Note, The Constitutionality of Nonresident Tuition, 55 Minn. L. Rev. 1139, 1149–1158 (1971). Moreover, in *Vlandis*, *supra*, the Court observed that "special problems [are] involved in determining the bona fide residence of college students who come from out of State to attend [a] public university . . . ," since those students are characteristically transient. 412 U. S., at 452. There is no such ambiguity about whether appellant Evaro is a bona fide resident of Maricopa County.

[16] 108 Ariz. 373, 374, 498 P. 2d 461, 462 (emphasis added).

just because, although gasping for breath, he was not in immediate danger of stopping breathing altogether. To allow a serious illness to go untreated until it requires emergency hospitalization is to subject the sufferer to the danger of a substantial and irrevocable deterioriation in his health. Cancer, heart disease, or respiratory illness, if untreated for a year, may become all but irreversible paths to pain, disability, and even loss of life. The denial of medical care is all the more cruel in this context, falling as it does on indigents who are often without the means to obtain alternative treatment.[17]

Finally, appellees seek to distinguish *Shapiro* as involving a partially federally funded program. Maricopa County has received federal funding for its public hospital[18] but, more importantly, this Court has held that whether or not a welfare program is federally funded is irrelevant to the applicability of the *Shapiro* analysis. *Pease* v. *Hansen*, 404 U. S. 70 (1971); *Graham* v. *Richardson*, 403 U. S. 365 (1971).

Not unlike the admonition of the Bible that, "Ye shall have one manner of law, as well for the stranger, as for one of your own country," Leviticus 24:22 (King James Version), the right of interstate travel must be seen as insuring new residents the same right to vital government benefits and privileges in the States to which they migrate as are enjoyed by other residents. The State of Arizona's durational residence requirement for free medical care penalizes indigents for exercising their right to migrate

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[17] See *Valenciano* v. *Bateman*, 323 F. Supp. 600, 603 (Ariz. 1971). See generally HEW Report on Medical Resources, *supra*, n. 14, at 73–74; Dept. of HEW, Human Investment Programs: Delivery of Health Services for the Poor (1967).

[18] See HEW, Hill-Burton Project Register, July 1, 1947–June 30, 1967. HEW Publication No. (HSM) 72–4011, p. 37. Maricopa County has received over $2 million in Hill-Burton (42 U. S. C. § 291 *et seq.*) funds since 1947.

to and settle in that State.[19] Accordingly, the classification created by the residence requirement, "unless shown to be necessary to promote a *compelling* governmental interest, is unconstitutional." *Shapiro*, 394 U. S., at 634. (Emphasis in original.)

VI

We turn now to the question of whether the State has shown that its durational residence requirement is "legitimately defensible,"[20] in that it furthers a compelling state interest.[21] A number of purposes are asserted to be served by the requirement and we must

[19] Medicaid, the primary federal program for providing medical care to indigents at public expense, does not permit participating States to apply a durational residence requirement as a condition to eligibility, 42 U. S. C. § 1396a (b)(3), and "this conclusion of a coequal branch of Government is not without significance." *Frontiero* v. *Richardson*, 411 U. S. 677, 687–688 (1973). The State of Arizona does not participate in the Medicaid program.

[20] Cf. Ely, Legislative and Administrative Motivation in Constitutional Law, 79 Yale L. J. 1205, 1223–1224 (1970); Note, Developments in the Law—Equal Protection, 82 Harv. L. Rev. 1065, 1076–1077 (1969).

[21] The Arizona Supreme Court observed that because this case involves a governmental benefit akin to welfare, the "reasonable basis" test of *Dandridge* v. *Williams*, 397 U. S. 471 (1970), should apply. In upholding a state regulation placing an absolute limit on the amount of welfare assistance to be paid a dependent family regardless of size or actual need, the Court in *Dandridge* found it "enough that the State's action be rationally based and free from invidious discrimination." *Id.*, at 487. The Court later distinguished *Dandridge* in *Graham* v. *Richardson*, 403 U. S. 365, 376 (1971), where MR. JUSTICE BLACKMUN, writing for the Court, observed that "[a]ppellants' attempted reliance on *Dandridge* . . . is also misplaced, since the classification involved in that case [did not impinge] upon a fundamental constitutional right . . . ." Strict scrutiny is required here because the challenged classification impinges on the right of interstate travel. Compare *Dandridge*, *supra*, at 484 n. 16, with *Shapiro* v. *Thompson*, *supra*.

determine whether these satisfy the appellees' heavy burden of justification, and insure that the State, in pursuing its asserted objectives, has chosen means that do not unnecessarily burden constitutionally protected interests. *NAACP* v. *Button*, 371 U. S. 415, 438 (1963).

A

The Arizona Supreme Court observed:

> "Absent a residence requirement, any indigent sick person . . . could seek admission to [Maricopa County's] hospital, the facilities being the newest and most modern in the state, and the resultant volume would cause long waiting periods or severe hardship on [the] county if it tried to tax its property owners to support [these] indigent sick . . . ." 108 Ariz. 373, 376, 498 P. 2d 461, 464.

The County thus attempts to sustain the requirement as a necessary means to insure the fiscal integrity of its free medical care program by discouraging an influx of indigents, particularly those entering the County for the sole purpose of obtaining the benefits of its hospital facilities.

First, a State may not protect the public fisc by drawing an invidious distinction between classes of its citizens. *Shapiro, supra*, at 633, so appellees must do more than show that denying free medical care to new residents saves money. The conservation of the taxpayers' purse is simply not a sufficient state interest to sustain a durational residence requirement which, in effect, severely penalizes exercise of the right to freely migrate and settle in another State. See *Rivera* v. *Dunn*, 329 F. Supp. 554 (Conn. 1971), aff'd, 404 U. S. 1054 (1972).

Second, to the extent the purpose of the requirement is to inhibit the immigration of indigents gen-

erally, that goal is constitutionally impermissible.[22] And, to the extent the purpose is to deter only those indigents who take up residence in the County solely to utilize its new and modern public medical facilities, the requirement at issue is clearly overinclusive. The challenged durational residence requirement treats every indigent, in his first year of residence, as if he came to the jurisdiction solely to obtain free medical care. Such a classification is no more defensible than the waiting period in *Shapiro, supra*, of which the Court said:

> "[T]he class of barred newcomers is all-inclusive, lumping the great majority who come to the State for other purposes with those who come for the sole purpose of collecting higher benefits." 394 U. S., at 631.

Moreover, "a State may no more try to fence out those indigents who seek [better public medical facilities] than it may try to fence out indigents generally." *Ibid.* An indigent who considers the quality of public hospital facilities in entering the State is no less deserving than one who moves into the State in order to take advantage of its better educational facilities. *Id.*, at 631–632.

It is also useful to look at the other side of the coin—at who will bear the cost of indigents' illnesses if the County does not provide needed treatment. For those newly arrived residents who do receive at least hospital care, the cost is often borne by private nonprofit hospitals, like appellant Memorial—many of which are already in precarious financial straits.[23] When absorbed

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[22] *Shapiro* v. *Thompson*, 394 U. S., at 629.

[23] See Cantor, The Law and Poor People's Access to Health Care, 35 Law & Contemp. Prob. 901, 909–914 (1970); *cf. Catholic Medical Center* v. *Rockefeller*, 305 F. Supp. 1256 and 1268 (EDNY 1969), vacated and remanded, 397 U. S. 820, aff'd on remand, 430 F. 2d 1297, appeal dismissed, 400 U. S. 931 (1970).

by private hospitals, the costs of caring for indigents must be passed on to paying patients and "at a rather inconvenient time"—adding to the already astronomical costs of hospitalization which bear so heavily on the resources of most Americans.[24] The financial pressures under which private nonprofit hospitals operate have already led many of them to turn away patients who cannot pay or to severely limit the number of indigents they will admit.[25] And, for those indigents who receive no care, the cost is, of course, measured by their own suffering.

In addition, the County's claimed fiscal savings may well be illusory. The lack of timely medical care could cause a patient's condition to deteriorate to a point where more expensive emergency hospitalization (for which no durational residence requirement applies) is needed. And, the disability that may result from letting an untreated condition deteriorate may well result in the patient and his family becoming a burden on the State's welfare rolls for the duration of his emergency care, or permanently, if his capacity to work is impaired.[26]

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[24] HEW Report on Medical Resources, *supra*, n. 14, at 74. See generally Health, Message from the President, *supra*, n. 14; E. Kennedy, In Critical Condition: The Crises in America's Health Care (1973); Hearings on The Health Care Crisis in America before the Subcommittee on Health of the Senate Committee on Labor and Public Welfare, 92d Cong., 1st Sess. (1971).

[25] Cantor, *supra*, n. 23; See E. Kennedy, *supra*, n. 24, at 78–94; Note, Working Rules for Assuring Nondiscrimination in Hospital Administration, 74 Yale L. J. 151, 156 n. 32 (1964); cf., *e. g.*, *Stanturf* v. *Sipes*, 447 S. W. 2d 558 (Mo. 1969) (hospital refused treatment to frostbite victim who was unable to pay $25 deposit). See generally HEW Report on Medical Resources, *supra*, n. 14, at 74; Hearings on The Health Care Crisis in America, *supra*, n. 24.

[26] "[L]ack of timely hospitalization and medical care for those unable to pay has been considered an economic liability to the patient, the hospital, and to the community in which these citizens

The appellees also argue that eliminating the durational residence requirement would dilute the quality of services provided to longtime residents by fostering an influx of newcomers and thus requiring the County's limited public health resources to serve an expanded pool of recipients. Appellees assert that the County should be able to protect its longtime residents because of their contributions to the community, particularly through the past payment of taxes. We rejected this "contributory" rationale both in *Shapiro* and in *Vlandis* v. *Kline*, 412 U. S. 441, 450 n. 6 (1973), by observing:

> "[Such] reasoning would logically permit the State to bar new residents from schools, parks, and libraries or deprive them of police and fire protection. Indeed it would permit the State to apportion all benefits and services according to the past tax contributions of its citizens. The Equal Protection Clause prohibits such an apportionment of state services." *Shapiro*, 394 U. S., at 632–633 (footnote omitted).

Appellees express a concern that the threat of an influx of indigents would discourage "the development of modern and effective [public medical] facilities." It is suggested that whether or not the durational residence requirement actually deters migration, the voters think that it protects them from low income families' being attracted by the county hospital; hence, the requirement is necessary for public support of that medical facility. A State may not employ an invidious discrimination to sustain the political viability of its programs. As we

might otherwise be self-supporting . . . ." HEW Report on Medical Resources, *supra*, n. 14, at 73; Comment, Indigents, Hospital Admissions and Equal Protection, 5 U. Mich. J. L. Reform 502, 515–516 (1972); cf. Battistella & Southby, Crisis in American Medicine, The Lancet 581, 582 (Mar. 16, 1968).

observed in *Shapiro, supra*, at 641, "[p]erhaps Congress could induce wider state participation in school construction if it authorized the use of joint funds for the building of segregated schools," but that purpose would not sustain such a scheme. See also *Cole* v. *Housing Authority of the City of Newport*, 435 F. 2d 807, 812–813 (CA1 1970).

B

The appellees also argue that the challenged statute serves some administrative objectives. They claim that the one-year waiting period is a convenient rule of thumb to determine bona fide residence. Besides not being factually defensible, this test is certainly overbroad to accomplish its avowed purpose. A mere residence requirement would accomplish the objective of limiting the use of public medical facilities to bona fide residents of the County without sweeping within its prohibitions those bona fide residents who had moved into the State within the qualifying period. Less drastic means, which do not impinge on the right of interstate travel, are available and employed [27] to ascertain an individual's true intentions, without exacting a protracted waiting period which may have dire economic and health consequences for certain citizens. See *Shelton* v. *Tucker*, 364 U. S. 479, 488 (1960). The Arizona State welfare agency applies criteria other than the duration of residency to determine whether an applicant is a bona fide resident.[28] The Arizona Medical Assistance to the Aged law provides public medical care for certain senior citizens, conditioned only on residence.[29] Pinal County, Arizona, has operated its public hospital without benefit of the

[27] See *Green* v. *Dept. of Public Welfare of Delaware*, 270 F. Supp. 173, 177–178 (Del. 1967).

[28] Ariz. Rev. Stat. Ann. § 46–202 (1) (Supp. 1973–1974).

[29] § 46–261.02 (3) (Supp. 1973–1974).

durational residence requirement since the application of the challenged statute in that County was enjoined by a federal court in *Valenciano* v. *Bateman*, 323 F. Supp. 600 (Ariz. 1971).[30]

The appellees allege that the waiting period is a useful tool for preventing fraud. Certainly, a State has a valid interest in preventing fraud by any applicant for medical care, whether a newcomer or oldtime resident. *Shapiro*, 394 U. S., at 637, but the challenged provision is ill-suited to that purpose. An indigent applicant, intent on committing fraud, could as easily swear to having been a resident of the county for the preceding year as to being one currently. And, there is no need for the State to rely on the durational requirement as a safeguard against fraud when other mechanisms to serve that purpose are available which would have a less drastic impact on constitutionally protected interests. *NAACP* v. *Button*, 371 U. S., at 438. For example, state law makes it a crime to file an "untrue statement . . . for the purpose of obtaining hospitalization, medical care or outpatient relief" at county expense. Ariz. Rev. Stat. Ann. § 11–297C (Supp. 1973–1974). See *Dunn*, 405 U. S., at 353–354; *U. S. Dept. of Agriculture* v. *Moreno*, 413 U. S. 528, 534 (1973).

Finally, appellees assert that the waiting period is necessary for budget predictability, but what was said in *Shapiro* is equally applicable to the case before us:

"The records . . . are utterly devoid of evidence that

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[30] In addition, Pima County, Arizona, did not apply the durational residence requirement between August 1969, when the requirement was found unconstitutional by the Arizona Court of Appeals, *Board of Supervisors, Pima County* v. *Robinson*, 10 Ariz. App. 238, 457 P. 2d 951, and September 1970, when that judgment was vacated as moot by the Arizona Supreme Court, 105 Ariz. 280, 463 P. 2d 536.

> [the County] uses the one-year requirement as a means to predict the number of people who will require assistance in the budget year. [The appellees do not take] a census of new residents . . . . Nor are new residents required to give advance notice of their need for . . . assistance. Thus, the . . . authorities cannot know how many new residents come into the jurisdiction in any year, much less how many of them will require public assistance." 394 U. S., at 634–635 (footnote omitted).

Whatever the difficulties in projecting how many newcomers to a jurisdiction will require welfare assistance, it could only be an even more difficult and speculative task to estimate how many of those indigent newcomers will require medical care during their first year in the jurisdiction. The irrelevance of the one-year residence requirement to budgetary planning is further underscored by the fact that *emergency* medical care for all newcomers and more complete medical care for the aged are currently being provided at public expense regardless of whether the patient has been a resident of the County for the preceding year. See *Shapiro, supra,* at 635.

VII

The Arizona durational residence requirement for eligibility for nonemergency free medical care creates an "invidious classification" that impinges on the right of interstate travel by denying newcomers "basic necessities of life." Such a classification can only be sustained on a showing of a compelling state interest. Appellees have not met their heavy burden of justification, or demonstrated that the State, in pursuing legitimate objectives, has chosen means which do not unnecessarily impinge on constitutionally protected interests. Accordingly, the judgment of the Supreme Court of Arizona is reversed and

the case remanded for further action not inconsistent with this opinion.

So ordered.

THE CHIEF JUSTICE and MR. JUSTICE BLACKMUN concur in the result.

MR. JUSTICE DOUGLAS.

The legal and economic aspects of medical care[1] are enormous; and I doubt if decisions under the Equal Protection Clause of the Fourteenth Amendment are equal to the task of dealing with these matters. So far as interstate travel *per se* is considered, I share the doubts of my Brother REHNQUIST. The present case, however, turns for me on a different axis. The problem has many aspects. The therapy of Arizona's atmosphere brings many there who suffer from asthma, bronchitis, arthritis, and tuberculosis. Many coming are indigent or become indigent after arrival. Arizona does not deny medical help to "emergency" cases "when immediate hospitalization or medical care is necessary for the preservation of life or limb," Ariz. Rev. Stat. Ann. § 11–297A (Supp. 1973–1974). For others, it requires a 12-month durational residence.

The Act is not aimed at interstate travelers; it applies even to a long-term resident who moves from one county to another. As stated by the Supreme Court of Arizona in the present case: "The requirement applies to all citizens within the state including long term residents of one county who move to another county. Thus, the classification does not single out non-residents nor attempt to penalize interstate travel. The requirement is uniformly applied." 108 Ariz. 373, 375, 498 P. 2d 461, 463.

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[1] See appendix to this opinion, *post*, p. 274.

What Arizona has done, therefore, is to fence the poor out of the metropolitan counties, such as Maricopa County (Phoenix) and Pima County (Tucson) by use of a durational residence requirement. We are told that eight Arizona counties have no county hospitals and that most indigent care in those areas exists only on a contract basis. In *San Antonio Independent School Dist.* v. *Rodriguez*, 411 U. S. 1, we had a case where Texas created a scheme by which school districts with a low property tax base, from which they could raise only meager funds, offered a lower quality of education to their students than the wealthier districts. That system was upheld against the charge that the state system violated the Equal Protection Clause. It was a closely divided Court and I was in dissent. I suppose that if a State can fence in the poor in educational programs, it can do so in medical programs. But to allow Arizona freedom to carry forward its medical program we must go one step beyond the *San Antonio* case. In the latter there was no legal barrier to movement into a better district. Here a one-year barrier to medical care, save for "emergency" care, is erected around the areas that have medical facilities for the poor.

Congress has struggled with the problem. In the Kerr-Mills Act of 1960, 74 Stat. 987, 42 U. S. C. § 302 (b)(2), it added provisions to the Social Security Act requiring the Secretary of Health, Education, and Welfare to disapprove any state plan for medical assistance to the aged (Medicaid) that excludes "any individual who resides in the state," thus eliminating durational residence requirements.

Maricopa County has received over $2 million in federal funds for hospital construction under the Hill-Burton Act, 42 U. S. C. § 291 *et seq.* Section 291c (e) authorizes the issuance of regulations governing the op-

eration of Hill-Burton facilities. The regulations contain conditions that the facility to be constructed or modernized with the funds "will be made available to all persons residing in the territorial area of the applicant" and that the applicant will render "a reasonable volume of services to persons unable to pay therefor." [2] The conditions of free services for indigents, however, may be waived if "not feasible from a financial viewpoint."

Prior to the application the state agency must obtain from the applicant an assurance "that there will be made available in the facility or portion thereof to be constructed or modernized a reasonable volume of services to persons unable to pay therefor. The requirement of an assurance from an applicant shall be waived if the applicant demonstrates to the satisfaction of the State agency, subject to subsequent approval by the Secretary, that such a requirement is not feasible from a financial viewpoint." 42 CFR § 53.111 (c)(1).[3]

So far as I can ascertain, the durational residence requirement imposed by Maricopa County has not been federally approved as a condition to the receipt of Hill-Burton funds.

Maricopa County does argue that it is not financially feasible to provide free nonemergency medical care to new residents. Even so, the federal regulatory framework does not leave the County uncontrolled in determining which indigents will receive the benefit of the resources which are available. It is clear, for example, that the County could not limit such service to whites out of

[2] Title 42 CFR § 53.111 (b)(5) defines that term to mean "a level of uncompensated services which meets a need for such services in the area served by an applicant and which is within the financial ability of such applicant to provide."

[3] The waiver of such a requirement requires notice and opportunity for public hearing. 42 CFR § 53.111 (c)(2).

a professed inability to service indigents of all races because 42 CFR § 53.112 (c) prohibits such discrimination in the operation of Hill-Burton facilities. It does not allow racial discrimination even against transients.

Moreover, Hill-Burton Act donees are guided by 42 CFR § 53.111 (g), which sets out in some detail the criteria which must be used in identifying persons unable to pay for such services. The criteria include the patient's health and medical insurance coverage, personal and family income, financial obligations and resources, and "similar factors." Maricopa County, pursuant to the state law here challenged, employs length of county residence as an additional criterion in identifying indigent recipients of uncompensated nonemergency medical care. The federal regulations, however, do not seem to recognize that as an acceptable criterion.

And, as we held in *Thorpe* v. *Housing Authority*, 393 U. S. 268; *Mourning* v. *Family Publications Service*, 411 U. S. 356, these federal conditions attached to federal grants are valid when "reasonably related to the purposes of the enabling legislation." 393 U. S., at 280–281.

It is difficult to impute to Congress approval of the durational residence requirement, for the implications of such a decision would involve weighty equal protection considerations by which the Federal Government, *Bolling* v. *Sharpe*, 347 U. S. 497, as well as the States, are bound.

The political processes[4] rather than equal protection litigation are the ultimate solution of the present problem. But in the setting of this case the invidious discrimination against the poor, *Harper* v. *Virginia Board*

[4] For the impact of "free" indigent care on private hospitals and their paying patients see Dept. of Health, Education, and Welfare (HEW) Report on Medical Resources Available to Meet the Needs of Public Assistance Recipients, House Committee on Ways and Means, 86th Cong., 2d Sess. (Comm. Print 1961).

of Elections, 383 U. S. 663, not the right to travel interstate, is in my view the critical issue.

APPENDIX TO OPINION OF DOUGLAS, J.

GOURMAND AND FOOD—A FABLE [5]

The people of Gourmand loved good food. They ate in good restaurants, donated money for cooking research, and instructed their government to safeguard all matters having to do with food. Long ago, the food industry had been in total chaos. There were many restaurants, some very small. Anyone could call himself a chef or open a restaurant. In choosing a restaurant, one could never be sure that the meal would be good. A commission of distinguished chefs studied the situation and recommended that no one be allowed to touch food except for qualified chefs. "Food is too important to be left to amateurs," they said. Qualified chefs were licensed by the state with severe penalties for anyone else who engaged in cooking. Certain exceptions were made for food preparation in the home, but a person could serve only his own family. Furthermore, to become a qualified chef, a man had to complete at least twenty-one years of training (including four years of college, four years of cooking school, and one year of apprenticeship). All cooking schools had to be first class.

These reforms did succeed in raising the quality of cooking. But a restaurant meal became substantially more expensive. A second commission observed that not everyone could afford to eat out. "No one," they said, "should be denied a good meal because of his

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[5] Foreword to an article on Medical Care and its Delivery: An Economic Appraisal by Judith R. Lave and Lester B. Lave in 35 Law & Contemp. Prob. 252 (1970).

income." Furthermore, they argued that chefs should work toward the goal of giving everyone "complete physical and psychological satisfaction." For those people who could not afford to eat out, the government declared that they should be allowed to do so as often as they liked and the government would pay. For others, it was recommended that they organize themselves in groups and pay part of their income into a pool that would undertake to pay the costs incurred by members in dining out. To insure the greatest satisfaction, the groups were set up so that a member could eat out anywhere and as often as he liked, could have as elaborate a meal as he desired, and would have to pay nothing or only a small percentage of the cost. The cost of joining such prepaid dining clubs rose sharply.

Long ago, most restaurants would have one chef to prepare the food. A few restaurants were more elaborate, with chefs specializing in roasting, fish, salads, sauces, and many other things. People rarely went to these elaborate restaurants since they were so expensive. With the establishment of prepaid dining clubs, everyone wanted to eat at these fancy restaurants. At the same time, young chefs in school disdained going to cook in a small restaurant where they would have to cook everything. The pay was higher and it was much more prestigious to specialize and cook at a really fancy restaurant. Soon there were not enough chefs to keep the small restaurants open.

With prepaid clubs and free meals for the poor, many people started eating their three-course meals at the elaborate restaurants. Then they began to increase the number of courses, directing the chef to "serve the best with no thought for the bill." (Recently a 317-course meal was served.)

The costs of eating out rose faster and faster. A new

government commission reported as follows: (1) Noting that licensed chefs were being used to peel potatoes and wash lettuce, the commission recommended that these tasks be handed over to licensed dishwashers (whose three years of dishwashing training included cooking courses) or to some new category of personnel. (2) Concluding that many licensed chefs were overworked, the commission recommended that cooking schools be expanded, that the length of training be shortened, and that applicants with lesser qualifications be admitted. (3) The commission also observed that chefs were unhappy because people seemed to be more concerned about the decor and service than about the food. (In a recent taste test, not only could one patron not tell the difference between a 1930 and a 1970 vintage but he also could not distinguish between white and red wines. He explained that he always ordered the 1930 vintage because he knew that only a really good restaurant would stock such an expensive wine.)

The commission agreed that weighty problems faced the nation. They recommended that a national prepayment group be established which everyone must join. They recommended that chefs continue to be paid on the basis of the number of dishes they prepared. They recommended that every Gourmandese be given the right to eat anywhere he chose and as elaborately as he chose and pay nothing.

These recommendations were adopted. Large numbers of people spent all of their time ordering incredibly elaborate meals. Kitchens became marvels of new, expensive equipment. All those who were not consuming restaurant food were in the kitchen preparing it. Since no one in Gourmand did anything except prepare or eat meals, the country collapsed.

MR. JUSTICE REHNQUIST, dissenting.

I

The State of Arizona provides free medical care for indigents. Confronted, in common with its 49 sister States, with the assault of spiraling health and welfare costs upon limited state resources, it has felt bound to require that recipients meet three standards of eligibility.[1] First, they must be indigent, unemployable, or unable to provide their own care. Second, they must be residents of the county in which they seek aid. Third, they must have maintained their residence for a period of one year. These standards, however, apply only to persons seeking nonemergency aid. An exception is specifically provided for "emergency cases when immediate hospitalization or medical care is necessary for the preservation of life or limb . . . ."

Appellant Evaro moved from New Mexico to Arizona in June 1971, suffering from a "chronic asthmatic and bronchial illness." In July 1971 he experienced a respiratory attack, and obtained treatment at the facilities of appellant Memorial Hospital, a privately operated

[1] Ariz. Rev. Stat. Ann. § 11-297A (Supp. 1973-1974) reads as follows:

"Except in emergency cases when immediate hospitalization or medical care is necessary for the preservation of life or limb no person shall be provided hospitalization, medical care or outpatient relief under the provisions of this article without first filing with a member of the board of supervisors of the county in which he resides a statement in writing, subscribed and sworn to under oath, that he is an indigent as shall be defined by rules and regulations of the state department of economic security, an unemployable totally dependent upon the state or county government for financial support, or an employable of sworn low income without sufficient funds to provide himself necessary hospitalization and medical care, and that he has been a resident of the county for the preceding twelve months."

institution. The hospital sought to recover its expenses from appellee Maricopa County under the provisions of Ariz. Rev. Stat. Ann. § 11–297A (Supp. 1973–1974), asserting that Evaro was entitled to receive county care. Since he did not satisfy the eligibility requirements discussed above,[2] appellee declined to assume responsibility for his care, and this suit was then instituted in the State Superior Court.

Appellants did not, and could not, claim that there is a constitutional right to nonemergency medical care at state or county expense or a constitutional right to reimbursement for care extended by a private hospital.[3] They asserted, however, that the state legislature, having decided to give free care to certain classes of persons, must give that care to Evaro as well. The Court upholds that claim, holding that the Arizona eligibility requirements burdened Evaro's "right to travel."

Unlike many traditional government services, such as police or fire protection, the provision of health care has commonly been undertaken by private facilities and personnel. But as strains on private services become greater, and the costs of obtaining care increase, federal, state, and local governments have been pressed to assume a larger role. Reasonably enough, it seems to me, those governments which now find themselves in the hospital business seek to operate that business primarily for those

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[2] The parties stipulated that Mr. Evaro was "an indigent who recently changed his residence from New Mexico to Arizona and who has resided in the state of Arizona for less than twelve months." App. 10. Therefore Mr. Evaro failed to meet only the third requirement discussed in the text.

[3] This Court has noted that citizens have no constitutional right to welfare benefits. See, *e. g.*, *Dandridge* v. *Williams*, 397 U. S. 471 (1970); *San Antonio Independent School Dist.* v. *Rodriguez*, 411 U. S. 1, 33 (1973).

persons dependent on the financing locality both by association and by need.

Appellants in this case nevertheless argue that the State's efforts, admirable though they may be, are simply not impressive enough. But others excluded by eligibility requirements certainly could make similar protests. Maricopa County residents of many years, paying taxes to both construct and support public hospital facilities, may be ineligible for care because their incomes are slightly above the marginal level for inclusion. These people have been excluded by the State, not because their claim on limited public resources is without merit, but because it has been deemed less meritorious than the claims of those in even greater need. Given a finite amount of resources, Arizona after today's decision may well conclude that its indigency threshold should be elevated since its counties must provide for out-of-state migrants as well as for residents of longer standing. These more stringent need requirements would then deny care to additional persons who until now would have qualified for aid.

Those presently excluded because marginally above the State's indigency standards, those who may be excluded in the future because of more stringent indigency requirements necessitated by today's decision, and appellant Evaro, all have a plausible claim to government-supported medical care. The choice between them necessitated by a finite amount of resources is a classic example of the determination of priorities to be accorded conflicting claims, and would in the recent past have been thought to be a matter particularly within the competence of the state legislature to decide. As this Court stated in *Dandridge* v. *Williams*, 397 U. S. 471, 487 (1970), "the Constitution does not empower this Court to second-guess state officials charged with the difficult

responsibility of allocating limited public welfare funds among the myriad of potential recipients."

The Court holds, however, that the State was barred from making the choice it made because of the burden its choice placed upon Evaro's "right to travel." Although the Court's definition of this "right" is hardly precise, the Court does state: "[T]he right of interstate travel must be seen as insuring new residents the same right to vital government benefits and privileges in the States to which they migrate as are enjoyed by other residents." This rationale merits further attention.

II

The right to travel throughout the Nation has been recognized for over a century in the decisions of this Court.[4] See *Crandall* v. *Nevada,* 6 Wall. 35 (1868). But the concept of that right has not been static. To see how distant a cousin the right to travel enunciated in this case is to the right declared by the Court in *Crandall,* reference need only be made to the language of Mr. Justice Miller, speaking for the Court:

> "But if the government has these rights on her own account, the citizen also has correlative rights. He has the right to come to the seat of government to assert any claim he may have upon that government, or to transact any business he may have with it. To seek its protection, to share its offices, to engage in administering its functions. He has a right to free access to its sea-ports, through which all the operations of foreign trade and commerce are

[4] Although the right to travel has been recognized by this Court for over a century, the origin of the right still remains somewhat obscure. The majority opinion in this case makes no effort to identify the source, simply relying on recent cases which state such a right exists.

> conducted, to the sub-treasuries, the land offices, the revenue offices, and the courts of justice in the several States, and this right is in its nature independent of the will of any State over whose soil he must pass in the exercise of it." *Id.*, at 44.

The Court in *Crandall* established no right to free benefits from every State through which the traveler might pass, but more modestly held that the State could not use its taxing power to impede travel across its borders.[5]

Later cases also defined this right to travel quite conservatively. For example, in *Williams* v. *Fears*, 179 U. S. 270 (1900), the Court upheld a Georgia statute taxing "emigrant agents"—persons hiring labor for work *outside* the State—although agents hiring for local work went untaxed. The Court recognized that a right to travel existed, stating:

> "Undoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right, ordinarily, of free transit from or through the territory of any State is a right secured by the Fourteenth Amendment and by other provisions of the Constitution." *Id.*, at 274.

The Court went on, however, to decide that the statute, despite the added cost it assessed against exported labor, affected freedom of egress "only incidentally and remotely." *Ibid.*[6]

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[5] The tax levied by the State of Nevada was upon every person leaving the State. As this Court has since noted, the tax was a direct tax on travel and was not intended to be a charge for the use of state facilities. See *Evansville Airport* v. *Delta Airlines*, 405 U. S. 707 (1972).

[6] The Court also rejected an equal protection argument, concluding: "We are unable to say that such a discrimination, if it existed,

The leading earlier case, *Edwards* v. *California*, 314 U. S. 160 (1941), provides equally little support for the Court's expansive holding here. In *Edwards* the Court invalidated a California statute which subjected to criminal penalties any person "that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be an indigent person." *Id.*, at 171. Five members of the Court found the statute unconstitutional under the Commerce Clause, finding in the Clause a "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." *Id.*, at 173. Four concurring Justices found a better justification for the result in the Fourteenth Amendment's protection of the "privileges of national citizenship." [7]

Regardless of the right's precise source and definition, it is clear that the statute invalidated in *Edwards* was specifically designed to, and would, deter indigent persons from entering the State of California. The imposition of criminal penalties on all persons assisting the entry of an indigent served to block ingress as surely as if the State had posted guards at the border to turn indigents away. It made no difference to the operation of the statute that the indigent, once inside the State, would be supported by federal payments.[8] Furthermore,

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did not rest on reasonable grounds, and was not within the discretion of the state legislature." 179 U. S., at 276.

[7] See the concurring opinions of MR. JUSTICE DOUGLAS (with whom Mr. Justice Black and Mr. Justice Murphy joined), 314 U. S., at 177, and Mr. Justice Jackson, *id.*, at 181.

[8] The Court in *Edwards* observed: "After arriving in California [the indigent] was aided by the Farm Security Administration, which . . . is wholly financed by the Federal government." 314 U. S., at 175. The Court did not express a view at that time as to whether a different result would have been reached if the State bore the financial burden. But cf. *Shapiro* v. *Thompson*, 394 U. S. 618 (1969).

the statute did not require that the indigent intend to take up continuous residence within the State. The statute was not therefore an incidental or remote barrier to migration, but was in fact an effective and purposeful attempt to insulate the State from indigents.

The statute in the present case raises no comparable barrier. Admittedly, some indigent persons desiring to reside in Arizona may choose to weigh the possible detriment of providing their own nonemergency health care during the first year of their residence against the total benefits to be gained from continuing location within the State, but their mere entry into the State does not invoke criminal penalties. To the contrary, indigents are free to live within the State, to receive welfare benefits necessary for food and shelter,[2] and to receive free emergency medical care if needed. Furthermore, once the indigent has settled within a county for a year, he becomes eligible for full medical care at county expense. To say, therefore, that Arizona's treatment of indigents compares with California's treatment during the 1930's would border on the frivolous.

Since those older cases discussing the right to travel are unhelpful to Evaro's cause here, reliance must be placed elsewhere. A careful reading of the Court's opinion discloses that the decision rests almost entirely on two cases of recent vintage: *Shapiro* v. *Thompson*, 394 U. S. 618 (1969), and *Dunn* v. *Blumstein*, 405 U. S. 330 (1972). In *Shapiro* the Court struck down statutes requiring one year's residence prior to receiving welfare benefits. In *Dunn* the Court struck down a statute requiring a year's residence before receiving the right to vote. In placing reliance on these two cases, the Court

[2] See Ariz. Rev. Stat. Ann. § 46-233 (Supp. 1973-1974), which provides that an eligible recipient of general assistance must have "established residence at the time of application."

must necessarily distinguish or discredit recent cases of this Court upholding statutes requiring a year's residence for lower in-state tuition.[10] The important question for this purpose, according to the Court's analysis, is whether a classification " 'operates to' *penalize* those persons . . . who have exercised their constitutional right of interstate migration.' " (Emphasis in Court's opinion.)

Since the Court concedes that "some 'waiting-period[s] . . . may not be penalties,' " *ante*, at 258–259, one would expect to learn from the opinion how to distinguish a waiting period which is a penalty from one which is not. Any expense imposed on citizens crossing state lines but not imposed on those staying put could theoretically be deemed a penalty on travel; the toll exacted from persons crossing from Delaware to New Jersey by the Delaware Memorial Bridge is a "penalty" on interstate travel in the most literal sense of all. But such charges,[11] as well as other fees for use of transportation facilities such as taxes on airport users,[12] have been upheld by this Court against attacks based upon the right to travel. It seems to me that the line to be derived from our prior cases is that some financial impositions on interstate travelers have such indirect or inconsequential impact on travel that they simply do not constitute the type of direct purposeful barriers struck down in *Edwards* and *Shapiro*. Where the impact is that remote, a State can reasonably require that the citizen bear some proportion of the State's cost in its facilities. I would think that this standard is not only supported by this Court's decisions, but would be

[10] See *Starns* v. *Malkerson*, 326 F. Supp. 234 (Minn. 1970), aff'd, 401 U. S. 985 (1971); *Vlandis* v. *Kline*, 412 U. S. 441 (1973).

[11] See, *e. g.*, *Interstate Busses Corp.* v. *Blodgett*, 276 U. S. 245 (1928); *Hendrick* v. *Maryland*, 235 U. S. 610 (1915).

[12] See *Evansville Airport* v. *Delta Airlines*, 405 U. S. 707 (1972).

eminently sensible and workable. But the Court not only rejects this approach, it leaves us entirely without guidance as to the proper standard to be applied.

The Court instead resorts to *ipse dixit*, declaring rather than demonstrating that the right to nonemergency medical care is within the class of rights protected by *Shapiro* and *Dunn:*

> "Whatever the ultimate parameters of the *Shapiro* penalty analysis, *it is at least clear that medical care is as much 'a basic necessity of life' to an indigent as welfare assistance.* And, governmental privileges or benefits necessary to basic sustenance have often been viewed as being of greater constitutional significance than less essential forms of governmental entitlements. See, *e. g., Shapiro, supra; Goldberg* v. *Kelly*, 397 U. S. 254, 264 (1970); *Sniadach* v. *Family Finance Corp.*, 395 U. S. 337, 340–342 (1969)." *Ante*, at 259. (Emphasis added; footnotes omitted.)

However clear this conclusion may be to the majority, it is certainly not clear to me. The solicitude which the Court has shown in cases involving the right to vote,[13] and the virtual denial of entry inherent in denial of welfare benefits—"the very means by which to live," *Goldberg* v. *Kelly*, 397 U. S. 254, 264 (1970)—ought not be so casually extended to the alleged deprivation here. Rather, the Court should examine, as it has done in the past, whether the challenged requirement erects a real and purposeful barrier to movement, or the threat of such a barrier, or whether the effects on travel, viewed realistically, are merely incidental and remote. As the above discussion has shown, the barrier here is hardly

[13] See, *e. g., Evans* v. *Cornman*, 398 U. S. 419 (1970); *Cipriano* v. *City of Houma*, 395 U. S. 701 (1969).

a counterpart to the barriers condemned in earlier cases. That being so, the Court should observe its traditional respect for the State's allocation of its limited financial resources rather than unjustifiably imposing its own preferences.

III

The Court, in its examination of the proffered state interests, categorically rejects the contention that those who have resided in the county for a fixed period of time may have a greater stake in community facilities than the newly arrived. But this rejection is accomplished more by fiat than by reason. One of the principal factual distinctions between *Starns* v. *Malkerson*, 326 F. Supp. 234 (Minn. 1970), aff'd, 401 U. S. 985 (1971), and *Vlandis* v. *Kline*, 412 U. S. 441 (1973), both of which upheld durational residence requirements for in-state university tuition,[14] and *Shapiro*, which struck them down for welfare recipients, is the nature of the aid which the State or county provides. Welfare benefits, whether in cash or in kind, are commonly funded from current tax revenues, which may well be supported by the very newest arrival as well as by the longtime resident. But universities and hospitals, although demanding operating support from current revenues, require extensive capital facilities which cannot possibly be funded out of current tax revenues. Thus, entirely apart from the majority's conception of whether nonemergency health care is more or less important than continued education,

[14] In *Vlandis*, while striking down a Connecticut statute that in effect prevented a new state resident from obtaining lower tuition rates for the full period of enrollment, we stated that the decision should not "be construed to deny a State the right to impose on a student, as one element in demonstrating bona fide residence, a reasonable durational residency requirement, which can be met while in student status." 412 U. S., at 452. *Starns* was cited as support for this position.

the interest of longer established residents in capital facilities and their greater financial contribution to the construction of such facilities seems indisputable.[15]

Other interests advanced by the State to support its statutory eligibility criteria are also rejected virtually out of hand by the Court. The protection of the county economies is dismissed with the statement that "[t]he conservation of the taxpayers' purse is simply not a sufficient state interest . . . ." [16] The Court points out that the cost of care, if not borne by the Government, may be borne by private hospitals such as appellant Memorial Hospital. While this observation is doubtless true in large part, and is bound to present a problem to any private hospital, it does not seem to me that it thus becomes a constitutional determinant. The Court also observes that the State may in fact *save* money by providing nonemergency medical care rather than waiting for deterioration of an illness. However valuable a qualified cost analysis might be to legislators drafting eligibility requirements, and however little this speculation may bear on Evaro's condition (which the record does not indicate to have been a deteriorating illness), this sort of judgment has traditionally been confided to legislatures, rather than to courts charged with determining constitutional questions.

The Court likewise rejects all arguments based on

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[15] This distinction may be particularly important in a State such as Arizona where the Constitution provides for limitations on state and county debt. See Ariz. Const., Art. 9, § 5 (State); Art. 9, § 8 (County). See generally Comment, Dulling the Edge of Husbandry: The Special Fund Doctrine in Arizona, 1971 L. & Soc. O. (Ariz. St. L. J.) 555.

[16] The appellees in this case filed an affidavit indicating that acceptance of appellants' position would impose an added burden on property taxpayers in Maricopa County of over $2.5 million in the first year alone. App. 12–17.

administrative objectives. Refusing to accept the assertion that a one-year waiting period is a "convenient rule of thumb to determine bona fide residence," the majority simply suggests its own alternatives. Similar analysis is applied in rejecting the appellees' argument based on the potential for fraud. The Court's declaration that an indigent applicant "intent on committing fraud, could as easily swear to having been a resident of the county for the preceding year as to being one currently" ignores the obvious fact that fabricating presence in the State for a year is surely more difficult than fabricating only a present intention to remain.

The legal question in this case is simply whether the State of Arizona has acted arbitrarily in determining that access to local hospital facilities for nonemergency medical care should be denied to persons until they have established residence for one year. The impediment which this quite rational determination has placed on appellant Evaro's "right to travel" is so remote as to be negligible: so far as the record indicates Evaro moved from New Mexico to Arizona three years ago and has remained ever since. The eligibility requirement has not the slightest resemblance to the actual barriers to the right of free ingress and egress protected by the Constitution, and struck down in cases such as *Crandall* and *Edwards*. And, unlike *Shapiro*, it does not involve an urgent need for the necessities of life or a benefit funded from current revenues to which the claimant may well have contributed. It is a substantial broadening of, and departure from, all of these holdings, all the more remarkable for the lack of explanation which accompanies the result. Since I can subscribe neither to the method nor the result, I dissent.

Exhibit 2
2-5-85

[394 US 618]

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

v

VIVIAN THOMPSON (No. 9)

WALTER E. WASHINGTON et al., Appellants,

v

CLAY MAE LEGRANT et al. (No. 33)

ROGER A. REYNOLDS et al., Appellants,

v

JUANITA SMITH et al. (No. 34)

394 US 618, 22 L Ed 2d 600, 89 S Ct 1322

[Nos. 9, 33, and 34]

Reargued October 23 and 24, 1968. Decided April 21, 1969.

SUMMARY

This case involved the following three appeals from decisions of three-judge United States District Courts holding unconstitutional a state or District of Columbia statutory provision which denies welfare assistance to residents of the state or District who have not resided within their jurisdictions for at least one year immediately preceding their applications for such assistance: (1) an appeal (No. 9) from such a decision of the District Court for the District of Connecticut with respect to such a provision in the Connecticut General Statutes (270 F Supp 331); (2) an appeal (No. 33) from such a decision of the District Court for the District of Columbia with respect to such a provision adopted by Congress in the District of Columbia Code (279 F Supp 22); and (3) an appeal (No. 34) from such a decision of the District Court for the Eastern District of Pennsylvania with respect to such a provision in the Pennsylvania Welfare Code (277 F Supp 65).

The United States Supreme Court affirmed the judgments of the District Courts in all three cases. In an opinion by BRENNAN, J., expressing the view of six members of the court, it was held that (1) absent a compelling state interest, the Connecticut and Pennsylvania statutory provisions violated the equal protection clause of the Fourteenth Amendment by imposing a classification of welfare applicants which impinged upon their constitutional right to travel freely from state to state; (2) absent a compelling governmental interest, the District of Columbia statutory provision violated the due process clause of the Fifth Amendment by imposing a discrimination which impinged upon the constitutional right to travel; and (3) § 402(b) of the Social Security Act of 1935 did not, and constitutionally could not, authorize the states to impose such one-year waiting period requirement.

STEWART, J., concurred, adding, in response to the dissent of HARLAN, J., that the court in its opinion did not "pick out particular human activities, characterize them as 'fundamental,' and give them added protection," but on the contrary simply recognized an established constitutional right—the right to travel from one state to another—and gave to that right no less protection than the Constitution itself demands, which right is not a mere conditional liberty subject to regulation and control under conventional due process or equal protection standards, but a right broadly assertable against private interference, as well as governmental action, and a virtually unconditional personal right guaranteed by the Constitution.

WARREN, Ch. J., joined by BLACK, J., dissented on the grounds that (1) Congress, under the commerce clause, has the power to impose minimal nationwide residence requirements or to authorize the states to do so; (2) Congress constitutionally exercised such power in these cases pursuant to the provision of the District of Columbia Code and § 402(b) of the Social Security Act, which authorized the imposition by the states of residence requirements; (3) such congressional action was not invalid merely because it burdened the right to travel; and (4) residence requirements can be imposed by Congress as an exercise of its power to control interstate commerce consistent with the constitutionally guaranteed right to travel, where, as here, the congressional decision to impose such requirement was rational and the restriction on travel insubstantial.

HARLAN, J., dissented on the grounds that (1) the court's opinion represented an unwise extension of the branch of the "compelling interest" doctrine which requires that classifications based upon "suspect" criteria be supported by a compelling interest, to a classification based upon recent interstate movement, with respect of which classification, since it is based upon the exercise of rights guaranteed against state infringement by the Federal Constitution, there is no need for any resort to the equal protection clause, and any undue burden upon such rights may be invalidated under the Fourteenth Amendment's due process clause; (2) to extend the branch of the "compelling interest" rule which holds that a statutory classification is subject to the "compelling interest" test if the result of the classification may be to affect a "fundamental right," regardless of the basis of the classification, to the travel rights involved here, went far toward making the court a "super-legislature," the infringement of which rights, since they are assured by the Federal Constitution, can be dealt

Briefs of Counsel, p 980, infra.

with under the due process clause; (3) when a statute affects only matters not mentioned in the Constitution, and is not arbitrary or irrational, the court is not entitled to pick out particular human activities, characterize them as "fundamental," and give them added protection under an unusually stringent equal protection test; (4) the welfare residence requirements, with respect to equal protection, should be judged by ordinary equal protection standards; (5) applying these standards, the requirements here were not "arbitrary" or "lacking in rational justification," and hence were not objectionable under the equal protection clause of the Fourteenth Amendment or under the analogous standards embodied in the due process clause of the Fifth Amendment; (6) taking into consideration the constitutional source and nature of the right to travel, the extent of interference with that right, the governmental interests served by welfare residence requirements, and the balancing of competing considerations, the one-year welfare residence requirements in this instance did not amount to an undue burden upon the right of interstate travel.

HEADNOTES

Classified to U. S. Supreme Court Digest, Annotated

Courts § 225.5 — congressional act pertaining to District of Columbia — constitutionality

1. 28 USC § 2282, requiring a three-judge United States District Court to hear a challenge to the constitutionality of "any Act of Congress," applies to acts of Congress pertaining solely to the District of Columbia.

Constitutional Law §§ 348.5, 528.5 — welfare assistance — residency requirements — discrimination — equal protection

2. In the absence of a showing that provisions of state statutes and of a District of Columbia statute enacted by Congress, prohibiting public assistance benefits to residents of less than a year, were necessary to promote compelling governmental interests, such prohibitions create a classification which constitutes an invidious discrimination denying such residents equal protection of the laws in violation of the equal protection clause of the Fourteenth Amendment with respect to the state provisions and in violation of the due process clause of the Fifth Amendment with respect to the District of Columbia provisions.

Constitutional Law §§ 348.5, 528.5 — welfare assistance — residency requirement — discrimination — equal protection

3. A challenge to provisions of state statutes and of a congressionally enacted District of Columbia statute prohibiting public assistance benefits to residents of less than a year, that such provisions create a classification which constitutes an invidious discrimination denying such residents equal protection of the laws in violation of the equal protection clause of the Fourteenth Amendment with respect to the state provisions and in violation of the due process clause of the Fifth Amendment with respect to the District of Columbia provision, cannot be answered by the argument that public assistance benefits are a "privilege" and not a "right."

Constitutional Law §§ 326, 348.5 — welfare assistance — residency requirement — classification

4. The purpose of a state statutory provision requiring a person to have one year's residence in the state before becoming eligible for welfare assistance, of inhibiting or deterring migration by needy persons into the state is not a constitutionally permissible state objective, but constitutes a violation of a person's basic constitutional right to travel freely from one state to another, and hence cannot serve as justification for the classification, created by the one-year waiting period, of needy resident families into two classes—(1) those who have resided in the state a year or more and are thus eligible for welfare assistance, and (2) those who have resided in the state less than one year and are thus ineligible for such assistance.

Constitutional Law § 101 — right to travel

5. The nature of the Federal Union and constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of the United States uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement.

Constitutional Law § 101 — right to travel

6. Although not explicitly mentioned in the Federal Constitution, the right freely to travel from one state to another is a basic right under the Constitution.

Constitutional Law § 101 — law chilling assertion of rights

7. If a law has no other purpose than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it is patently unconstitutional.

Constitutional Law §§ 326, 348.5 — welfare assistance — residency requirement — classification

8. The classification of needy resident families in a state into two classes—(1) those who have resided a year or more in the state and are thus eligible for welfare assistance, and (2) those who have resided less than a year in the state and are thus ineligible for assistance—resulting from a state statutory provision requiring a person to have one year's residence in the state before becoming eligible for welfare assistance, cannot be justified as a permissible state attempt to discourage those indigents who would enter the state solely to obtain larger benefits, because such attempt is not a constitutionally permissible state objective

TOTAL CLIENT SERVICE LIBRARY REFERENCES

16 AM JUR 2d, Constitutional Law §§ 485 et seq., 551; AM JUR 2d, Welfare Laws (1st ed Poor and Poor Laws §§ 28–30)

US L ED DIGEST, Constitutional Law §§ 101, 326, 348.5, 528.5; Poor and Poor Laws § 2

ALR DIGESTS, Constitutional Law §§ 294; 411, 458, 574; Poor and Poor Laws § 4

L ED INDEX TO ANNO, Constitutional Law; Poor Persons

ALR QUICK INDEX, Due Process of Law; Equal Protection of Law; Poor and Poor Laws; Social Security

ANNOTATION REFERENCES

Constitutionality of poor relief law, as affected by requirement as to period of residence as condition of relief. 132 ALR 516.

Construction and application of state social security or unemployment compensation act as affected by terms of the Federal act or judicial or administrative rulings thereunder. 139 ALR 892.

Requisite residence for purpose of old age assistance. 43 ALR2d 1427.

and constitutes a violation of a person's basic constitutional right to travel freely from one state to another; a state may no more try to fence out those indigents who seek higher welfare benefits than it may try to fence out indigents generally.

Constitutional Law § 348.5 — welfare assistance — residency requirement — classification

9. Limitation of welfare benefits to those regarded as contributing to the state through the payment of taxes is not a constitutionally permissible state objective but violates the equal protection clause of the Fourteenth Amendment, and hence cannot serve as justification for the classification of needy residence families in a state into two classes—(1) those who have resided a year or more in the state and are thus eligible for benefits, and (2) those who have resided less than a year in the state and are thus ineligible for benefits—resulting from a state statutory provision requiring a person to have one year's residence in the state before becoming eligible for welfare assistance.

Constitutional Law § 314 — equal protection — state services

10. The equal protection clause of the Fourteenth Amendment prohibits a state from apportioning all benefits and services according to the past tax contributions of its citizens.

Constitutional Law §§ 345, 348.5 — limiting state expenditures — discrimination

11. Although a state may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program, it may not accomplish such a purpose by invidious distinctions, in violation of the equal protection clause of the Fourteenth Amendment, between classes of its citizens, as, for example, by reducing expenditures for education by barring indigent children from its schools.

Constitutional Law § 348.5 — welfare assistance — residency requirement — classification

12. The saving of welfare costs cannot be an independent ground for a state's invidious classification, in denial of equal protection of the laws, of needy residence families into two classes—(1) those who have resided a year or more in the state and are thus eligible for welfare assistance, and (2) those who have resided less than a year in the state and are thus ineligible for welfare assistance—resulting from a state statutory provision requiring a person to have one year's residence in the state before becoming eligible for welfare assistance.

Constitutional Law § 348.5 — welfare assistance — residency requirement — classification

13. A mere showing of a rational relationship between the statutory one-year waiting-period requirement before a new resident of a state becomes eligible for welfare assistance and the permissible state objectives of (1) facilitating the planning of the welfare budget, (2) providing an objective test of residency, (3) minimizing the opportunity for recipients fraudulently to receive welfare payments from more than one jurisdiction, and (4) encouraging early entry of new residents into the labor force, is insufficient to justify the classification, under the equal protection clause of the Fourteenth Amendment of needy resident families into two classes—(1) those who have resided a year or more in the state and thus are eligible for welfare assistance, and (2) those who have resided less than a year in the state and are thus ineligible for welfare assistance.

Constitutional Law §§ 101, 326, 525 — classification of citizens — right to travel

14. Any classification of citizens which serves to penalize the exercise of their constitutional right to move from state to state or to the District of Columbia, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional, a state statute making such a classification being a violation of the equal protection clause of the Fourteenth Amendment, and a congressionally enacted statute of the District of Columbia making such a classification being a violation of the due process clause of the Fifth Amendment.

Constitutional Law §§ 326, 348.5, 528.5 — welfare assistance — residency requirement — classification — compelling interest

15. For purposes of determining whether state statutes violate the equal protection clause of the Fourteenth Amendment and whether a congressionally enacted District of Columbia statute violates the due process clause of the Fifth Amendment, a classification of needy resident families into two classes—(1) those who have resided for a year or more in the jurisdiction and are thus eligible for welfare assistance, and (2) those who have resided less than a year in the jurisdiction and are thus ineligible for such assistance—resulting from provisions of such statutes requiring a person to have one year's residence in the jurisdiction before becoming eligible for welfare assistance, is not shown to be justified by a compelling governmental interest on the alleged basis that the waiting-period requirement facilitates the planning of the welfare budget or budget predictability, where such classification penalizes the exercise of a needy person's constitutional right to travel freely from state to state or to the District of Columbia, and where the record is utterly devoid of evidence that either of the states in question or the District of Columbia in fact uses the one-year requirement as a means to predict the number of people who will require assistance in the budget year.

Constitutional Law §§ 326, 348.5, 528.5 — welfare assistance — residency requirement — classification — compelling interest

16. For purposes of determining whether state statutes violate the equal protection clause of the Fourteenth Amendment and whether a congressionally enacted District of Columbia statute violates the due process clause of the Fifth Amendment, a classification of needy resident families into two classes—(1) those who have resided for a year or more in the jurisdiction and are thus eligible for welfare assistance, and (2) those who have resided less than a year in the jurisdiction and are thus ineligible for such assistance—resulting from provisions of such statutes requiring a person to have one year's residence in the jurisdiction before becoming eligible for welfare assistance, is not shown to be justified by a compelling governmental interest on the alleged basis that the waiting-period requirement provides an objective test of residency or an administratively efficient rule of thumb for determining residency, where such classification penalizes the exercise of a needy person's constitutional right to travel freely from state to state or to the District of Columbia, where the residence requirement and the one-year waiting-period requirement are distinct and independent prerequisites for assistance under the statute, and where the facts relevant to the determination of each are directly examined by the welfare authorities.

Constitutional Law §§ 326, 348.5, 528.5 — welfare assistance — residency requirement — classification — compelling interest

17. For purposes of determining whether state statutes violate the equal protection clause of the Fourteenth Amendment and whether a congressionally enacted District of Columbia statute violates the due process clause of the Fifth Amendment, a classification of needy resident families into two classes—(1) those who have resided for a year or more in the jurisdiction and are thus eligible for welfare assistance, and (2) those who have resided less than a year in the jurisdiction and are thus ineligible for such assistance—result-

ing from provisions of such statutes requiring a person to have one year's residence in the jurisdiction before becoming eligible for welfare assistance, is not shown to be justified by a compelling governmental interest on the alleged basis that the waiting-period requirement provides a safeguard against fraudulent receipt of welfare benefits from more than one jurisdiction, where such classification penalizes the exercise of a needy person's constitutional right to travel freely from state to state or to the District of Columbia, and where less drastic means are available and are employed to minimize the hazard of fraudulent receipt of benefits.

Constitutional Law §§ 326, 348.5 — welfare assistance — residency requirement — classification — compelling interest

18. For purposes of determining whether a state statute violates the equal protection clause of the Fourteenth Amendment, a classification of needy resident families into two classes—(1) those who have resided for a year or more in the state and are thus eligible for welfare assistance, and (2) those who have resided less than a year in the state and are thus ineligible for such assistance—resulting from a provision of such statute requiring a person to have one year's residence in the state before becoming eligible for welfare assistance, is not shown to be justified by a compelling governmental interest on the alleged basis that the waiting-period requirement encourages new residents to join the labor force promptly, where such classification penalizes the exercise of a needy person's constitutional right to travel freely from state to state, and where the logic of such alleged justification for the classification would also require a similar waiting period for long-term residents of the state; a state purpose to encourage employment provides no rational basis for imposing a one-year waiting-period restriction on new residents only.

Constitutional Law § 348.5 — welfare assistance — residency requirement — equal protection

19. A classification by a state of welfare applicants according to whether they have lived in the state for one year, so that those who have resided in the state for less than a year are ineligible for welfare assistance, while those who have resided in the state for a year or more are eligible for such assistance, is irrational and unconstitutional in violation of the equal protection clause of the Fourteenth Amendment, even under the traditional equal protection test that equal protection is denied only if the classification is "without any reasonable basis."

Constitutional Law §§ 326, 348.5 — welfare assistance — residency requirement — classification — compelling interest

20. The constitutionality of a classification by a state of welfare applicants according to whether they have lived in the state for one year, so that those who have resided in the state for less than a year are ineligible for welfare assistance, while those who have resided in the state for a year or more are eligible for such assistance, must be judged not by the traditional equal protection standard that equal protection is denied only if the classification is "without any reasonable basis," but by the stricter standard of whether it promotes a compelling state interest, where such classification of welfare applicants touches on the fundamental constitutional right of interstate movement.

Poor and Poor Laws § 2 — AFDC — state assistance plan — federal approval

21. Section 402(b) of the Social Security Act of 1935 (42 USC § 602(b)) —which provides that the Secretary of Health, Education, and Welfare shall approve any state assistance plan which fulfils certain specified conditions, except that he shall not approve any plan which imposes as a condition of eligibility for aid to families with dependent children, a residence requirement which denies aid with respect to any child residing in the state (1) who has resided there for one year immediately preceding the application for such aid, or (2) who was born within one year immediately preceding the application, if the parent or other relative with whom the child is living has resided in the state for one year immediately preceding the birth—does not approve, much less prescribe, the imposition by a state, as part of the jointly funded Aid to Families with Dependent Children (AFDC) program, of a requirement that a welfare applicant must have resided in the state for one year before becoming eligible for welfare assistance.

Constitutional Law § 348.5 — state welfare assistance — residency requirement — effect of federal approval

22. Even if Congress in § 402(b) of the Social Security Act of 1935 (42 USC § 602(b)), dealing with federal approval of state assistance plans as part of the jointly funded Aid to Families with Dependent Children (AFDC) program, approves the imposition by states of a one-year waiting period before a new resident of a state becomes eligible for welfare assistance, it is the responsive state legislation which infringes constitutional rights by imposing a classification in violation of the equal protection clause of the Fourteenth Amendment; by itself § 402(b) has absolutely no restrictive effect, and it is therefore not that statute, but only the state requirements, which pose the constitutional question.

Constitutional Law §§ 326, 348.5 — state welfare assistance — residency requirement — effect of federal approval

23. Insofar as § 402(b) of the Social Security Act of 1935 (42 USC § 602(b)), dealing with federal approval of state assistance plans as part of the jointly funded Aid to Families with Dependent Children (AFDC) program, may permit the one-year waiting period requirement imposed by a state before a new resident of the state becomes eligible for welfare assistance, it is unconstitutional, where such requirement violates the equal protection clause of the Fourteenth Amendment by imposing a classification which impinges on the constitutional right of welfare applicants to travel freely from state to state.

Constitutional Law § 314; United States § 14 — Congress' power — equal protection

24. Congress may not authorize the states to violate the equal protection clause of the Fourteenth Amendment.

Constitutional Law § 314; United States § 17 — Congress' power — federal-state programs — equal protection

25. Congress is without power to enlist state co-operation in a joint federal-state program by legislation which authorizes the states to violate the equal protection clause of the Fourteenth Amendment.

Constitutional Law §§ 316, 513 — due process — discrimination

26. While the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is so unjustifiable as to be violative of due process.

APPEARANCES OF COUNSEL

Francis J. MacGregor, Richard W. Barton and William C. Sennett argued the cause for appellants.

Archibald Cox argued the cause for appellees.

Lorna L. Williams argued the cause for the State of Iowa, amicus curiae.

Briefs of Counsel, p 980, infra.

[394 US 621]

Mr. Justice Brennan delivered the opinion of the Court.

These three appeals were restored to the calendar for reargument. 392 US 920, 20 L Ed 1381, 88 S Ct 2272 (1968). Each is an appeal from a decision of a three-judge District Court holding

[394 US 622]

unconstitutional a State or District of Columbia statutory provision which denies welfare assistance to residents of the State or District who have not resided within their jurisdictions for at least one year immediately preceding their applications for such assistance.[1] We affirm the judgments of the District Courts in the three cases.

I.

In No. 9, the Connecticut Welfare Department invoked § 17-2d of the Connecticut General Statutes[2] to

[394 US 623]

deny the application of appellee Vivian Marie Thompson for assistance under the program for Aid to Families with Dependent Children (AFDC). She was a 19-year-old unwed mother of one child and pregnant with her second child when she changed her residence in June 1966 from Dorchester, Massachusetts, to Hartford, Connecticut, to live with her mother, a Hartford resident. She moved to her own apartment in Hartford in August 1966, when her mother was no longer able to support her and her infant son. Because of her pregnancy, she was unable to work or enter a work training program. Her application for AFDC assistance, filed in August, was denied in November solely on the ground that, as required by § 17-2d, she had not lived in the State for a year before her application was filed. She brought this action in the District Court for the District of Connecticut where a three-judge court, one judge dissenting, declared § 17-2d unconstitutional. 270 F Supp 331 (1967). The majority held that the waiting-period requirement is unconstitutional because it "has a chilling effect on the right to travel." Id., at 336. The majority also held that the provision was a violation of the Equal Protection Clause of the Fourteenth Amendment because the denial of relief to those resident in the State for less than a year is not based on any permissible purpose but is solely designed, as "Connecticut states quite frankly," "to protect its fisc by discouraging entry of those who come needing relief." Id., at 336-337. We noted probable jurisdiction. 389 US 1032, 19 L Ed 2d 820, 88 S Ct 784 (1968).

In No. 33, there are four appellees. Three of them—appellees Harrell, Brown, and Legrant—applied for and were denied AFDC aid. The fourth, appellee Barley, applied for and was denied benefits under the program for Aid to the Permanently and Totally Disabled. The denial in each case was on the ground that the applicant had not resided in the District of Columbia for one year

[394 US 624]

immediately preceding the filing of her application, as required by § 3-203 of the District of Columbia Code.[3]

Appellee Minnie Harrell, now deceased, had moved with her three children from New York to Washington in September 1966. She suffered from cancer and moved to be near members of her family who lived in Washington.

Appellee Barley, a former resident of the District of Columbia, returned to the District in March 1941 and was committed a month later to St. Elizabeths Hospital as mentally ill. She has remained in that hospital ever since. She was deemed eligible for release in 1965, and a plan was made to transfer her from the hospital to a foster home. The plan depended, however, upon Mrs. Barley's obtaining welfare assistance for her support. Her application for assistance under the program for Aid to the Permanently and Totally Disabled was denied because her time spent in the hospital did not count in determining compliance with the one-year requirement.

Appellee Brown lived with her mother and two of her three children in Fort Smith, Arkansas. Her third child was living with appellee Brown's father in the District of Columbia. When her mother moved from Fort Smith to Oklahoma, appellee Brown, in February 1966, returned to the District of Columbia where she had lived as a child. Her application for AFDC assistance was approved insofar as it sought assistance for the child who

[394 US 625]

had lived in the District with her father but was denied to the extent it sought assistance for the two other children.

Appellee Legrant moved with her two children from South Carolina to the District of Columbia in March 1967 after the death of her mother. She planned to live with a sister and brother in Washington. She was pregnant and in ill health when she applied for and was denied AFDC assistance in July 1967.

[1] The several cases were consoli-

1. Accord: Robertson v Ott, 284 F Supp 735 (DC Mass 1968); Johnson v Robinson, Civil No. 67-183 (DC ND Ill, Feb. 20, 1968); Ramos v Health and Social Services Bd. 276 F Supp 474 (DC ED Wis 1967); Green v Dept. of Pub. Welfare, 270 F Supp 173 (DC Del 1967). Contra: Waggoner v Rosenn, 286 F Supp 275 (DC Md Pa 1968); see also People ex rel. Heydenreich v Lyons, 374 Ill 557, 30 NE2d 46 (1940).

All but one of the appellees herein applied for assistance under the Aid to Families with Dependent Children (AFDC) program which was established by the Social Security Act of 1935, 49 Stat 627, as amended, 42 USC §§ 601-609. The program provides partial federal funding of state assistance plans which meet certain specifications. One appellee applied for Aid to the Permanently and Totally Disabled which is also jointly funded by the States and the Federal Government. 42 USC §§ 1351-1355.

2. Conn Gen Stat Rev § 17-2d (1965 Supp), now § 17-2c, provides:

"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 [now 302] or general assistance under part I 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."

An exception is made for those persons who come to Connecticut with a bona fide job offer or are self-supporting upon arrival in the State and for three months thereafter. 1 Conn Welfare Manual, c II, §§ 219.1-219.2 (1966).

3. DC Code Ann § 3-203 (1967) provides:

"Public assistance shall be awarded to or on behalf of any needy individual who either (a) has resided in the District for one year immediately preceding the date of filing his application for such assistance or (b) who was born within one year immediately preceding the application for such aid, if the parent or other relative with whom the child is living has resided in the District for one year immediately preceding the birth; or (c) is otherwise within one of the categories of public assistance established by this chapter." See D. C. Handbook of Pub. Assistance Policies and Procedures, HPA-2, El. 9.1, I, III (1966) (hereinafter cited as D. C. Handbook).

dated for trial, and a three-judge District Court was convened.[4] The court, one judge dissenting, held § 3-203 unconstitutional. 279 F Supp 22 (1967). The majority rested its decision on the ground that the one-year requirement was unconstitutional as a denial of the right to equal protection secured by the Due Process Clause of the Fifth Amendment. We noted probable jurisdiction. 390 US 940, 19 L Ed 2d 1129, 88 S Ct 1053 (1968).

In No. 34, there are two appellees, Smith and Foster, who were denied AFDC aid on the sole ground that they had not been residents of Pennsylvania for a year prior to their applications as required by § 432(6) of the

[394 US 626]

Pennsylvania Welfare Code.[5] Appellee Smith and her five minor children moved in December 1966 from Delaware to Philadelphia, Pennsylvania, where her father lived. Her father supported her and her children for several months until he lost his job. Appellee then applied for AFDC assistance and had received two checks when the aid was terminated. Appellee Foster, after living in Pennsylvania from 1953 to 1965, had moved with her four children to South Carolina to care for her grandfather and invalid grandmother and had returned to Pennsylvania in 1967. A three-judge District Court for the Eastern District of Pennsylvania, one judge dissenting, declared § 432(6) unconstitutional. 277 F Supp 65 (1967). The majority held that the classification established by the waiting-period requirement is "without rational basis and without legitimate purpose or function" and therefore a violation of the Equal Protection Clause. Id., at 67. The majority noted further that if the purpose of the statute was "to erect a barrier against the movement of indigent persons into the State or to

[394 US 627]

effect their prompt departure after they have gotten there," it would be "patently improper and its implementation plainly impermissible." Id., at 67-68. We noted probable jurisdiction. 390 US 940, 19 L Ed 2d 1129, 88 S Ct 1054 (1968).

[1] 4. In Ex parte Cogdell, 342 US 163, 96 L Ed 181, 72 S Ct 196 (1951), this Court remanded to the Court of Appeals for the District of Columbia Circuit to determine whether 28 USC § 2282, requiring a three-judge court when the constitutionality of an Act of Congress is challenged, applied to Acts of Congress pertaining solely to the District of Columbia. The case was mooted below, and the question has never been expressly resolved. However, in Berman v Parker, 348 US 26, 99 L Ed 27, 75 S Ct 98 (1954), this Court heard an appeal from a three-judge court in a case involving the constitutionality of a District of Columbia statute. Moreover, three-judge district courts in the District of Columbia have continued to hear cases involving such statutes. See, e. g., Hobson v Hansen, 265 F Supp 902 (1967). Section 2282 requires a three-judge court to hear a challenge to the constitutionality of "any Act of Congress." (Emphasis supplied.) We see no reason to make an exception for Acts of Congress pertaining to the District of Columbia.

5. Pa Stat. Tit. 62, § 432(6) (1968). See also Pa Pub. Assistance Manual §§ 3150-3151 (1962). 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."

II.

[2, 3] There is no dispute that the effect of the waiting-period requirement in each case is to create two classes of needy resident families indistinguishable from each other except that one is composed of residents who have resided a year or more, and the second of residents who have resided less than a year, in the jurisdiction. On the basis of this sole difference the first class is granted and the second class is denied welfare aid upon which may depend the ability of the families to obtain the very means to subsist—food, shelter, and other necessities of life. In each case, the District Court found that appellees met the test for residence in their jurisdictions, as well as all other eligibility requirements except the requirement of residence for a full year prior to their applications. On reargument, appellees' central contention is that the statutory prohibition of benefits to residents of less than a year creates a classification which constitutes an invidious discrimination denying them equal protection of the laws.[6] We agree. The interests which appellants assert are promoted by the classification either may not constitutionally be promoted by government or are not compelling governmental interests.

III.

Primarily, appellants justify the waiting-period requirement as a protective device to preserve the fiscal integrity of state public assistance programs. It is asserted that people who require welfare assistance during their first

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year of residence in a State are likely to become continuing burdens on state welfare programs. Therefore, the argument runs, if such people can be deterred from entering the jurisdiction by denying them welfare benefits during the first year, state programs to assist long-time residents will not be impaired by a substantial influx of indigent newcomers.[7]

There is weighty evidence that exclusion from the jurisdiction of the poor who need or may need relief was the specific objective of these provisions. In the Congress, sponsors of federal legislation to elimi-

[3] 6. This constitutional challenge cannot be answered by the argument that public assistance benefits are a "privilege" and not a "right." See Sherbert v Verner, 374 US 398, 404, 10 L Ed 2d 965, 971, 83 S Ct 1790 (1963).

7. The waiting-period requirement has its antecedents in laws prevalent in England and the American Colonies centuries ago which permitted the ejection of individuals and families if local authorities thought they might become public charges. For example, the preamble of the English Law of Settlement and Removal of 1662 expressly recited the concern, also said to justify the three statutes before us, that large numbers of the poor were moving to parishes where more liberal relief policies were in effect. See generally Coll, Perspectives in Public Welfare: The English Heritage, 4 Welfare in Review, No. 3, p. 1 (1966). The 1662 law and the earlier Elizabethan Poor Law of 1601 were the models adopted by the American Colonies. Newcomers to a city, town, or county who might become public charges were "warned out" or "passed on" to the next locality. Initially, the funds for welfare payments were raised by local taxes and the controversy as to responsibility for particular indigents was between localities in the same State. As States—first alone and then with federal grants—assumed the major responsibility, the contest of non-responsibility became interstate.

nate all residence requirements have been consistently opposed by representatives of state and local welfare agencies who have stressed the fears of the States that elimination of the requirements would result in a heavy influx of individuals into States providing the most generous benefits. See, e. g., Hearings on H. R. 10032 before the House Committee on Ways and Means, 87th Cong, 2d Sess, 309–310, 644 (1962); Hearings on H. R. 6000 before the Senate Committee on Finance, 81st Cong,

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2d Sess, 324–327 (1950). The sponsor of the Connecticut requirement said in its support: "I doubt that Connecticut can and should continue to allow unlimited migration into the state on the basis of offering instant money and permanent income to all who can make their way to the state regardless of their ability to contribute to the economy." H. B. 82, Connecticut General Assembly House Proceedings, February Special Session, 1965, Vol II, pt 7, p. 3594. In Pennsylvania, shortly after the enactment of the one-year requirement, the Attorney General issued an opinion construing the one-year requirement strictly because "[a]ny other conclusion would tend to attract the dependents of other states to our Commonwealth." 1937–1938 Official Opinions of the Attorney General, No. 240, p. 110. In the District of Columbia case, the constitutionality of § 3–203 was frankly defended in the District Court and in this Court on the ground that it is designed to protect the jurisdiction from an influx of persons seeking more generous public assistance than might be available elsewhere.

[4] We do not doubt that the one-year waiting-period device is well suited to discourage the influx of poor families in need of assistance. An indigent who desires to migrate, resettle, find a new job, and start a new life will doubtless hesitate if he knows that he must risk making the move without the possibility of falling back on state welfare assistance during his first year of residence when his need may be most acute. But the purpose of inhibiting migration by needy persons into the State is constitutionally impermissible.

[5] This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement. That

[394 US 630]

proposition was early stated by Chief Justice Taney in the Passenger Cases, 7 How 283, 492, 12 L Ed 702, 790 (1849):

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

[6] We have no occasion to ascribe the source of this right to travel interstate to a particular constitutional provision.[8] It suffices that, as Mr. Justice Stewart said for the Court in United States v Guest, 383 US 745, 757–758, 16 L Ed 2d 239, 249, 86 S Ct 1170 (1966):

"The constitutional right to travel from one State to another . . . occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized.

". . . [The] right finds no explicit mention in the Constitution. The reason, it has been suggested, is

[394 US 631]

that a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created. In any event, freedom to travel throughout the United States has long been recognized as a basic right under the Constitution."

[4, 7] Thus, the purpose of deterring the in-migration of indigents cannot serve as justification for the classification created by the one-year waiting period, since that purpose is constitutionally impermissible. If a law has "no other purpose . . . than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it [is] patently unconstitutional." United States v Jackson, 390 US 570, 581, 20 L Ed 2d 138, 147, 88 S Ct 1209 (1968).

[8] Alternatively, appellants argue that even if it is impermissible for a State to attempt to deter the entry of all indigents, the challenged classification may be justified as a permissible state attempt to discourage those indigents who would enter the State solely to obtain larger benefits. We observe first that none of the statutes before us is tailored to serve that objective. Rather, the class of barred newcomers is all-inclusive, lumping the great majority who come to the State for other purposes with those who come for the sole purpose of collecting higher benefits. In actual operation, therefore, the three statutes enact what in effect are nonrebuttable presumptions that every applicant for assistance in his first year of residence came to the jurisdiction solely to obtain higher benefits. Nothing whatever in any of these records supplies any basis in fact for such a presumption.

More fundamentally, a State may no more try to fence out those indigents who seek higher welfare benefits than it may try to fence out indigents generally. Implicit in any such distinction is the notion that indigents who enter a State with the hope of securing higher welfare benefits are somehow less deserving than indigents who do not

[394 US 632]

take this consideration into account. But we do not perceive why a mother who is seeking to make a new life for herself and her children should be regarded as less deserving because she considers, among other factors, the level of a State's public

8. In Corfield v Coryell, 6 F Cas 546, 552 (No. 3230) (CCED Pa 1825), Paul v Virginia, 8 Wall 168, 180, 19 L Ed 357, 360 (1869), and Ward v Maryland, 12 Wall 418, 430, 20 L Ed 449, 452 (1871), the right to travel interstate was grounded upon the Privileges and Immunities Clause of Art IV, § 2. See also Slaughter-House Cases, 16 Wall 36, 79, 21 L Ed 394, 409 (1873); Twining v New Jersey, 211 US 78, 97, 53 L Ed 97, 105, 29 S Ct 14 (1908). In Edwards v California, 314 US 160, 183–185, 86 L Ed 119, 129–132, 62 S Ct 164 (1941) (Douglas and Jackson, JJ., concurring), and Twining v New Jersey, supra, reliance was placed on the Privileges and Immunities Clause of the Fourteenth Amendment. See also Crandall v Nevada, 6 Wall 35, 18 L Ed 745 (1868). In Edwards v California, supra, and the Passenger Cases, 7 How 283, 12 L Ed 702 (1849), a Commerce Clause approach was employed.

See also Kent v Dulles, 357 US 116, 125, 2 L Ed 2d 1204, 1210, 78 S Ct 1113 (1958); Aptheker v Secretary of State, 378 US 500, 505–506, 12 L Ed 2d 992, 996, 997, 84 S Ct 1659 (1964); Zemel v Rusk, 381 US 1, 14, 14 L Ed 2d 179, 188, 85 S Ct 1271 (1965), where the freedom of Americans to travel outside the country was grounded upon the Due Process Clause of the Fifth Amendment.

assistance. Surely such a mother is no less deserving than a mother who moves into a particular State in order to take advantage of its better educational facilities.

[9, 10] Appellants argue further that the challenged classification may be sustained as an attempt to distinguish between new and old residents on the basis of the contribution they have made to the community through the payment of taxes. We have difficulty seeing how long-term residents who qualify for welfare are making a greater present contribution to the State in taxes than indigent residents who have recently arrived. If the argument is based on contributions made in the past by the long-term residents, there is some question, as a factual matter, whether this argument is applicable in Pennsylvania where the record suggests that some 40% of those denied public assistance because of the waiting period had lengthy prior residence in the State.[9] But we need not rest on the particular facts of these cases. Appellants' reasoning would logically permit the State to bar new residents from schools, parks, and libraries or deprive them of police and fire protection. Indeed it would permit the State to apportion all benefits and services according to the past tax contributions of its

[394 US 633]

citizens. The Equal Protection Clause prohibits such an apportionment of state services.[10]

[11, 12] We recognize that a State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens. It could not, for example, reduce expenditures for education by barring indigent children from its schools. Similarly, in the cases before us, appellants must do more than show that denying welfare benefits to new residents saves money. The saving of welfare costs cannot justify an otherwise invidious classification.[11]

In sum, neither deterrence of indigents from migrating to the State nor limitation of welfare benefits to those regarded as contributing to the State is a constitutionally permissible state objective.

IV.

Appellants next advance as justification certain administrative and related governmental objectives allegedly served by the waiting-period requirement.[12] They argue

[394 US 634]

that the

9. Furthermore, the contribution rationale can hardly explain why the District of Columbia and Pennsylvania bar payments to children who have not lived in the jurisdiction for a year regardless of whether the parents have lived in the jurisdiction for that period. See DC Code § 3-203; DC Handbook, EL 9.1, 1(C) (1966); Pa Stat, Tit 62, § 432(6) (1968). Clearly, the children who were barred would not have made a contribution during that year.

10. We are not dealing here with state insurance programs which may legitimately tie the amount of benefits to the individual's contributions.

11. In Rinaldi v Yeager, 384 US 305, 16 L Ed 2d 577, 86 S Ct 1497 (1966), New Jersey attempted to reduce expenditures by requiring prisoners who took an unsuccessful appeal to reimburse the State out of their institutional earnings for the cost of furnishing a trial transcript. This Court held the New Jersey statute unconstitutional because it did not require similar repayments from unsuccessful appellants given a suspended sentence, placed on probation, or sentenced only to a fine. There was no rational basis for the distinction between unsuccessful appellants who were in prison and those who were not.

12. Appellant in No. 9, the Connecticut Welfare Commissioner, disclaims any reliance on this contention. In No. 34, the District Court found as a fact that the Pennsylvania requirement served none of the claimed functions. 277 F Supp 65, 68 (1967).

13. Of course, such advance notice would inevitably be unreliable since some who registered would not need welfare a year later while others who did not register would need welfare.

14. See Conn Gen Stat Rev § 17-2d, now § 17-2c, and Pa Pub Assistance Manual § 3154 (1968).

15. Both Connecticut and Pennsylvania have entered into open-ended interstate compacts in which they have agreed to eliminate the durational requirement for

requirement (1) facilitates the planning of the welfare budget; (2) provides an objective test of residency; (3) minimizes the opportunity for recipients fraudulently to receive payments from more than one jurisdiction; and (4) encourages early entry of new residents into the labor force.

[13, 14] At the outset, we reject appellants' argument that a mere showing of a rational relationship between the waiting period and these four admittedly permissible state objectives will suffice to justify the classification. See Lindsley v Natural Carbonic Gas Co, 220 US 61, 78, 55 L Ed 369, 377, 31 S Ct 337 (1911); Flemming v Nestor, 363 US 603, 611, 4 L Ed 2d 1435, 1444, 80 S Ct 1367 (1960); McGowan v Maryland, 366 US 420, 426, 6 L Ed 2d 393, 399, 81 S Ct 1101 (1961). The waiting-period provision denies welfare benefits to otherwise eligible applicants solely because they have recently moved into the jurisdiction. But in moving from State to State or to the District of Columbia appellees were exercising a constitutional right, and any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a *compelling* governmental interest, is unconstitutional. Cf. Skinner v Oklahoma, 316 US 535, 541, 86 L Ed 1655, 1660, 62 S Ct 1110 (1942); Korematsu v United States, 323 US 214, 216, 89 L Ed 194, 198, 65 S Ct 193 (1944); Bates v Little Rock, 361 US 516, 524, 4 L Ed 2d 480, 486, 80 S Ct 412 (1960); Sherbert v Verner, 374 US 398, 406, 10 L Ed 2d 965, 971, 83 S Ct 1790 (1963).

[15] The argument that the waiting-period requirement facilitates budget predictability is wholly unfounded. The records in all three cases are utterly devoid of evidence that either State or the District of Columbia in fact uses the one-year requirement as a means to predict the number of people who will require assistance in the budget year. None of the appellants takes a census of new residents or collects any other data that would reveal the number of newcomers in the State less than a year.

[394 US 635]

Nor are new residents required to give advance notice of their need for welfare assistance.[13] Thus, the welfare authorities cannot know how many new residents come into the jurisdiction in any year, much less how many of them will require public assistance. In these circumstances, there is simply no basis for the claim that the one-year waiting requirement serves the purpose of making the welfare budget more predictable. In Connecticut and Pennsylvania the irrelevance of the one-year requirement to budgetary planning is further underscored by the fact that temporary, partial assistance is given to some new residents[14] and full assistance is given to other new residents under reciprocal agreements.[15] Finally, the claim that a one-year waiting re-

quirement is used for planning purposes is plainly belied by the fact that the requirement is not also imposed on applicants who are long-term residents, the group that receives the bulk of welfare payments. In short, the States rely on methods other than the one-year requirement to make budget estimates. In No. 34, the Director of the Pennsylvania Bureau of Assistance Policies and Standards testified that, based on experience in Pennsylvania and elsewhere, her office had already estimated how much the elimination of the one-year requirement would cost and that the estimates of costs of other changes in regulations have proven exceptionally accurate."

[394 US 636]

[16] The argument that the waiting period serves as an administratively efficient rule of thumb for determining residency similarly will not withstand scrutiny. The residence requirement and the one-year waiting-period requirement are distinct and independent prerequisites for assistance under these three statutes, and the facts relevant to the determination of each are directly examined by the welfare authorities.[16] Before granting an application, the welfare authorities investigate the applicant's employment, housing, and family situation and in the course of the inquiry necessarily learn the facts upon which to determine whether the applicant is a resident.[17]

[394 US 637]

[17] Similarly, there is no need for a State to use the one-year waiting period as a safeguard against fraudulent receipt of benefits;[18] for less drastic means are available, and are employed, to minimize that hazard. Of course, a State has a valid interest in preventing fraud by any applicant, whether a newcomer or a long-time resident. It is not denied, however, that the investigations now conducted entail inquiries into facts relevant to that subject. In addition, cooperation among state welfare departments is common. The District of Columbia, for example, provides interim assistance to its former residents who have moved to a State which has a waiting period. As a matter of course, District officials send a letter to the welfare authorities in the recipient's new community "to request the information needed to continue assistance."[19] A like procedure would be an effective safeguard against the hazard of double payments. Since double payments can be prevented by a letter or a telephone call, it is unreasonable to accomplish this objective by the blunderbuss method of denying assistance to all indigent newcomers for an entire year.

[18] Pennsylvania suggests that the one-year waiting period is justified as a means of encouraging new residents to join the labor force promptly. But this logic would also require a similar waiting period for long-term residents of the State. A state purpose to encourage employment

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provides no rational basis for imposing a one-year waiting-period restriction on new residents only.

[2, 19, 20] We conclude therefore that appellants in these cases do not use and have no need to use the one-year requirement for the governmental purposes suggested. Thus, even under traditional equal protection tests a classification of welfare applicants according to whether they have lived in the State for one year would seem irrational and unconstitutional.[20] But, of course, the traditional criteria do not apply in these cases. Since the classification here touches on the fundamental right of interstate movement, its constitutionality must be judged by the stricter standard of whether it promotes a *compelling* state interest. Under this standard, the waiting-period requirement clearly violates the Equal Protection Clause.[21]

V.

Connecticut and Pennsylvania argue, however, that the constitutional challenge to the waiting-period requirements must fail because Congress expressly approved the imposition of the requirement by the States as part of the jointly funded AFDC program.

Section 402(b) of the Social Security Act of 1935, as amended, 42 USC § 602(b), provides that:

"The Secretary shall approve any [state assistance] plan which fulfills the conditions specified in subsection

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(a) of this section, except that he shall not approve any plan which imposes as a condition of eligibility for aid to families with

anyone who comes from another State which has also entered into the compact. Conn Gen Stat Rev § 17-21a (1968); Pa Pub Assistance Manual § 3150, App I (1966).

16. In Pennsylvania, the one-year waiting-period requirement, but not the residency requirement, is waived under reciprocal agreements. Pa Stat, Tit 62, § 432(6) (1968); Pa Pub Assistance Manual § 3151.21 (1962).

1 Conn Welfare Manual, c II, § 220 (1966), provides that "[r]esidence within the state shall mean that the applicant is living in an established place of abode and the plan is to remain." A person who meets this requirement does not have to wait a year for assistance if he entered the State with a bona fide job offer or with sufficient funds to support himself without welfare for three months. Id, at § 219.2.

HEW Handbook of Pub. Assistance Administration, pt IV, § 3650 (1946), clearly distinguishes between residence and duration of residence. It defines residence, as is conventional, in terms of intent to remain in the jurisdiction, and it instructs interviewers that residence and length of residence "are two distinct aspects . . . ."

17. See, e.g., D. C. Handbook, chapters on Eligibility Payments, Requirements, Resources, and Reinvestigation for an indication of how thorough these investigations are. See also 1 Conn Welfare Manual, c I (1967); Pa Pub Assistance Manual §§ 3170-3330 (1962).

The Department of Health, Education, and Welfare has proposed the elimination of individual investigations, except for spot checks, and the substitution of a declaration system, under which the "agency accepts the statements of the applicant for or recipient of assistance, about facts that are within his knowledge and competence . . . as a basis for decisions regarding his eligibility and extent of entitlement." HEW, Determination of Eligibility for Public Assistance Programs, 33 Fed Reg 17189 (1968). See also Hoshino, Simplification of the Means Test and its Consequences, 41 Soc Serv Rev 237, 241-249 (1967); Burns, What's Wrong With Public Welfare?, 36 Soc Serv Rev 111, 114-115 (1962). Presumably the statement of an applicant that he intends to remain in the jurisdiction would be accepted under a declaration system.

18. The unconcern of Connecticut and Pennsylvania with the one-year requirement as a means of preventing fraud is made apparent by the waiver of the requirement in reciprocal agreements with other States. See n 15, supra.

19. D. C. Handbook, FV 2.1, 1, II (B) (1967). See also Pa Pub Assistance Manual § 3153 (1962).

20. Under the traditional standard, equal protection is denied only if the classification is "without any reasonable basis." Lindsley v Natural Carbonic Gas Co, 220 US 61, 78, 55 L Ed 369, 377, 31 S Ct 337 (1911); see also Flemming v Nestor, 363 US 603, 4 L Ed 2d 1435, 80 S Ct 1367 (1960).

21. We imply no view of the validity of waiting-period or residence requirements determining eligibility to vote, eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and so forth. Such requirements may promote compelling state interests on the one hand, or, on the other, may not be penalties upon the exercise of the constitutional right of interstate travel.

dependent children, a residence requirement which denies aid with respect to any child residing in the State (1) who has resided in the State for one year immediately preceding the application for such aid, or (2) who was born within one year immediately preceding the application, if the parent or other relative with whom the child is living has resided in the State for one year immediately preceding the birth."

[21] On its face, the statute does not approve, much less prescribe, a one-year requirement. It merely directs the Secretary of Health, Education, and Welfare not to disapprove plans submitted by the States because they include such a requirement.[22] The suggestion that Congress enacted that directive to encourage state participation in the AFDC program is completely refuted by the legislative history of the section. That history discloses that Congress enacted the directive to curb hardships resulting from lengthy residence requirements. Rather than constituting an approval or a prescription of the requirement in state plans, the directive was the means chosen by Congress to deny federal funding to any State which persisted in stipulating excessive residence requirements as a condition of the payment of benefits.

One year before the Social Security Act was passed, 20 of the 45 States which had aid to dependent children programs required residence in the State for two or more years. Nine other States required two or more years of

[394 US 640]

residence in a particular town or county. And 33 jurisdictions required at least one year of residence in a particular town or county.[23] Congress determined to combat this restrictionist policy. Both the House and Senate Committee Reports expressly stated that the objective of § 402(b) was to compel "[l]iberality of residence requirement."[24] Not a single instance can be found in the debates or committee reports supporting the contention that § 402(b) was enacted to encourage participation by the States in the AFDC program. To the contrary, those few who addressed themselves to waiting-period requirements emphasized that participation would depend on a State's repeal or drastic revision of existing requirements. A congressional demand on 41 States to repeal or drastically revise offending statutes is hardly a way to enlist their cooperation.[25]

22. As of 1964, 11 jurisdictions imposed no residence requirement whatever for AFDC assistance. They were Alaska, Georgia, Hawaii, Kentucky, New Jersey, New York, Rhode Island, Vermont, Guam, Puerto Rico, and the Virgin Islands. See HEW, Characteristics of State Public Assistance Plans under the Social Security Act (Pub Assistance Rep No 50, 1964 ed).

23. Social Security Board, Social Security in America 235–236 (1937).

24. HR Rep No 615, 74th Cong, 1st Sess, 24; S Rep No 628, 74th Cong, 1st Sess, 35. Furthermore, the House Report cited President Roosevelt's statement in his Social Security Message that "People want decent homes to live in; they want to locate them where they can engage in productive work . . . ." HR Rep, supra, at 2. Clearly this was a call for greater freedom of movement.

In addition to the statement in the above Committee report, see the remarks of Rep. Doughton (floor manager of the Social Security bill in the House) and Rep. Vinson. 79 Cong Rec 5474, 5602–5603 (1935). These remarks were made in relation to the waiting-period requirements for old-age assistance, but they apply equally to the AFDC program.

25. Section 402(b) required the repeal of 30 state statutes which imposed too long a waiting period in the State or particular town or county and 11 state statutes (as well as the Hawaii statute) which required residence in a particular town or county. See Social Security Board, Social Security in America 235–236 (1937).

VI.

[394 US 641]

[22] But even if we were to assume, arguendo, that Congress did approve the imposition of a one-year waiting period, it is the responsive *state* legislation which infringes constitutional rights. By itself § 402(b) has absolutely no restrictive effect. It is therefore not that statute but only the state requirements which pose the constitutional question.

[23-25] Finally, even if it could be argued that the constitutionality of § 402(b) is somehow at issue here, it follows from what we have said that the provision, insofar as it permits the one-year waiting-period requirement, would be unconstitutional. Congress may not authorize the States to violate the Equal Protection Clause. Perhaps Congress could induce wider state participation in school construction if it authorized the use of joint funds for the building of segregated schools. But could it seriously be contended that Congress would be constitutionally justified in such authorization by the need to secure state cooperation? Congress is without power to enlist state cooperation in a joint federal-state program by legislation which authorizes the States to violate the Equal Protection Clause. Katzenbach v Morgan, 384 US 641, 651, n. 10, 16 L Ed 2d 828, 836, 86 S Ct 1717 (1966).

[26] The waiting-period requirement in the District of Columbia Code involved in No. 33 is also unconstitutional even though it was adopted by Congress as an exercise of federal power. In terms of of federal power, the discrimination created by the one-year requirement violates the Due

[394 US 642]

Process Clause of the Fifth Amendment. "[W]hile the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is 'so unjustifiable as to be violative of due process.'" Schneider v Rusk, 377 US 163, 168, 12 L Ed 2d 218, 222, 84 S Ct 1187 (1964); Bolling v Sharpe, 347 US 497, 98 L Ed 884, 74 S Ct 693 (1954). For the reasons we have stated in invalidating the Pennsylvania and Connecticut provisions, the District of Columbia provision is also invalid—the Due Process Clause of the Fifth Amendment prohibits Congress from denying public assistance to poor persons otherwise eligible solely on the ground that they have not been residents of the District of Columbia for one year at the time their applications are filed.

Accordingly, the judgments in Nos. 9, 33, and 34 are

Affirmed.

SEPARATE OPINIONS

Mr. Justice Stewart, concurring.

In joining the opinion of the Court, I add a word in response to the dissent of my Brother Harlan, who, I think, has quite misappre-

It is apparent that Congress was not intimating any view of the constitutionality of a one-year limitation. The constitutionality of any scheme of federal social security legislation was a matter of doubt at that time in light of the decision in Schechter Poultry Corp. v United States, 295 US 495, 79 L Ed 1570, 55 S Ct 837, 97 ALR 947 (1935). Throughout the House debates congressmen discussed the constitutionality of the fundamental taxing provisions of the Social Security Act, see, e.g., 79 Cong Rec 5783 (1935) (remarks of Rep Cooper), but not once did they discuss the constitutionality of § 420(b).

hended what the Court's opinion says.

The Court today does *not* "pick out particular human activities, characterize them as 'fundamental,' and give them added protection . . . ." To the contrary, the Court simply recognizes, as it must, an established constitutional right, and gives to that right no less protection than the Constitution itself demands.

"The constitutional right to travel from one State to another . . . has been firmly established and repeatedly recognized." United States v Guest, 383 US 745, 757, 16 L Ed 2d 239, 249, 86 S Ct 1170. This constitutional right, which, of course, includes the right of "entering and abiding in any State in the [394 US 643] due process or equal protection standards.[1] "[T]he right to travel freely from State to State finds constitutional protection that is quite independent of the Fourteenth Amendment." United States v Guest, supra, at 760, n. 17, 16 L Ed 2d at 250.[2] As we made clear in Guest, it is a right broadly assertable against private interference as well as governmental action.[3] Like the right of association, NAACP v Alabama, 357 US 449, 2 L Ed 2d 1488, 78 S Ct 1163, it is a virtually unconditional personal right,[4] guaranteed by the Constitution to us all.

It follows, as the Court says, that "the purpose of deterring the immigration of indigents cannot serve as justification for the classification created by the one-year waiting period, since that purpose is constitutionally impermissible." And it further follows, as the Court says, that any *other* purposes offered in support of a [394 US 644] law that so clearly impinges upon the constitutional right of interstate travel must be shown to reflect a *compelling* governmental interest. This is necessarily true whether the impinging law be a classification statute to be tested against the Equal Protection Clause, or a state or federal regulatory law, to be tested against the Due Process Clause of the Fourteenth or Fifth Amendment. As Mr. Justice Harlan wrote for the Court more than a decade ago, "[T]o justify the deterrent effect . . . on the free exercise . . . of their constitutionally protected right . . . a '. . . subordinating interest of the State must be compelling.'" NAACP v Alabama, supra at 463, 2 L Ed at 1500.

The Court today, therefore, is not "contriving new constitutional principles." It is deciding these cases under the aegis of established constitutional law.[5]

Mr. Chief Justice **Warren**, with whom Mr. Justice **Black** joins, dissenting.

In my opinion the issue before us can be simply stated: May Congress, acting under one of its enumerated powers, impose minimal nationwide residence requirements or authorize the States to do so? Since I believe that Congress does have this power and has constitutionally exercised it in these cases, I must dissent.

I.

The Court insists that § 402 (b) of the Social Security Act "does not approve, much less prescribe, a one-year requirement." Ante, at 639, 22 L Ed 2d at 618. From its reading of the legislative history it concludes that Congress did not intend to authorize the States to impose residence requirements.

[394 US 645]

An examination of the relevant legislative materials compels in my view, the opposite conclusion, i. e., Congress intended to authorize state residence requirements of up to one year.

The Great Depression of the 1930's exposed the inadequacies of state and local welfare programs and dramatized the need for federal participation in welfare assistance. See J. Brown, Public Relief 1929–1939 (1940). Congress determined that the Social Security Act, containing a system of unemployment and old-age insurance as well as the categorical assistance programs now at issue, was to be a major step designed to ameliorate the problems of economic insecurity. The primary purpose of the categorical assistance programs was to encourage the States to provide new and greatly enhanced welfare programs. See, e. g., S Rep No. 628, 74th Cong, 1st Sess, 5–6, 18–19 (1935); H. R. Rep No. 615, 74th Cong, 1st Sess, 4 (1935). Federal aid would mean an immediate increase in the amount of benefits paid under state programs. But federal aid was to be conditioned upon certain requirements so that the States would remain the basic administrative units of the welfare system and would be unable to shift the welfare burden to local governmental units with inadequate financial resources. See Advisory Commission on Intergovernmental Relations, Statutory and Administrative Controls Associated with Federal Grants for Public Assistance 9–26 (1964). Significantly, the categories of assistance programs created by the Social Security Act corresponded to those already in existence in a number of States. See J. Brown, Public Relief 1929–1939, at 26–32. Federal entry into the welfare area can therefore be best described as a major experiment in "cooperative federalism." King v Smith, 392 US 309, 317, 20 L Ed 2d 1118, 1125, 88 S Ct 2128 (1968), combining state and federal participation to solve the problems of the depression.

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Each of the categorical assistance programs contained in the Social Security Act allowed participating States to impose residence requirements as a condition of eligibility for benefits. Congress also imposed a

1. By contrast, the "right" of international travel has been considered to be no more than an aspect of the "liberty" protected by the Due Process Clause of the Fifth Amendment. Kent v Dulles, 357 US 116, 125, 2 L Ed 2d 1204, 1209, 78 S Ct 1113; Aptheker v Secretary of State, 378 US 500, 505–506, 12 L Ed 2d 992, 996, 997, 84 S Ct 1659. As such, this "right," the Court has held, can be regulated within the bounds of due process. Zemel v Rusk, 381 US 1, 14 L Ed 2d 179, 85 S Ct 1271.

2. The constitutional right of interstate travel was fully recognized long before adoption of the Fourteenth Amendment. See the statement of Chief Justice Taney in the Passenger Cases, 7 How 283, 492, 12 L Ed 702, 790:

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

3. Mr. Justice Harlan was alone in dissenting from this square holding in Guest. Supra, at 762, 16 L Ed 2d at 252.

4. The extent of emergency governmental power temporarily to prevent or control interstate travel, e.g., to a disaster area, need not be considered in these cases.

5. It is to be remembered that the Court today *affirms* the judgments of three different federal district courts, and that at least four other federal courts have reached the same result. See ante, at 622, n 1, 22 L Ed 2d 608.

one-year requirement for the categorical assistance programs operative in the District of Columbia. See HR Rep No. 891, 74th Cong, 1st Sess (1935) (old-age pensions); HR Rep No. 201, 74th Cong, 1st Sess (1935) (aid to the blind). The congressional decision to allow the States to impose residence requirements and to enact such a requirement for the District was the subject of considerable discussion. Both those favoring lengthy residence requirements[1] and those opposing all requirements[2] pleaded their case during the congressional hearings on the Social Security Act. Faced with the competing claims of States which feared that abolition of residence requirements would result in an influx of persons seeking higher welfare payments and of organizations which stressed the unfairness of such requirements to transient workers forced by the economic dislocation of the depression to seek work far from their homes, Congress chose a middle course. It required those States seeking federal grants for categorical assistance to reduce their existing residence requirements to what Congress viewed as an acceptable maximum. However, Congress accommodated state fears by allowing the States to retain minimal residence requirements.

Congress quickly saw evidence that the system of welfare assistance contained in the Social Security Act including residence requirements was operating to encourage States to expand and improve their categorical

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assistance programs. For example, the Senate was told in 1939:

"The rapid expansion of the program for aid to dependent children in the country as a whole since 1935 stands in marked contrast to the relatively stable picture of mothers' aid in the preceding 4-year period from 1932 through 1935. The extension of the program during the last 3 years is due to Federal contributions which encouraged the matching of State and local funds." S Rep No. 734, 76th Cong, 1st Sess, 29 (1939).

The trend observed in 1939 continued as the States responded to the federal stimulus for improvement in the scope and amount of categorical assistance programs. See Wedemeyer & Moore, The American Welfare System, 54 Calif L Rev 326, 347–356 (1966). Residence requirements have remained a part of this combined state-federal welfare program for 34 years. Congress has adhered to its original decision that residence requirements were necessary in the face of repeated attacks against these requirements.[3] The decision to retain residence requirements, combined with Congress' continuing desire to encourage wider state participation in categorical assistance programs, indicates to me that Congress has authorized the imposition by the States of residence requirements.

II.

Congress has imposed a residence

1. See, e.g., Hearings on HR 4120 before the House Committee on Ways and Means, 74th Cong, 1st Sess, 831–832, 861–871 (1935).

2. See, e.g., Hearings on S 1130 before the Senate Committee on Finance, 74th Cong, 1st Sess, 522–540, 643, 650 (1935).

3. See e.g., Hearings on HR 10032 before the House Committee on Ways and Means, 87th Cong, 2d Sess, 355, 385–405, 437 (1962); Hearings on HR 6000 before the Senate Committee on Finance, 81st Cong, 2d Sess, 142–143 (1950).

requirement in the District of Columbia and authorized the States to impose similar requirements. The issue before us must therefore be framed in terms of whether Congress may

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create minimal residence requirements, not whether the States, acting alone, may do so. See Prudential Insurance Co. v Benjamin, 328 US 408, 90 L Ed 1342, 66 S Ct 1142, 164 ALR 476 (1946); In re Rahrer, 140 US 545, 35 L Ed 572, 11 S Ct 865 (1891). Appellees insist that a congressionally mandated residence requirement would violate their right to travel. The import of their contention is that Congress, even under its "plenary"[4] power to control interstate commerce, is constitutionally prohibited from imposing residence requirements. I reach a contrary conclusion for I am convinced that the extent of the burden on interstate travel when compared with the justification for its imposition requires the Court to uphold this exertion of federal power.

Congress, pursuant to its commerce power, has enacted a variety of restrictions upon interstate travel. It has taxed air and rail fares and the gasoline needed to power cars and trucks which move interstate. 26 USC § 4261 (air fares); 26 USC § 3469 (1952 ed), repealed in part by Pub L 87–508, § 5(b), 76 Stat 115 (rail fares); 26 USC § 4081 (gasoline). Many of the federal safety regulations of common carriers which cross state lines burden the right to travel. 45 USC §§ 1–43 (railroad safety appliances); 49 USC § 1421 (air safety regulations). And Congress has prohibited by criminal statute interstate travel for certain purposes. E.g., 18 USC § 1952. Although these restrictions operate as a limitation upon free interstate movement of persons, their constitutionality appears well settled. See Texas & Pacific R. Co. v Rigsby, 241 US 33, 41, 60 L Ed 874, 878, 36 S Ct 482 (1916); Southern R. Co. v United States, 222 US 20, 56 L Ed 72, 32 S Ct 2 (1911); United States v Zizzo, 338 F2d 577 (CA7th Cir, 1964), cert denied, 381 US 915, 14 L Ed 2d 435, 85 S Ct 1536 (1965). As the Court observed in Zemel v Rusk, 381 US 1, 14, 14 L Ed 2d 179, 189, 85 S Ct 1271 (1965), "the fact that a liberty cannot be inhibited without due

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process of law does not mean that it can under no circumstances be inhibited."

The Court's right-to-travel cases lend little support to the view that congressional action is invalid merely because it burdens the right to travel. Most of our cases fall into two categories: those in which *state*-imposed restrictions were involved, see, e.g., Edwards v California, 314 US 160, 86 L Ed 119, 62 S Ct 164 (1941); Crandall v Nevada, 6 Wall 35, 18 L Ed 745 (1868), and those concerning congressional decisions to remove impediments to interstate movement, see, e. g., United States v Guest, 383 US 745, 16 L Ed 2d 239, 86 S Ct 1170 (1966). Since the focus of our inquiry must be whether Congress would exceed permissible bounds by imposing residence requirements, neither group of cases offers controlling principles.

In only three cases have we been confronted with an assertion that Congress has impermissibly burdened the right to travel. Kent v Dulles, 357 US 116, 2 L Ed 2d 1204, 78 S Ct 1113 (1958), did invalidate a burden on the right to travel;

4. See e.g., Heart of Atlanta Motel, Inc. v United States, 379 US 241, 256–260, 13 L Ed 2d 258, 267–270, 85 S Ct 348 (1964).

however, the restriction was voided on the nonconstitutional basis that Congress did not intend to give the Secretary of State power to create the restriction at issue. Zemel v Rusk, supra, on the other hand, sustained a flat prohibition of travel to certain designated areas and rejected an attack that Congress could not constitutionally impose this restriction. Aptheker v Secretary of State, 378 US 500, 12 L Ed 2d 992, 84 S Ct 1659 (1964), is the only case in which this Court invalidated on a constitutional basis a congressionally imposed restriction. Aptheker also involved a flat prohibition but in combination with a claim that the congressional restriction compelled a potential traveler to choose between his right to travel and his First Amendment right of freedom of association. It was this Hobson's choice, we later explained, which formed the rationale of Aptheker. See Zemel v Rusk, supra, at 16, 14 L Ed 2d at 189. Aptheker thus contains two characteristics distinguishing it from the appeals now before the Court: a combined

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infringement of two constitutionally protected rights and a flat prohibition upon travel. Residence requirements do not create a flat prohibition, for potential welfare recipients may move from State to State and establish residence wherever they please. Nor is any claim made by appellees that residence requirements compel them to choose between the right to travel and another constitutional right.

Zemel v Rusk, the most recent of the three cases, provides a framework for analysis. The core inquiry is "the extent of the governmental restriction imposed" and the "extent of the necessity for the restriction." Id., at 14, 14 L Ed 2d at 189. As already noted, travel itself is not prohibited. Any burden inheres solely in the fact that a potential welfare recipient might take into consideration the loss of welfare benefits for a limited period of time if he changes his residence. Not only is this burden of uncertain degree,[5] but appellees themselves assert there is evidence that few welfare recipients have in fact been deterred by residence requirements. See Harvith, The Constitutionality of Residence Tests for General and Categorical Assistance Programs, 54 Calif L Rev 567, 615–618 (1966); Note, Residence Requirements in State Public Welfare Statutes, 51 Iowa L Rev 1080, 1083–1085 (1966).

The insubstantiality of the restriction imposed by residence requirements must then be evaluated in light of the possible congressional reasons for such requirements. See, e. g., McGowan v Maryland, 366 US 420, 425–427, 6 L Ed 2d 393, 398–400, 81 S Ct 1101 (1961). One fact which does emerge with clarity from the legislative history is Congress' belief that a program of cooperative federalism combining federal aid with

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enhanced state participation would result in an increase in the scope of welfare programs and level of benefits. Given the apprehensions of many States that an increase in benefits without minimal residence requirements would result in an inability to provide an adequate welfare system, Congress deliberately adopted the intermediate course of a cooperative program. Such a program, Congress believed,

5. The burden is uncertain because indigents who are disqualified from categorical assistance by residence requirements are not left wholly without assistance. All of the appellees in these cases found alternative sources of assistance after their disqualification.

would encourage the States to assume greater welfare responsibilities and would give the States the necessary financial support for such an undertaking. Our cases require only that Congress have a rational basis for finding that a chosen regulatory scheme is necessary to the furtherance of interstate commerce. See, e. g., Katzenbach v McClung, 379 US 294, 13 L Ed 2d 290, 85 S Ct 377 (1964); Wickard v Filburn, 317 US 111, 87 L Ed 122, 63 S Ct 82 (1942). Certainly, a congressional finding that residence requirements allowed each State to concentrate its resources upon new and increased programs of rehabilitation ultimately resulting in an enhanced flow of commerce as the economic condition of welfare recipients progressively improved is rational and would justify imposition of residence requirements under the Commerce Clause. And Congress could have also determined that residence requirements fostered personal mobility. An individual no longer dependent upon welfare would be presented with an unfettered range of choices so that a decision to migrate could be made without regard to considerations of possible economic dislocation.

Appellees suggests, however, that Congress was not motivated by rational considerations. Residence requirements are imposed, they insist, for the illegitimate purpose of keeping poor people from migrating. Not only does the legislative history point to an opposite conclusion, but it also must be noted that "[i]nto the motives which induced members of Congress to [act] . . . this Court may not enquire." Arizona v California, 283 US 423, 455, 75 L Ed 1154, 1166, 51 S Ct 522 (1931). We

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do not attribute an impermissible purpose to Congress if the result would be to strike down an otherwise valid statute. United States v O'Brien, 391 US 367, 383, 20 L Ed 2d 672, 683, 88 S Ct 1673 (1968); McCray v United States, 195 US 27, 56, 49 L Ed 78, 95, 24 S Ct 769 (1904). Since the congressional decision is rational and the restriction on travel insubstantial, I conclude that residence requirements can be imposed by Congress as an exercise of its power to control interstate commerce consistent with the constitutionally guaranteed right to travel.

Without an attempt to determine whether any of Congress' enumerated powers would sustain residence requirements, the Court holds that congressionally imposed requirements violate the Due Process Clause of the Fifth Amendment. It thus suggests that, even if residence requirements would be a permissible exercise of the commerce power, they are "so unjustifiable as to be violative of due process." Ante, at 642, 22 L Ed 2d at 619. While the reasons for this conclusion are not fully explained, the Court apparently believes that, in the words of Bolling v Sharpe, 347 US 497, 500, 98 L Ed 884, 887, 74 S Ct 693 (1954), residence requirements constitute "an arbitrary deprivation" of liberty.

If this is the import of the Court's opinion, then it seems to have departed from our precedents. We have long held that there is no requirement of uniformity when Congress acts pursuant to its commerce power. Sunshine Anthracite Coal Co. v Adkins, 310 US 381, 401, 84 L Ed 1263, 1275, 60 S Ct 907 (1940); Currin v Wallace, 306 US 1, 13–14, 83 L Ed 441, 450, 451, 59 S Ct 379

(1939).[6] I do not suggest that Congress is completely free when legislating under one of its enumerated powers to enact wholly arbitrary classifications, for Bolling v Sharpe, supra, and Schneider v Rusk, 377 US 163, 12 L Ed 2d 218, 84 S Ct 1187 (1964),

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counsel otherwise. Neither of these cases, however, is authority for invalidation of congressionally imposed residence requirements. The classification in Bolling required racial segregation in the public schools of the District of Columbia and was thus based upon criteria which we subject to the most rigid scrutiny. Loving v Virginia, 388 US 1, 11, 18 L Ed 2d 1010, 1017, 87 S Ct 1817 (1967). Schneider involved an attempt to distinguish between native-born and naturalized citizens solely for administrative convenience. By authorizing residence requirements Congress acted not to facilitate an administrative function but to further its conviction that an impediment to the commercial life of this Nation would be removed by a program of cooperative federalism combining federal contributions with enhanced state benefits. Congress, not the courts, is charged with determining the proper prescription for a national illness. I cannot say that Congress is powerless to decide that residence requirements would promote this permissible goal and therefore must conclude that such requirements cannot be termed arbitrary.

The Court, after interpreting the legislative history in such a manner that the constitutionality of § 402 (b) is not at issue, gratuitously adds that § 402(b) is unconstitutional. This method of approaching constitutional questions is sharply in contrast with the Court's approach in Street v New York, 394 US at 585–590, 22 L Ed 2d at 580–584. While in Street the Court strains to avoid the crucial constitutional question, here it summarily treats the constitutionality of a major provision of the Social Security Act when, given the Court's interpretation of the legislative materials, that provision is not at issue. Assuming that the constitutionality of § 402(b) is properly treated by the Court, the cryptic footnote in Katzenbach v Morgan, 384 US 641, 651–652, n. 10, 16 L Ed 2d 828, 835, 836, 86 S Ct 1717 (1966), does not support its conclusion. Footnote 10 indicates that Congress is without power to undercut the equal-protection guarantee of racial equality in the guise of implementing

[394 US 654]

the Fourteenth Amendment. I do not mean to suggest otherwise. However, I do not understand this footnote to operate as a limitation upon Congress' power to further the flow of interstate commerce by reasonable residence requirements. Although the Court dismisses § 402(b) with the remark that Congress cannot authorize the States to violate equal protection, I believe that the dispositive issue is whether under its commerce power Congress can impose residence requirements.

Nor can I understand the Court's implication, ante, at 638, n. 21, 22 L Ed 2d 617, that other state residence requirements such as those employed in determining eligibility to vote do not present constitutional questions. Despite the fact that in Drueding v Devlin, 380 US 125, 13 L Ed 2d 792, 85 S Ct 807 (1965), we affirmed an appeal from a three-judge District Court after the District Court had rejected a constitutional challenge to Maryland's one-year residence requirement for presidential elections, the rationale employed by the Court in there appeals would seem to require the opposite conclusion. If a State would violate equal protection by denying welfare benefits to those who have recently moved interstate, then it would appear to follow that equal protection would also be denied by depriving those who have recently moved interstate of the fundamental right to vote. There is nothing in the opinion of the Court to explain this dichotomy. In any event, since the constitutionality of a state residence requirement as applied to a presidential election is raised in a case now pending, Hall v Beals, No. 950, 1968 Term, I would await that case for a resolution of the validity of state voting residence requirements.

III.

The era is long past when this Court under the rubric of due process has reviewed the wisdom of a congressional decision that intersate commerce will be fostered by the enactment of certain regulations. Compare

[394 US 655]

Adkins v Children's Hospital, 261 US 525, 67 L Ed 785, 43 S Ct 394, 24 ALR 1238 (1923), with United States v Darby, 312 US 100, 85 L Ed 609, 61 S Ct 451, 132 ALR 1430 (1941). Speaking for the Court in Helvering v Davis, 301 US 619, 644, 81 L Ed 1307, 1317, 57 S Ct 904, 109 ALR 1319 (1937), Mr Justice Cardozo said of another section of the Social Security Act:

"Whether wisdom or unwisdom resides in the scheme of benefits set forth . . . is not for us to say. The answer to such inquiries must come from Congress, not the courts. Our concern here, as often, is with power, not with wisdom."

I am convinced that Congress does have power to enact residence requirements of reasonable duration or to authorize the States to do so and that it has exercised this power.

The Court's decision reveals only the top of the iceberg. Lurking beneath are the multitude of situations in which States have imposed residence requirements including eligibility to vote, to engage in certain professions or occupations or to attend a state-supported university. Although the Court takes pains to avoid acknowledging the ramifications of its decision, its implications cannot be ignored. I dissent.

Mr. Justice Harlan, dissenting.

The Court today holds unconstitutional Connecticut, Pennsylvania, and District of Columbia statutes which restrict certain kinds of welfare benefits to persons who have lived within the jurisdiction for at least one year immediately preceding their applications. The Court has accomplished this result by an expansion of the comparatively new constitutional doctrine that some state statutes will be deemed to deny equal protection of the laws unless justified by a "compelling" governmental interest, and by holding that the Fifth Amendment's Due Process Clause imposes a similar limitation on federal enactments. Having decided that the "compelling interest" principle

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is applicable, the Court then finds that the governmental interests here asserted are either wholly impermissible or are not

6. Some of the cases go far as to intimate that at least in the area of taxation Congress is not inhibited by any problems of classification. See Helvering v Lerner Stores Corp. 314 US 463, 465, 86 L Ed 343, 347, 62 S Ct 347 (1941); Steward Machine Co. v Davis, 301 US 548, 584, 81 L Ed 1279, 1289, 57 S Ct 883, 109 ALR 1293 (1937); LaBelle Iron Works v United States, 256 US 377, 392, 65 L Ed 998, 1008, 41 S Ct 528 (1921).

"compelling." For reasons which follow, I disagree both with the Court's result and with its reasoning.

I.

These three cases present two separate but related questions for decision. The first, arising from the District of Columbia appeal, is whether Congress may condition the right to receive Aid to Families with Dependent Children (AFDC) and Aid to the Permanently and Totally Disabled in the District of Columbia upon the recipient's having resided in the District for the preceding year.[1] The second, presented in the Pennsylvania and Connecticut appeals, is whether a State may, with the approval of Congress, impose the same conditions with

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respect to eligibility for AFDC assistance.[2] In each instance, the welfare residence requirements are alleged to be unconstitutional on two grounds: *first*, because they impose an undue burden upon the constitutional right of welfare applicants to travel interstate; *second*, because they deny to persons who have recently moved interstate and would otherwise be eligible for welfare assistance the equal protection of the laws assured by the Fourteenth Amendment (in the state cases) or the analogous protection afforded by the Fifth Amendment (in the District of Columbia case). Since the Court basically relies upon the equal protection ground, I shall discuss it first.

1. Of the District of Columbia appellees all sought AFDC assistance except appellee Harley, who asked for Aid to the Permanently and Totally Disabled. In 42 USC §1320(a)(1), Congress has authorized "States" (including the District of Columbia, see 42 USC §1301(a)(1)) to require up to one year's immediately prior residence as a condition of eligibility for AFDC assistance. See n 15, infra. In 42 USC §§1352 (b)(1) and 1382(b)(2), Congress has permitted "States" to condition disability payments upon the applicant's having resided in the State for up to five of the preceding nine years. However, DC Code §3-203 prescribes a one-year residence requirement for both types of assistance, so the question of the constitutionality of a longer required residence period is not before us.

Appellee Harley also challenged in the District Court the constitutionality of a district of Columbia regulation which provided that time spent in a District of Columbia institution as a public charge did not count as residence for purposes of welfare eligibility. The District Court held that the regulation must fall for the same reasons as the residence statute itself. Since I believe that the District Court erred in striking down the statute, and since the issue of the regulation's constitutionality has been argued in this Court only in passing, I would remand appellee Harley's cause for further consideration of that question.

2. I do not believe that the Pennsylvania appeal presents the additional question of the validity of a residence condition for a purely state-financed and state-authorized public assistance program. The Pennsylvania welfare eligibility provision, Pa Stat Ann, Tit 62, § 432 (1968), states:

"Except as hereinafter otherwise provided . . . needy persons of the classes defined in clauses (1) and (2) of this section shall be eligible for assistance:

"(1) Persons for whose assistance Federal financial participation is available to the Commonwealth as . . . aid to families with dependent children, . . . and which assistance is not precluded by other provisions of law.

"(2) Other persons who are citizens of the United States . . . .

. . . . . .

"(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 . . . ."

As I understand it, this statute initially divides Pennsylvania welfare applicants into two classes: (1) persons for whom federal financial assistance is available and not precluded by other provisions of federal law (if state law, including the residence requirement, were intended, the "Except as hereinafter otherwise provided" proviso at the beginning of the entire section would be surplusage); (2) other persons who are citizens. The residence requirement applies to both classes. However, since all of the Pennsylvania appellees clearly fall into the first or federally assisted class, there is no need to consider whether residence conditions may constitutionally be imposed with respect to the second or purely state-assisted class.

II.

In upholding the equal protection argument,[3] the Court has applied an equal protection doctrine of relatively recent vintage: the rule that statutory classifications which either are based upon certain "suspect" criteria or affect "fundamental rights" will be held to deny equal protection unless justified by a "compelling" governmental interest. See ante, at 627, 634, 638, 22 L Ed 2d at 611, 615, 617.

The "compelling interest" doctrine, which today is articulated more explicitly than ever before, constitutes an increasingly significant exception to the long-established rule that a statute does not deny equal protection if it is rationally related to a legitimate governmental objective.[4] The "compelling interest" doctrine has two branches. The branch which requires that classifications based upon "suspect" criteria be supported by a compelling interest apparently had its genesis in case involving racial classifications, which have, at least since Korematsu v United States, 323 US 214, 216, 89 L Ed 194, 199, 65 S Ct 193 (1944), been regarded as inherently "suspect."[5] The criterion of "wealth" apparently was added to the list of "suspects" as an alternative justification for the relationale in Harper

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v Virginia Bd. of Electional right, for the Court states, 169, 173, 86 S Ct 1079 (1966), in which Virginia's poll tax was struck down. The criterion of political allegiance may have been added in Williams v Rhodes, 393 US 23, 21 L Ed 2d 24, 89 S Ct 5 (1968).[6] Today the list apparently has been further enlarged to include classifications based upon recent interstate movement, and perhaps those based upon the exercise of *any* constitutional right, for the Court states ante, at 634, 22 L Ed 2d at 615:

"The waiting-period provision denies welfare benefits to otherwise eligible applicants solely because they have recently moved into the jurisdiction. But in moving . . . appellees were exercising a constitutional right, and any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a *compelling* governmental interest, is unconstitutional."[7]

I think that this branch of the "compelling interest" doctrine is

3. In characterizing this argument as one based on an alleged denial of equal protection of the laws, I do not mean to disregard the fact that this contention is applicable in the District of Columbia only through the terms of the Due Process Clause of the Fifth Amendment. Nor do I mean to suggest that these two constitutional phrases are "always interchangeable," see Bolling v Sharpe, 347 US 497, 499, 98 L Ed 884, 886, 74 S Ct 693 (1954). In the circumstances of this case, I do not believe myself obliged to explore whether there may be any differences in the scope of the protection afforded by the two provisions.

4. See, e. g., Rapid Transit Corp. v City of New York, 303 US 573, 578, 82 L Ed 1024, 1029, 58 S Ct 721 (1938). See also infra, at 662, 22 L Ed 2d at 631.

5. See Loving v Virginia, 388 US 1, 11 (1967); cf. Bolling v Sharpe, 347 US 497, 499, 98 L Ed 884, 886, 74 S Ct 693 (1954). See also Hirabayashi v United States, 320 US 81, 88, 100, 87 L Ed 1774, 1777, 1786, 63 S Ct 1375 (1943); Yick Wo v Hopkins, 118 US 356, 30 L Ed 220, 6 S Ct 1064 (1886).

6. See n 9, infra.

7. See n 9, infra.

sound when applied to racial classifications, for historically the Equal Protection Clause was largely a product of the desire to eradicate legal distinctions founded upon race. However, I believe that the more recent extensions have been unwise. For the reasons stated in my dissenting opinion in Harper v Virginia Bd. of Elections, supra, at 680, 683–686, 16 L Ed 2d at 182–184, I do not consider wealth a "suspect" statutory criterion. And when, as in Williams v Rhodes, supra, and the present case, a classification is based upon the exercise of rights guaranteed against state infringement by the Federal Constitution, then there is no need for any resort to the Equal Protection Clause; in such instances, this Court may properly and straightforwardly invalidate any undue burden upon those rights under the Fourteenth Amendment's Due Process Clause. See, e. g., my separate opinion in Williams v Rhodes, supra, at 41, 21 L Ed 2d at 37.

[394 US 660]

The second branch of the "compelling interest" principle is even more troublesome. For it has been held that a statutory classification is subject to the "compelling interest" test if the result of the classification may be to affect a "fundamental right," regardless of the basis of the classification. This rule was foreshadowed in Skinner v Oklahoma, 316 US 535, 541, 86 L Ed 1655, 1660, 62 S Ct 1110 (1942), in which an Oklahoma statute providing for compulsory sterilization of "habitual criminals" was held subject to "strict scrutiny" mainly because it affected "one of the basic civil rights." After a long hiatus, the principle re-emerged in Reynolds v Sims, 377 US 533, 561–562, 12 L Ed 506, 527, 84 S Ct 1362 (1964), in which state apportionment statutes were subjected to an unusually stringent test because "any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized." Id., at 562, 12 L Ed 2d at 527. The rule appeared again in Carrington v Rash, 380 US 89, 96, 13 L Ed 2d 675, 680, 85 S Ct 775 (1965), in which, as I now see that case,[8] the Court applied an abnormally severe equal protection standard to a Texas statute denying certain servicemen the right to vote, without indicating that the statutory distinction between servicemen and civilians was generally "suspect." This branch of the doctrine was also an alternate ground in Harper v Virginia Bd. of Elections, supra, see 383 US, at 670, 16 L Ed 2d at 174, and apparently was a basis of the holding in Williams v Rhodes, supra.[9] It

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has reappeared today in the Court's cryptic suggestion, ante, at 627, 22 L Ed 2d at 611, that the "compelling interest" test is applicable merely because the result of the classification may be to deny the appellees "food, shelter, and other necessities of life," as well as in the Court's statement, ante, at 638, 22 L Ed 2d at 617, that "[s]ince the classification here touches on the fundamental right of interstate movement, its constitutionality must be judged by the stricter standard of whether it promotes a *compelling* state interest."[10]

I think this branch of the "compelling interest" doctrine particularly unfortunate and unnecessary. It is unfortunate because it creates an exception which threatens to swallow the standard equal protection rule. Virtually every state statute affects important rights. This Court has repeatedly held, for example, that the traditional equal protection standard is applicable to statutory classifications affecting such fundamental matters as the right to pursue a particular occupation,[11] the right to receive greater or smaller wages[12] or to work more or less hours,[13] and the right to inherit property.[14] Rights such as these are in principle indistinguishable from those involved here, and to extend the "compelling interest" rule to all cases in which such rights are affected would go far toward making this Court a "super-legislature." This branch of the doctrine is also unnecessary. When the right affected is one assured by

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the Federal Constitution, any infringement can be dealt with under the Due Process Clause. But when a statute affects only matters not mentioned in the Federal Constitution and is not arbitrary or irrational, I must reiterate that I know of nothing which entitles this Court to pick out particular human activities, characterize them as "fundamental," and give them added protection under an unusually stringent equal protection test.

I shall consider in the next section whether welfare residence requirements deny due process by unduly burdening the right of interstate travel. If the issue is regarded purely as one of equal protection, then, for the reasons just set forth, this nonracial classification should be judged by ordinary equal protection standards. The applicable criteria are familiar and well established. A legislative measure will be found to deny equal protection only if "it is without any reasonable basis and therefore is purely arbitrary." Lindsley v Natural Carbonic Gas Co. 220 US 61, 78, 55 L Ed 369, 377, 31 S Ct 337 (1911). It is not enough that the measure results incidentally "in some inequality," or that it is not drawn "with mathematical nicety," ibid.; the statutory classification must instead cause "different treatments . . . so disparate, relative to the difference in classification, as to be wholly arbitrary." Walters v City of St. Louis, 347 US 231, 237, 98 L Ed 660, 665, 74 S Ct 505 (1954). Similarly, this Court has stated that where, as here, the issue concerns the authority of Congress to withhold "a noncontractual benefit un-

8. I recognize that in my dissenting opinion in Harper v Virginia Bd. of Elections, supra, at 683, 16 L Ed 2d at 182, I characterized the test applied in Carrington as "the traditional equal protection standard." I am now satisfied that this was too generous a reading of the Court's opinion.

9. Analysis is complicated when the statutory classification is grounded upon the exercise of a "fundamental" right. For then the statute may come within the first branch of the "compelling interest" doctrine because exercise of the right is deemed a "suspect" criterion, and also within the second because the statute is considered to affect the right by deterring its exercise. Williams v Rhodes, supra, is such a case insofar as the statutes involved both inhibited exercise of the right of political association and drew distinctions based upon the way the right was exercised. The present case is another instance, insofar as welfare residence statutes both deter interstate movement and distinguish among welfare applicants on the basis of such movement. Consequently, I have not attempted to specify the branch of the doctrine upon which these decisions rest.

10. See n 9, supra.

11. See, e.g., Williamson v Lee Optical Co. 348 US 483, 99 L Ed 563, 75 S Ct 461 (1955); Kotch v Board of River Pilot Commrs. 330 US 552, 91 L Ed 1093, 67 S Ct 920 (1947).

12. See, e.g., Bunting v Oregon, 243 US 426, 61 L Ed 830, 37 S Ct 435 (1917).

13. See, e.g., Miller v Wilson, 236 US 373, 59 L Ed 628, 35 S Ct 342, LRA1915F 829 (1915).

14. See, e.g., Ferry v Spokane, P. & S. R. Co., 258 US 314, 66 L Ed 635, 42 S Ct 358, 20 ALR 1326 (1922).

der a social welfare program . . . , the Due Process Clause [of the Fifth Amendment] can be thought to interpose a bar only if the statute manifests a patently arbitrary classification, utterly lacking in rational justification." Flemming v Nestor, 363 US 603, 611, 4 L Ed 2d 1435, 1445, 80 S Ct 1367 (1960).

For reasons hereafter set forth, see infra, at 672–677, 22 L Ed 2d at 637–641, a legislature might rationally find that the imposition of a welfare residence requirement would aid in the accomplishment of at least four valid governmental objectives.

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It might also find that residence requirements have advantages not shared by other methods of achieving the same goals. In light of undeniable relation of residence irements to valid legislative s, it cannot be said that the requirements are "arbitrary" or "lacking in rational justification." Hence, I can find no objection to these residence requirements under the Equal Protection Clause of the Fourteenth Amendment or under the analogous standard embodied in the Due Process Clause of the Fifth Amendment.

III.

The next issue, which I think requires fuller analysis than that deemed necessary by the Court under its equal protection rationale, is whether a one-year welfare residence requirement amounts to an undue burden upon the right of interstate travel. Four considerations are relevant: *First*, what is the constitutional source and nature of the right to travel which is relied upon? *Second*, what is the extent of the interference with that right? *Third*, what governmental interests are served by welfare residence requirements? *Fourth*, how should the balance of the competing considerations be struck?

The initial problem is to identify the source of the right to travel asserted by the appellees. Congress enacted the welfare residence requirement in the District of Columbia, so the right to travel which is invoked in that case must be enforceable against *congressional* action. The residence requirements challenged in the Pennsylvania and Connecticut appeals were authorized by Congress in 42 USC § 602(b), so the right to travel relied upon in those cases must be enforceable against the States even though they have acted with congressional approval.

In my view, it is playing ducks and drakes with the statute to argue, as the Court does, ante, at 639–641, 22 L Ed 2d at 617–619, that Congress did not mean to *approve* these state residence

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requirements. In 42 USC § 602(b), quoted more fully, ante, at 638–639, 22 L Ed 2d at 617, 618, Congress directed that: "[t]he Secretary shall approve any [state assistance] plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes as a condition of eligibility for [AFDC aid] a residence requirement [equal to or greater than one year]."

I think that by any fair reading this section must be regarded as conferring congressional approval upon any plan containing a residence requirement of up to one year.

If any reinforcement is needed for taking this statutory language at face value, the overall scheme of the AFDC program and the context in which it was enacted suggest strong reasons why Congress would

have wished to approve limited state residence requirements. Congress determined to enlist state assistance in financing the AFDC program, and to administer the program primarily through the States. A previous Congress had already enacted a one-year residence requirement with respect to aid for dependent children in the District of Columbia.[15] In these circumstances, I think it only sensible to conclude that in allowing the States to impose limited residence conditions despite their possible impact on persons who wished to move interstate,[16] Congress was motivated by a desire to encourage state participation in

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the AFDC program,[17] as well as by a feeling that the States should at least be permitted to impose residence requirements as strict as that already authorized for the District of Columbia. Congress therefore had a genuine federal purpose in allowing the States to use residence tests. And I fully agree with the Chief Justice that this purpose would render § 602(b) a permissible exercise of Congress' power under the Commerce Clause, unless Congress were prohibited from acting by another provision of the Constitution.

Nor do I find it credible that Congress intended to refrain from expressing approval of state residence requirements because of doubts about their constitutionality or their compatibility with the Act's beneficent purposes. With respect to constitutionality, a similar residence requirement was already in effect for the District of Columbia, and the burdens upon travel which might be caused by such requirements must, even in 1935, have been regarded as within the competence of Congress under its commerce power. If Congress had thought residence requirements entirely incompatible with the aims of the Act, it could simply have provided that state assistance plans containing such requirements should not be approved at all, rather than having limited approval to plans containing residence requirements of less than one year. Moreover, when Congress in 1944 revised the AFDC program in the District of Columbia to conform with the standards of the Act, it chose to condition eligibility upon one year's residence,[18] thus strongly indicating that

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it doubted neither the constitutionality of such a provision nor its consistency with the Act's purposes.[19]

Opinions of this Court and of individual Justices have suggested four provisions of the Constitution as possible sources of a right to travel enforceable against the federal or state governments: the

15. See 44 Stat 758, § 1.

16. The arguments for and against welfare residence requirements, including their impact on indigent migrants, were fully aired in congressional committee hearings. See, e.g., Hearings on HR 4120 before the House Committee on Ways and Means, 74th Cong, 1st Sess, 831–852, 861–871 (1935); Hearings on S 1130 before the Senate Committee on Finance, 74th Cong, 1st Sess, 522–540, 643, 656 (1935).

17. I am not at all persuaded by the Court's argument that Congress' sole purpose was to compel "'[u]niformity of residence requirement.'" See, ante, at 640, 22 L Ed 2d at 618. If that was the only objective, it could have been more effectively accomplished by specifying that to qualify for approval under the Act a state assistance plan must contain no residence requirement.

18. See Act to provide aid to dependent Children in the District of Columbia § 3, 58 Stat 277 (1944). In 1962, this Act was repealed and replaced by DC Code § 3–203, the provision now being challenged. See 76 Stat 914.

19. Cf. ante, at 639–641; 22 L Ed 2d 618, 619 and nn. 24–25.

Commerce Clause;[20] the Privileges and Immunities Clause of Art. IV, § 2;[21] the Privileges and Immunities Clause of the Fourteenth Amendment;[22] and the Due Process Clause of the Fifth Amendment.[23] The Commerce Clause can be of no assistance to these appellees, since that clause grants plenary power to Congress,[24] and Congress either enacted or approved all of the residence requirements here challenged. The Privileges and Immunities Clause of Art. IV, § 2,[25] is irrelevant, for it appears settled that this clause neither limits federal power nor prevents a State from distinguishing among its own citizens, but simply "prevents a State from discriminating against citizens of other States in favor of its own." Hague v CIO, 307 US 496, 511, 83 L Ed 1423, 1434, 59 S Ct 954 (1939) (opinion of Roberts, J.); see Slaughter-House Cases, 16 Wall 36, 77, 21 L Ed 394, 409 (1873). Since Congress enacted the District of Columbia residence statute, and since the Pennsylvania and Connecticut appellees were residents

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and therefore citizens of those States when they sought welfare, the clause can have no application in any of these cases.

The Privileges and Immunities Clause of the Fourteenth Amendment provides that: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." It is evident that this clause cannot be applicable in the District of Columbia appeal, since it is limited in terms to instances of state action. In the Pennsylvania and Connecticut cases, the respective States did impose and enforce the residence requirements. However, Congress approved these requirements in 42 USC § 602(b). The fact of congressional approval, together with this Court's past statements about the nature of the Fourteenth Amendment Privileges and Immunities Clause, leads me to believe that the clause affords no additional help to these appellees, and that the decisive issue is whether Congress itself may impose such requirements. The view of the Privileges and Immunities Clause which has most often been adopted by the Court and by individual Justices is that it extends only to those "privileges and immunities" which "arise or grow out of relationship of United States citizens to the national government." Hague v CIO, 307 US 496, 520, 83 L Ed 1423, 1439, 59 S Ct 954 (1939) (opinion of Stone, J.).[26] On the authority of Crandall v Nevada, 6 Wall 35, 18 L Ed 745 (1868), those privileges and immunities have repeatedly been said to include the right to travel from State to State,[27] presumably for the reason assigned in Crandall: that state restrictions on travel

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might interfere with intercourse between the Federal Government and its citizens.[28] This kind of objection to state welfare residence requirements would seem necessarily to vanish in the face of congressional authorization, for except in those instances when its authority is limited by a constitutional provision binding upon it (as the Fourteenth Amendment is not), Congress has full power to define the relationship between citizens and the Federal Government.

Some Justices, notably the dissenters in the Slaughter-House Cases, 16 Wall 36, 83, 111, 124, 21 L Ed 394, 410, 419, 424 (1873) (Field, Bradley, and Swayne, JJ., dissenting), and the concurring Justices in Edwards v California, 314 US 160, 177, 181, 86 L Ed 119, 127, 129, 62 S Ct 164 (1941) (Douglas and Jackson, JJ., concurring), have gone further and intimated that the Fourteenth Amendment right to travel interstate is a concomitant of federal citizenship which stems from sources even more basic than the need to protect citizens in their relations with the Federal Government. The Slaughter-House dissenters suggested that the privileges and immunities of national citizenship, including freedom to travel, were those natural rights

20. See, e.g., Edwards v California, 314 US 160, 86 L Ed 119, 62 S Ct 164 (1941); the Passenger Cases, 7 How 283, 12 L Ed 702 (1849).

21. See, e.g., Corfield v Coryell, 6 F Cas 546 (No. 3230) (1825) (Mr. Justice Washington).

22. See, e.g., Edwards v California, 314 US 160, 177, 181, 86 L Ed 119, 127, 129, 62 S Ct 164 (1941) (Douglas and Jackson, JJ., concurring); Twining v New Jersey, 211 US 78, 97, 53 L Ed 97, 105, 29 S Ct 14 (1908) (dictum).

23. See, e.g., Kent v Dulles, 357 US 116, 125–127, 2 L Ed 2d 1204, 1209, 1210, 78 S Ct 1113 (1958); Aptheker v Secretary of State, 378 US 500, 505–506, 12 L Ed 2d 992, 996, 997, 84 S Ct 1659 (1964).

24. See e.g., Prudential Ins. Co. v Benjamin, 328 US 408, 423, 90 L Ed 1342, 1355, 66 S Ct 1142, 164 ALR 476 (1946). See also Maryland v Wirtz 392 US 183, 193–199, 20 L Ed 2d 1020, 1029–1032, 88 S Ct 2017 (1968).

25. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

26. See Slaughter-House Cases, 16 Wall 36, 79, 21 L Ed 394, 409 (1873); In re Kemmler, 136 US 436, 448, 34 L Ed 519, 524, 10 S Ct 930 (1890); McPherson v Blacker, 146 US 1, 35, 36 L Ed 869, 878, 13 S Ct 3 (1892); Giozza v Tiernan, 148 US 657, 661, 37 L Ed 599, 601, 13 S Ct 721 (1893); Duncan v Missouri, 152 US 377, 382, 38 L Ed 485, 487, 14 S Ct 570 (1894); Twining v New Jersey, 211 US 78, 97–98, 53 L Ed 97, 105, 106, 29 S Ct 14 (1908).

27. See, e.g., Slaughter-House Cases, supra, at 79, 21 L Ed at 409; Twining v New Jersey, supra, at 97, 53 L Ed at 105.

28. The Crandall Court stressed the "right" of a citizen to come to the national capital, to have access to federal officials, and to travel to seaports. See 6 Wall. at 44, 18 L Ed at 747. Of course, Crandall was decided before the enactment of the Fourteenth Amendment.

"which of right belong to the citizens of all free governments," 16 Wall, at 98, 21 L Ed at 415 (Field, J.). However, since such rights are "the rights of citizens of any free government," id., at 114, 21 L Ed at 421 (Bradley, J.), it would appear that they must be immune from national as well as state abridgement. To the extent that they may be validly limited by Congress, there would seem to be no reason why they may not be similarly abridged by States acting with congressional approval.

The concurring Justices in Edwards laid emphasis not upon natural rights but upon a generalized concern for the functioning of the federal system, stressing that to

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allow a State to curtail "the rights of *national* citizenship would be to contravene every conception of national unity," 314 US, at 181, 86 L Ed at 129 (Douglas, J.), and that "[i]f national citizenship means less than [the right to move interstate] it means nothing." Id., at 183, 86 L Ed at 130 (Jackson, J.). However, even under this rationale the clause would appear to oppose no obstacle to congressional delineation of the rights of national citizenship, insofar as Congress may do so without infringing other provisions of the Constitution. Mr. Justice Jackson explicitly recognized in Edwards that: "The right of the citizen to migrate from state to state . . . [is] subject to all constitutional limitations imposed by the federal government," id., at 184, 86 L Ed at 131. And nothing in the nature of

federalism would seem to prevent Congress from authorizing the States to do what Congress might validly do itself. Indeed, this Court has held, for example, that Congress may empower the States to undertake regulations of commerce which would otherwise be prohibited by the negative implications of the Commerce Clause. See Prudential Ins. Co. v Benjamin, 328 US 408, 90 L Ed 1342, 66 S Ct 1142, 164 ALR 476 (1946). Hence, as has already been suggested, the decisive question is whether Congress may legitimately enact welfare residence requirements, and the Fourteenth Amendment Privileges and Immunities Clause adds no extra force to the appellees' attack on the requirements.

The last possible source of a right to travel is one which does operate against the Federal Government: the Due Process Clause of the Fifth Amendment.[29]

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It is now settled that freedom to travel is an element of the "liberty" secured by that clause. In Kent v Dulles, 357 US 116, 125–126, 2 L Ed 2d 1204, 1210, 78 S Ct 1113 (1958), the Court said:

"The right to travel is a part of the 'liberty' of which the citizen cannot be deprived without due process of law under the Fifth Amendment. . . . Freedom of movement across frontiers . . . , and inside frontiers as well, was a part of our heritage. . . ."

The Court echoed these remarks in Aptheker v Secretary of State, 378 US 500, 505–506, 12 L Ed 2d 992, 996, 997, 84 S Ct 1659 (1964), and added:

"Since this case involves a personal liberty protected by the Bill of Rights, we believe that the proper approach to legislation curtailing that liberty must be that adopted by this Court in NAACP v Button, 371 US 415 [9 L Ed 2d 405, 83 S Ct 328], and Thornhill v Alabama, 310 US 88 [84 L Ed 1093, 60 S Ct 736]. . . . [S]ince freedom of travel is a constitutional liberty closely related to rights of free speech and association, we believe that appellants . . . should not be required to assume the burden of demonstrating that Congress could not have written a statute constitutionally prohibiting their travel." Id., at 516–517, 12 L Ed 2d at 1003, 1004.

However, in Zemel v Rusk, 381 US 1, 14 L Ed 2d 179, 85 S Ct 1271 (1965), the First Amendment cast of the Aptheker opinion was explained as having stemmed from the fact that Aptheker was forbidden to travel because of "expression or association on his part," id., at 16, 14 L Ed 2d at 190. The Court noted that Zemel was "not being forced to choose between membership in an organization and freedom to travel," ibid., and held that the mere circumstance that Zemel's proposed journey to Cuba might be used to collect information of political and social significance was not enough to bring the case within the First Amendment category.

Finally, in United States v Guest, 383 US 745, 16 L Ed 2d 239, 86 S Ct 1170 (1966), the Court again had occasion to consider the right of

[394 US 671]

interstate travel. Without specifying the source of that right, the Court said:

"The constitutional right to travel from one State to another . . . occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized. . . . [The] right finds no explicit mention in the Constitution. The reason, it has been suggested, is that a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created. In any event, freedom to travel throughout the United States has long been recognized as a basic right under the Constitution." Id., at 757–758, 16 L Ed 2d at 249. (Footnotes omitted.)

I therefore conclude that the right to travel interstate is a "fundamental" right which, for present purposes, should be regarded as having its source in the Due Process Clause of the Fifth Amendment.

The next questions are: (1) To what extent does a one-year residence condition upon welfare eligibility interfere with this right to travel?; and (2) What are the governmental interests supporting such a condition? The consequence of the residence requirements is that persons who contemplate interstate changes of residence, and who believe that they otherwise would qualify for welfare payments, must take into account the fact that such assistance will not be available for a year after arrival. The number or proportion of persons who are actually deterred from changing residence by the existence of these provisions is unknown. If one accepts evidence put forward by the appellees,[30] to the effect

[394 US 672]

that there would be only a minuscule increase in the number of welfare applicants were existing residence requirements to be done away with, it follows that the requirements do not deter an appreciable number of persons from moving interstate.

Against this indirect impact on the right to travel must be set the interests of the States, and of Congress with respect to the District of Columbia, in imposing residence conditions. There appear to be four such interests. First, it is evident that a primary concern of Congress and the Pennsylvania and Connecticut Legislatures was to deny welfare benefits to persons who moved into the jurisdiction primarily in order to collect those benefits.[31] This seems to me an entirely legitimate objective. A legislature is certainly not obliged to furnish welfare assistance to every inhabitant of the jurisdiction, and it is entirely rational to deny benefits to those who enter primarily in order to receive them, since this will make more funds available for those whom the legislature deems more worthy of subsidy.[32]

29. Professor Chafee has suggested that the Due Process Clause of the Fourteenth Amendment may similarly protect the right to travel against state interference. See Z. Chafee, Three Human Rights in the Constitution of 1787, p. 192 (1956). However, that clause surely provides no greater protection against the States than does the Fifth Amendment clause against the Federal Government; so the decisive question still is whether Congress may enact a residence requirement.

30. See Brief for Appellees in No. 33, pp. 49–51 and n. 70; Brief for Appellees in No. 34, p. 24 n 11; Supplemental Brief for Appellees on Reargument 27–30.

31. For Congress, see, e.g., Problems of Hungry Children in the District of Columbia, Hearings before the Subcommittee on Public Health, Education, Welfare, and Safety of the Senate Committee on the District of Columbia, 85th Cong, 1st Sess. For Connecticut, see Connecticut General Assembly, 1965 Feb. Spec Sess, House of Representatives Proceedings Vol II, pt. 7, at 2505. For Pennsylvania, see Appendix in No. 34, pp. 96a–98a.

32. There is support for the view that enforcement of residence requirements can significantly reduce welfare costs by denying benefits to those who come solely to collect them. For example, in the course of a long article generally critical of residence requirements, and after a detailed discus-

[394 US 673]

A second possible purpose of residence requirements is the prevention of fraud. A residence requirement provides an objective and workable means of determining that an applicant intends to remain indefinitely within the jurisdiction. It therefore may aid in eliminating fraudulent collection of benefits by nonresidents and persons already receiving assistance in other States. There can be no doubt that prevention of fraud is a valid legislative goal. Third, the requirement of a fixed period of residence may help in predicting the budgetary amount which will be needed for public assistance in the future. While none of the appellant jurisdictions appears to keep data sufficient to permit the making of detailed budgetary predictions in consequence of the requirement,[32] it is probable that in the event of a very large increase or decrease in the number of indigent newcomers the waiting period would give the legislature time to make needed adjustments in the welfare laws. Obviously, this is a proper objective. Fourth, the residence requirements conceivably may have been predicated upon a legislative desire to restrict welfare payments financed in part by state tax funds to persons who have

[394 US 674]

recently made some contribution to the State's economy, through having been employed, having paid taxes, or having spent money in the State. This too would appear to be a legitimate purpose.[34]

The next question is the decisive one: whether the governmental interests served by residence requirements outweigh the burden imposed upon the right to travel. In my view, a number of considerations militate in favor of constitutionality. First, as just shown, four separate, legitimate governmental interests are furthered by residence requirements. Second, the impact of the requirements upon the freedom of individuals to travel interstate is indirect and, according to evidence put forward by the appellees themselves, insubstantial. Third, these are not cases in which a State or States, acting alone, have attempted to interfere with the right of citizens to travel, but one

sion of the available information. Professor Harvith has stated:

"A fair conclusion seems to be that, in at least some states, it is not unreasonable for the legislature to conclude that a useful saving in welfare costs may be obtained by residence tests discouraging those who would enter the state solely because of its welfare programs. In New York, for example, a one per cent saving in welfare costs would amount to several million dollars." Harvith, The Constitutionality of Residence Tests for General and Categorical Assistance Programs, 54 Calif L Rev 567, 615 (1966). (Footnotes omitted.) See also Helvering v Davis, 301 US 619, 644, 81 L Ed 1307, 1316, 57 S Ct 904, 109 ALR 1319 (1937).

For essentially the same reasons, I would uphold the Connecticut welfare regulations which except from the residence requirement persons who come to Connecticut with a bona fide job offer or with resources sufficient to support them for three months. See 1 Conn Welfare Manual, c II, §§ 219.1–219.2 (1966). Such persons are very unlikely to have entered the State primarily in order to receive welfare benefits.

33. For precise prediction to be possible, it would appear that a residence requirement must be combined with a procedure for ascertaining the number of indigent persons who enter the jurisdiction and the proportion of those persons who will remain indigent during the residence period.

34. I do not mean to imply that each of the above purposes necessarily was sought by each of the legislatures that adopted durational residence requirements. In Connecticut, for example, the welfare budget is apparently open-ended, suggesting that this State is not seriously concerned with the need for more accurate budgetary estimates.

in which the States have acted within the terms of a limited authorization by the National Government, and in which Congress itself has laid down a like rule for the District of Columbia. Fourth, the legislatures which enacted these statutes have been fully exposed to the arguments of the appellees as to why these residence requirements are unwise, and have rejected them. This is not, therefore, an instance in which legislatures have acted without mature deliberation.

Fifth, and of longer-range importance, the field of welfare assistance is one in which there is a widely recognized need for fresh solutions and consequently for experimentation. Invalidation of welfare residence

[394 US 675]

requirements might have the unfortunate consequence of discouraging the Federal and State Governments from establishing unusually generous welfare programs in particular areas on an experimental basis, because of fears that the program would cause an influx of persons seeking higher welfare payments. Sixth and finally, a strong presumption of constitutionality attaches to statutes of the types now before us. Congressional enactments come to this Court with an extremely heavy presumption of validity. See, e. g., Brown v Maryland, 12 Wheat 419, 436, 6 L Ed 678, 684 (1827); Insurance Co. v Glidden Co. 284 US 151, 158, 76 L Ed 214, 219, 52 S Ct 69 (1931); United States v Butler, 297 US 1, 67, 80 L Ed 477, 489, 56 S Ct 312, 102 ALR 914 (1936); United States v National Dairy Corp. 372 US 29, 32, 9 L Ed 2d 561, 565, 83 S Ct 594 (1963). A similar presumption of constitutionality attaches to state statutes, particularly when, as here, a State has acted upon a specific authorization from Congress. See, e. g., Powell v Pennsylvania, 127 US 678, 684–685, 32 L Ed 253, 256, 257, 8 S Ct 992 (1888); United States v Des Moines N. & R. Co. 142 US 510, 544–545, 35 L Ed 1099, 1109, 12 S Ct 308 (1892).

I do not consider that the factors which have been urged to outweigh these considerations are sufficient to render unconstitutional these state and federal enactments. It is said, first, that this Court, in the opinions discussed, supra, at 669–671 22 L Ed 2d at 635–637, has acknowledged that the right to travel interstate is a "fundamental" freedom. Second, it is contended that the governmental objectives mentioned above either are ephemeral or could be accomplished by means which do not impinge as heavily on the right to travel, and hence that the requirements are unconstitutional because they "sweep unnecessarily broadly and thereby invade the area of protected freedoms." NAACP v Alabama, 377 US 288, 307, 12 L Ed 2d 325, 338, 84 S Ct 1302 (1964). The appellees claim that welfare payments could be denied those who come primarily to collect welfare by means of less restrictive provisions, such as New York's

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Welfare Abuses Law;[35] that fraud could be prevented by investigation of individual applicants or by a much shorter residence period; that budgetary predictability is a remote and speculative goal; and that assurance of investment in the community could be obtained by a shorter residence period or by taking into account

35. That law, NY Soc. Welfare Law § 139-a, requires public welfare officials to conduct a detailed investigation in order to ascertain whether a welfare "applicant came into the state for the purpose of receiving public assistance or care and accordingly is undeserving of and ineligible for assistance . . . ."

prior intervals of residence in the jurisdiction.

Taking all of these competing considerations into account, I believe that the balance definitely favors constitutionality. In reaching that conclusion, I do not minimize the importance of the right to travel interstate. However, the impact of residence conditions upon that right is indirect and apparently quite insubstantial. On the other hand, the governmental purposes served by the requirements are legitimate and real, and the residence requirements are clearly suited to their accomplishment. To abolish residence requirements might well discourage highly worthwhile experimentation in the welfare field. The statutes come to us clothed with the authority of Congress and attended by a correspondingly heavy presumption of constitutionality. Moreover, although the appellees assert that the same objectives could have been achieved by less restrictive means, this is an area in which the judiciary should be especially slow to fetter the judgment of Congress and of some 46 state legislatures[36] in the choice of methods. Residence requirements have

[394 US 677]

advantages, such as administrative simplicity and relative certainty, which are not shared by the alternative solutions proposed by the appellees. In these circumstances, I cannot find that the burden imposed by residence requirements upon ability to travel outweighs the governmental interests in their continued employment. Nor do I believe that the period of residence required in these cases—one year—is so excessively long as to justify a finding of unconstitutionality on that score.

I conclude with the following observations. Today's decision, it seems to me, reflects to an unusual degree the current notion that this Court possesses a peculiar wisdom all its own whose capacity to lead this Nation out of its present troubles is contained only by the limits of judicial ingenuity in contriving new constitutional principles to meet each problem as it arises. For anyone who, like myself, believes that it is an essential function of this Court to maintain the constitutional divisions between state and federal authority and among the three branches of the Federal Government, today's decision is a step in the wrong direction. This resurgence of the expansive view of "equal protection" carries the seeds of more judicial interference with the state and federal legislative process, much more indeed than does the judicial application of "due process" according to traditional concepts (see my dissenting opinion in Duncan v Louisiana, 391 US 145, 171, 20 L Ed 2d 491, 508, 88 S Ct 1444 (1968)), about which some members of this Court have expressed fears as to its potentialities for setting us judges "at large."[37] I consider it particularly unfortunate that this judicial roadblock to the powers of Congress in this field should occur at the very threshold of the current discussions regarding the "federalizing" of these aspects of welfare relief.

36. The figure may be variously calculated. There was testimony before the District Court in the Pennsylvania case that 46 States had some form of residence requirement for welfare assistance. Appendix in No. 34, pp. 92a–95a. It was stipulated in the Connecticut case that in 1965, 40 States had residence requirements for aid to dependent children. Appendix to Appellant's Brief in No. 9, p. 45a. See also ante, at 639–640, 22 L Ed 2d at 618 and n. 22.

37. Cf. Harper v Virginia Bd. of Elections, 383 US 663, 670, 675–680, 16 L Ed 2d 169, 175, 177–180, 86 S Ct 1079 (Black, J., dissenting).

Exhibit 3
2-5-85

DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

Social Services

PERSONAL SERVICES	1986	1987
Executive FTE	365.64	365.64
LFA Current Level FTE	367.64	367.64
Difference	(2.0)	(2.0)
Executive	$7,957,005	$7,970,893
LFA Current Level	8,013,693	8,027,965
Difference	$ (56,688)	$ (57,072)

- - - - - - - - - - - - Personal Services Issues - - - - - - - - - - - -

1. Difference is due to LFA retaining a nursing home ombudsman position and legal services advocacy position for aging services. The executive includes these positions as a modified.

2. Committee Issues

Committee Action--Personal Services

OPERATING EXPENSES

	1986			1987		
	Base	Inflation	Total	Base	Inflation	Total
Executive	$820,134	$35,735	$855,869	$820,276	$42,775	$863,051
LFA Current Level	803,757	44,676	848,433	803,757	76,369	880,126
Difference	$ 16,377	$(8,941)	$ 7,436	$ 16,519	$(33,594)	$(17,075)

- - - - - - - - - - - - - - Operating Expenses Issues - - - - - - - - - - -

1. Major difference between the LFA and executive are in supplies and materials and travel where the executive exceeds the LFA by $40,051. The difference is partially offset by the LFA being higher in contracted services and communications. The net difference for operating services is $16,377 or less than 2 percent of the total operating costs.

2. Committee Issues

Committee Action--Operating Expenses

EQUIPMENT	1986	1987
Executive	$11,500	$ 2,500
LFA Current Level	6,574	6,904
Difference	$ 4,926	$(4,404)

- - - - - - - - - - - - - - - Equipment Issues - - - - - - - - - - - - - - -

1. The LFA funded general office furniture and replacement typewriter and calculators. The executive includes purchase of a computer in fiscal 1986.

2. Committee Issues

Committee Action--Equipment

GRANTS AND BENEFITS

DAY CARE	1986	1987
Executive	$430,271	$457,063
LFA Current Level	421,247	441,626
Difference	$ 9,024	$ 15,437

1. The difference between the LFA and executive budgets results from the method of calculating the day care payment. The LFA inflated the Fiscal 1985 average cost per day by 4.5 and 5.0 percent for fiscal 1986 and fiscal 1987. The executive increase the average payment by $.50 each year of the 1987 biennium which is equal to an inflation of 6.6 percent for fiscal 1986 and 6.2 percent for fiscal 1987. The Day Care Program is approximately 28 percent general fund, and 72 percent other federal funds.

	1986	1987
Executive Average Payment	8.03	8.53
LFA Average Payment	7.87	8.26

2. Committee Issues

Committee Action--Day Care

CHILD ABUSE	1986	1987
Executive	$73,245	$73,245
LFA Current Level	70,306	73,821
Difference	$ 2,939	$ (576)

1. The major difference results from the LFA inflating the fiscal 1984 actual expenditures while the executive used the fiscal 1985 contract level and carried this amount forward to fiscal year 1986 and 1987.

This program is 100 percent funded through a federal grant.

2. Committee Issues

Committee Action--Child Abuse

LEGAL SERVICES	1986	1987
Executive	$100,000	$100,000
LFA Current Level	~~100,000~~ 50,000	~~100,000~~ 50,000
Difference	$ -0-	$ -0-

1. Funding for this program is 25 percent general fund and 75 percent Title XX.

2. Committee Issues

Committee Action--Legal Services

DOMESTIC VIOLENCE	1986	1987
Executive	$131,871	$137,146
LFA Current Level	124,822	131,063
Difference	$ 7,049	$ 6,083

1. The executive level of funding was calculated by inflating fiscal 1985 base costs. Because the cost of this program is funded through a $14.00 fee on marriage licenses, the LFA used the fiscal 1984 revenue generated from the marriage license fee and inflated this amount to fiscal 1986 and 1987.

2. Committee Issues

Committee Action--Domestic Violence

BIG BROTHERS AND SISTERS	1986	1987
Executive	$217,307	$226,000
LFA Current Level	163,787	171,977
Difference	$ 53,520	$ 54,023

1. The program is funded on a 25/75 match between the local program and federal Title XX funds. The major difference is due to the LFA not including the local third party match. Total funding for the program is similar.

2. Committee Issues

Committee Action--Big Brothers and Sisters

HOME HEALTH	1986	1987
Executive	$30,047	$31,249
LFA Current Level	21,953	23,050
Difference	$ 8,094	$ 8,199

1. The difference is primarily due to the LFA assuming a third party match. In fact, the program is totally state funded through 25 percent general fund and 75 percent Title XX.

2. Committee Issues

Committee Action--Home Health

WEST YELLOWSTONE	1986	1987
Executive	$7,150	$7,436
LFA Current Level	5,212	5,473
Difference	$1,938	$1,963

1. The difference is due to the LFA not including local match.

2. Committee Issues

Committee Action--West Yellowstone

REFUGEE	1986	1987
Executive	$250,000	$250,000
LFA Current Level	260,830	273,872
Difference	$ 10,830	$ 23,872

1. The difference is due to executive estimating the fiscal 1986 and fiscal 1987 grant levels at $250,000 per year. The LFA inflated the fiscal 1984 actual expenditures. These are 100 percent federal funds.

2. Committee Issues

Committee Action--Refugee

SUBSIDIZED ADOPTION	1986	1987
Executive	$161,245	$161,245
LFA Current Level	125,620	131,900
Difference	$ 35,625	$ 29,345

1. The difference is due to executive using the August fiscal 1985 annualized client level for their expenditure base. The LFA used the fiscal 1984 current level expenditure as the base and inflated for fiscal 1986 and 1987. This program is funded approximately 73 percent general fund and the balance with federal funds.

2. Committee Issues

Committee Action--Subsidized Adoption

SUPPLEMENTAL SECURITY INCOME	1986	1987
Executive	$924,835	$988,440
LFA Current Level	793,005	793,005
Difference	$131,830	$195,435

1. The difference between the executive and LFA expenditure level is due to estimates in caseload. The LFA held the fiscal 1984 SSI caseload constant through the fiscal 1987 biennium. The executive inflated the caseload by 6.73 percent each year from fiscal 1984. Funding for this program is 100 percent general fund.

2. Committee Issues

Committee Action--Supplemental Security Income

AGING	1986	1987
Executive	$4,274,031	$4,293,823
LFA Current Level	4,500,698	4,730,733
Difference	$ 226,667	$ 436,910

1. The major difference between the executive and LFA expenditure level is due to the anticipated level of federal funds and calculation of the state match.

As Currently Recommended
Aging Services Funds

	Executive SFY 86	LFA SFY 86	Difference SFY 86	Executive SFY 87	LFA SFY 87	Difference
Federal Funds	$3,649,237	$3,887,732	$ 238,495	$3,649,237	$4,082,118	$432,881
State Funds						
State Match	192,400	177,937	(14,463)	200,096	186,834	(13,262)
Information & Referral	141,394	137,681	(3,713)	147,050	144,565	(2,485)
In-Home Services	286,000	297,348	11,348	297,440	312,216	14,776
Legacy	5,000	-0-	(5,000)	-0-	5,000	5,000
General Fund	$ 624,794	$ 612,966	$ (11,828)	$ 644,586	$ 648,615	$ 4,029
Total	$4,274,031	$4,500,689	$(226,667)	$4,293,823	$4,730,733	$436,910

The federal grant award for federal fiscal year 1985 if $3,841,277. If this amount is used to project available funds for fiscal 1986 and 1987 the following adjustments could be made.

	FY 1986	FY 1987
FEDERAL FUNDS	$3,841,277	$3,841,277
STATE FUNDS		
State Match	$ 189,076	$ 189,076
Information/Referral	137,681	144,565
In-Home Service	286,000	297,440
Legacy Leg.	5,000	-0-
General Fund	$ 617,757	$ 631,081
Total	$4,459,034	$4,472,358

2. Committee Issues

Committee Action--State Funds

FOSTER CARE	1986	1987
Executive	$5,898,484	$6,146,591
LFA Current Level	5,206,675	5,464,504
Difference	$ 691,809	$ 682,082

- - - - - - - - - - - - - - - Foster Care Issues - - - - - - - - - - - - - - -

1. There are three major issues in the foster care budget.

   a) With the exception of out-of-state care, the LFA used fiscal 1984 actual days of service provided. The executive adjusted the fiscal 1984 base in making their projection. Major differences occur in Care and Professional, In-State, and Attention Home services.

	Days of Care		
	Care & Prof	In-State	Attention Home
Executive	8,442	33,170	10,915
LFA Current Level	6,256	32,075	8,415
Difference	2,186	1,095	2,500

b) For out-of-state care, the LFA reduced the fiscal 1984 base number of days by 3,650. This reduction was made under the assumption that at least ten of the children that would otherwise be placed out-of-state during the fiscal 1987 biennium could be placed in-state at the new youth center in Billings. Funding for these children is already included in the medicaid portion of SRS budget. The executive used an estimate of the fiscal 1985 out-of-state placements and did not include any placements at the Billing's center.

c) Because families, insurers, and social security pay a portion of foster care, the department receives these credits on behalf of the clients. The LFA used the actual fiscal 1984 amount of credits and include inflation on these amounts for fiscal 1986 and fiscal 1987. The executive estimated the fiscal 1985 credit amount and essentially carried this amount forward.

	FY 83	FY 84	FY 85	FY 86	FY 87
Executive	$318,774	$355,620	$319,137	$320,000	$320,000
LFA Current Level	318,774	355,620	376,957	393,920	413,616
Difference	$ -0-	$ -0-	$ 57,820	$ 73,920	$ 93,616

2. Committee Issues

Committee Action--Foster Care

PBLEG:SRS 2-3-5

Exhibit 4
2-5-85

FOSTER CARE TREATMENT ISSUES

1. Summary of Out of State Placements
2. Treatment Budget Issues

SUMMARY OF OUT OF STATE PLACEMENTS

CATEGORY	STATE INSTITUTION	TREATMENT	TOTAL
Sexual Offender or Victim	1	4	5
Court Order No SRS Involvement	3	10	13
Out of State Proximity to Parents		2	2
Facilities Border Montana		4	4
Multiple Handicaps DD/Physical/ Emotional		2	2
Inappropriate for State Facilities	2	4	6
No In State Referral	1	5	6
Runaway	1		1
TOTAL	8	31	39

	LFA		Executive Updated 1/22/85	
Treatment	9		31	
State Institution	10		8	
Total	19		39	
	86	87	86	87
Treatment days	3440	3440	11315	11315
Treatment dollars	$226,180	237,497	728,233	758,105
Average Cost per day	65.75	69.04	64.36	66.99*

*average cost per day as of 1/22/85

DAILY RATES

	SFY85	SFY86 4% increase	SFY 87 4% increase
Out of State	61.88	64.36	66.99
YBGR			
Campus Treatment	75.26	78.27	81.40
Assessment	87.34/100	90.83/104	94.47/108.16
Deaconess			
Intensive	67.40	70.10	72.90

VISITORS' REGISTER

Human Services Sub COMMITTEE

BILL NO. _____ DATE 2-5-85

SPONSOR _____

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
Tim Smith	Helena	N (GA)	
Greg C Johnston	Missoula	1	
Carol Graham	Hamilton	X	
Lonnie Mueller	Polson	X	
Kirby Brin	Glasgow		
Richard Keshein	Billings		
Dave Drew	Missoula		
Mike Morris	Missoula		
Norma Harris	Helena	X	
Ben Johns	Helena	+	
John Bebee	Helena	X	

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PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.