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Constitutionality of Welfare Residence Requirements, The

Stanley R. Huller

In *Walker*, had the action been taken by the city officials themselves in refusing the permit in an arbitrary or capricious manner, petitioners would have been allowed to ignore the lack of permit, to march, and to fight the ordinance as unconstitutional. And, they probably would have successfully defended their actions even before this very Court. The burden on the constitutional rights of free speech and free assembly are the same whether placed there by local officials administering an unconstitutional permit system or by a state court requiring applicants to spend months or years contesting an injunction in the courts in order to win a right which the Constitution says no government shall deny.[59]

Wayne L. Friesner

The Constitutionality of Welfare Residence Requirements

Green, his wife and their eight minor children moved to Delaware to establish residence. After two unproductive periods of employment Green and his wife applied for and were granted welfare.[1] Subsequently the assistance was disallowed when it was discovered that they had not resided in Delaware for one full year prior to applying for welfare.[2] The Greens then initiated a class action for a declaratory judgment against the Delaware Department of Public Welfare, claiming that the residence requirement violated the United States Constitution.[3] *Held*: A statute which requires an individual to reside within a state for one year before becoming eligible for state welfare benefits creates an invidious discrimination against a class of needy persons who have otherwise satisfied welfare requirements and therefore violates the equal protection clause of the fourteenth amendment to the United States Constitution. *Green v. Department of Public Welfare*, 270 F. Supp. 173 (D. Del. 1967).

I. Relevant Constitutional Concepts

Durational residence as a prerequisite to receiving welfare benefits originated with the English Poor Laws[4] and is predicated upon the traditional concept of settlement.[5] The basis of this concept is that an individual's belonging to a community obligated the community to support him in time of need. Today the various states have applied this rationale to welfare

[59] Poulos v. New Hampshire, 345 U.S. 395, 424 (1953) (Douglas, J., dissenting.).

[1] Green was employed successively by two contractors, but due to bad weather and lay-offs, he averaged less than $40 per week net income.

[2] Del. Code Ann. ch. 31, § 504(4) (Supp. 1966) provides that assistance is available to needy persons of Delaware who have resided therein for at least one year prior to the filing of their application, except that the residence period does not apply to medical treatments.

[3] A three-judge court was convened pursuant to 28 U.S.C. § 2284 (1964).

[4] English Poor Laws, 47 Eliz. c. 2 (1601).

[5] *See* Mandelker, *The Settlement Requirement in General Assistance*, 1955 Wash. U.L.Q. 355. The 1601 English Poor Laws initiated a system of public tax supported relief and the establishment of the alms house and the work house. The early concept conferred settlement through parents, by birth or by a residence period in the community. The settlement doctrine was carried over to the colonies in a strict form with common requirements for settlement remaining essentially the same.

plans requiring residence periods ranging from no period[6] to five years.[7] Under some programs residence must be of a specified duration in the same county as well as in the state.[8] Other variations include shorter residence requirements for persons who were self-supporting upon entering the particular state.[9] Still other states have provisions for emergency[10] or reciprocal[11] benefits which may be obtained without meeting any residence requirement. But, regardless of the variation selected by the state, a residence requirement poses serious constitutional questions. In particular, constitutional challenges are based upon the proposition that such residence requirements abridge: (1) the freedom of interstate movement protected by the commerce clause and (2) the fourteenth amendment guarantee of the equal protection of the laws or of the privileges and immunities of United States citizenship.[12]

Freedom of Movement and Settlement. It is now well established that the Constitution protects a citizen's freedom to travel from state to state and to settle in the state of his own choosing.[13] Prior to the fourteenth amendment, the Supreme Court, in *Crandall v. Nevada*,[14] enjoined the state of Nevada from levying a tax upon commercial vehicles as they passed through that state. The Court rejected a commerce clause argument, but nevertheless held the tax invalid as an interference with important governmental functions by denying citizens free access to government centers.[15] *Crandall* subsequently became authority for the proposition that the right to travel and settle is a fundamental right of national citizenship.[16] Its rationale was read into the privileges and immunities clause of the fourteenth amendment, enacted shortly thereafter, and the right to travel is now clearly a funda-

[6] *E.g.*, N.Y. Soc. Welfare Laws § 117 (1966).
[7] *E.g.*, N.H. Rev. Stat. Ann. § 164.1 (1964).
[8] *E.g.*, Iowa Code Ann. § 252.16 (Supp. 1966).
[9] *E.g.*, Va. Code Ann. § 63.330 (1950).
[10] *E.g.*, Ore. Rev. Stat. Ann. § 411.720 (1967).
[11] *E.g.*, Conn. Gen. Stat. § 17-2d (Supp. 1965).
[12] It is recognized that welfare assistance is commonly divided into two classes. (1) Welfare financed entirely by the state and local units is called general or public assistance. (2) Categorical welfare is provided by the state in conjunction with the federal government through the Social Security Act, 49 Stat. 620 (1935), *as amended*, 42 U.S.C. §§ 1301-1394 (1964), *as amended*, 42 U.S.C. §§ 1301-1396d (Supp. 1, 1965). Under the act, welfare is jointly provided for the following programs: (1) old age assistance, (2) aid to the blind, (3) aid to the disabled, (4) medical assistance for the aged, and (5) aid to needy families with children. It should be noted that the federal act prescribes a maximum one-year residence requirement for states participating in the categorical aid programs. 49 Stat. 627 (1935), *as amended*, 42 U.S.C. 602(b) (1964). The categorical programs may be subject to constitutional challenges on the basis of the fifth amendment. Kent v. Dulles, 357 U.S. 116 (1958). They are also subject to the same constitutional challenges under the fourteenth amendment that pertain to general assistance programs. Green v. Department of Pub. Welfare, 270 F. Supp. 173, 176 (D. Del. 1967). It may also be argued that the privileges and immunities clause of article IV, § 2 prohibits abridgement of the right to travel. The application of this clause, however, is limited to discriminations against residents of one state by another state. "Article IV has no bearing on the validity of residence tests, since it protects only citizens of other states, and newcomers attacking assistance residence requirements are citizens of the state where they now reside." Harvith, *The Constitutionality of Residence Tests for General and Categorical Assistance Programs*, 54 Calif. L. Rev. 567, 608 (1966).
[13] United States v. Guest, 383 U.S. 745 (1966); Aptheker v. Secretary of State, 378 U.S. 500 (1964); Edwards v. California, 314 U.S. 160 (1941); Thompson v. Shapiro, 270 F. Supp. 331 (D. Conn. 1967).
[14] 73 U.S. 35 (1867).
[15] *Id.* at 43.
[16] Edwards v. California, 314 U.S. 160, 178 (1941).

mental right protected both by *Crandall* and the fourteenth amendment.[17]

The commerce clause argument, although rejected by *Crandall* and other early cases,[18] is now clearly an additional constitutional source of protection for the right to travel.[19] In 1941 the Supreme Court in *Edwards v. California*[20] relied upon the commerce clause to invalidate a California statute which made it a misdemeanor to bring a non-resident indigent to California. The majority held that the transportation of indigent persons from state to state clearly fell exclusively within the interstate commerce power of Congress and was therefore protected from state interference.[21]

More recent Supreme Court cases have not altogether differentiated between *Crandall*, the commerce clause, and the privileges and immunities clause as providing the source of protection of the right to travel.[22] Instead, the Court has recently considered the right as a "penumbral" right, arising from and perhaps before the Constitution.[23]

Equal Protection. The purpose of the equal protection clause of the fourteenth amendment is to protect all persons in the enjoyment of their natural and inalienable rights by prohibiting a state from denying to any person the equal protection of the laws.[24] However, it is well established that the equal protection clause does not prevent a state from classifying persons for various purposes.[25] Equal protection is denied only when the classifications are arbitrary, unreasonable or unjustified.[26]

Inclusiveness of the class has been considered in weighing the validity of statutory classifications against challenges under equal protection.[27] However, recent Supreme Court cases have dealt with challenges to classifications by examining the relationship between the class and the purpose of the statute.[28] Generally, the classification drawn in the statute must be reasonable in light of its purpose.[29] For example, a state may not justify a dis-

[17] United States v. Guest, 383 U.S. 745 (1966); Aptheker v. Secretary of State, 378 U.S. 500 (1964); Edwards v. California, 314 U.S. 160, 181 (1941) (Jackson, J., concurring). *Crandall* must still be distinguished from the fourteenth amendment because it does not require state action. Apparently *Crandall* may be interposed against private restrictions on the right to travel. United States v. Guest, 383 U.S. 745 (1966).

[18] *E.g.*, Williams v. Fears, 179 U.S. 270 (1900).

[19] Edwards v. California, 314 U.S. 160 (1941); Anderson v. Mullaney, 191 F.2d 123 (9th Cir. 1951), *aff'd on other grounds*, 342 U.S. 415 (1952).

[20] 314 U.S. 160 (1941).

[21] *Id.* at 176.

[22] "Although there have been recurring differences in emphasis within the Court as to the source of the constitutional right of interstate travel, there is no need here to canvass those differences further. All have agreed that the right exists." United States v. Guest, 383 U.S. 745, 759 (1966), *noted in* 20 Sw. L.J. 913, 920 (1966).

[23] United States v. Guest, 383 U.S. 745 (1966). For an analogous treatment of the right of privacy, see Griswold v. Connecticut, 381 U.S. 479 (1965).

[24] Skinner v. Oklahoma, 316 U.S. 535 (1942); Yick Wo v. Hopkins, 118 U.S. 356 (1886).

[25] Sherbert v. Verner, 374 U.S. 398 (1963); Yick Wo v. Hopkins, 118 U.S. 356 (1886).

[26] Carrington v. Rash, 380 U.S. 89 (1965); Thompson v. Shapiro, 270 F. Supp. 331 (D. Conn. 1967).

[27] A class is considered over-inclusive if it includes more members than necessary to achieve the desired statutory purpose. An under-inclusive class is composed entirely of the desired class, but does not include all necessary members. *See* Tussman & tenBroek, *Equal Protection of the Laws*, 37 CALIF. L. REV. 341 (1949).

[28] Carrington v. Rash, 380 U.S. 89 (1965); McLaughlin v. Florida, 379 U.S. 184 (1964); Allied Stores v. Bowers, 358 U.S. 522 (1959).

[29] Carrington v. Rash, 380 U.S. 89 (1965); Hartford Co. v. Harrison, 301 U.S. 459 (1937).

criminatory law merely because it affords some remote administrative benefit. Accordingly, the Supreme Court struck a Texas constitutional provision which prohibited any military personnel entering Texas during military tenure from voting during this tenure.[30] In holding the provision unreasonable the Court specifically rejected the state's contention that without such a provision administrative problems would be too great in determining which military personnel actually intended to reside in Texas.[31]

The reasonable relation test was again emphasized by the Supreme Court in a case holding that a statute prohibiting aliens from commercial fishing in California bore no reasonable relation to the statutory purpose of conserving fish.[32] Similarly, the Court invalidated an Oklahoma statute which authorized the sterilization of persons convicted of named felonies a certain number of times.[33] Equal protection of the laws was denied because there was no proven relationship between the recidivism of the particular crimes and the probability of producing criminal offspring.

II. Welfare, Residence, and the Constitution

Prior to 1966, the residence periods imposed by various state welfare programs received only two constitutional challenges. In the first case, decided before *Crandall* and the fourteenth amendment, a Massachusetts court considered it beyond question that a legislature possessed the power to pass a statute requiring a pauper to reside three years in a town in order to gain settlement.[34] In the second case, decided in 1940, the Illinois Supreme Court upheld a three-year welfare residence requirement, concluding that the equal protection clause could only be interposed against discriminations that are purely arbitrary and that it does not preclude a classification based on a real and substantial difference having a rational relation to the subject of the particular legislation.[35] The court found nothing arbitary or unreasonable about the three-year statute. In response to arguments based upon the privileges and immunities clause of the Constitution, article IV, section II, the court merely stated that the avowed purpose of that clause was to prevent the enlargement of the rights of one or more persons and the impairment of or discrimination against the rights of others.[36] The court, without citing *Crandall*, concluded that no fundamental rights were impaired by the questioned statute. Thus limited, challenges to residence requirements were stifled until a recent wave of welfare residence cases reopened the constitutional issues.[37]

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[30] Carrington v. Rash, 380 U.S. 89 (1965). The statute denied voting rights to those who actually entered Texas while in military service. Military personnel living in Texas at the time of entry into the military were not denied voting rights. Those who remained in Texas after military service were also accorded voting rights.

[31] Carrington v. Rash, 380 U.S. 89, 96 (1965).

[32] Takahashi v. Fish & Game Comm'n, 334 U.S. 410 (1948).

[33] Skinner v. Oklahoma, 316 U.S. 535 (1942). *See also* Reynolds v. Sims, 377 U.S. 533 (1964). *But cf.* Buck v. Bell, 274 U.S. 200 (1927).

[34] Rutland v. Mendon, 18 Mass. (1 Pick.) 154 (1822).

[35] People *ex rel.* Heydenreich v. Lyons, 374 Ill. 557, 30 N.E.2d 46 (1940).

[36] The court did not discuss the privileges and immunities clause of the fourteenth amendment. *See* note 12 *supra.*

[37] *See* note 42 *infra.*

In one such recent case, a district court in Washington, D.C., upheld the constitutionality of a one-year residence requirement, concluding that no substantial constitutional issue was presented.[38] Subsequently, however, a three-judge federal court held a similar residence statute in Connecticut unconstitutional, relying on both the privileges and immunities and equal protection clauses of the fourteenth amendment.[39] The court stated that examination of the equal protection clause does not end with a showing of equal application among the class. The courts must also reach and determine the question of whether the statutory classification is reasonable in light of its purpose. Answering this question, the court concluded that the purpose of the statute was to discourage the entry of indigents whose sole purpose of entry was to take advantage of the state's welfare rolls.[40] The residence requirement was held not reasonable in light of even such an arguably valid purpose.[41] Cast against this conflicting background[42] is *Green v. Department of Public Welfare*.[43]

III. GREEN—THE HEART OF THE MATTER

Although the court in *Green* was confronted with several constitutional arguments, it based its decision on the equal protection clause.[44] In weigh-

[38] Harrell v. Board of Comm'rs, 269 F. Supp. 919 (D.D.C. 1967). Since this decision, however, a three-judge court has found the same statute unconstitutional. Harrell v. Tobriner, Civil No. 1497-67 (D.D.C., Nov. 2, 1967). The three-judge court held (2-1) the requirement unconstitutional and enjoined enforcement in any of the public assistance programs.

[39] Thompson v. Shapiro, 270 F. Supp. 331 (D. Conn. 1967).

[40] *Id.* at 337.

[41] A class may be perfectly reasonable in relation to its purpose and nevertheless be unconstitutional because its *purpose* is invalid. Thus, as states became more sophisticated and asserted valid purposes to justify laws created for invalid purposes the courts turned their attention to the reasonable relation test.

[42] The present status of the other welfare cases filed or decided is as follows: Smith v. Reynolds, 277 F. Supp. 65 (E.D. Pa. 1967) (the three-judge court held (2-1) the requirement unconstitutional and enjoined enforcement in any of the public assistance programs). *Contra*, Porter v. Graham, Civil No. Civ.-2348-Tucson (D. Ariz., Jan. 24, 1968) (the three-judge court unanimously granted a preliminary injunction for the benefit of the plaintiff only; a motion to amend to allow a class action is now pending); Johnson v. Robinson, Civil No. 67-C-1883 (N.D. Ill., Dec. 28, 1967) (the three-judge court unanimously granted a preliminary injunction restraining enforcement of the residence requirement in all public assistance programs); Mantell v. Dandridge, Civil No. 18792 (D. Md., Dec. 4, 1967) (the three-judge court unanimously (but without opinion) granted a preliminary injunction restraining enforcement of the residence requirement in all categorical assistance programs); Waggoner v. Rosen, Civil No. 9841 (M.D. Pa., Jan. 29, 1968) (in which a different three-judge court from that in Smith v. Reynolds, *supra*, in Pennsylvania, by a vote of 2-1, upheld the residence requirement); Ramos v. Health & Social Servs. Bd., 276 F. Supp. 474 (E.D. Wis. 1967) (the three-judge court unanimously held the requirement unconstitutional and entered a preliminary injunction restraining enforcement of the requirement in the categorical assistance programs).

Three-judge courts have been convened in the following actions: Marshall v. California Dep't of Social Welfare, Civil No. 47401 (N.D. Cal. 1967); Lamont v. Roberts, Civil No. 67-1056-Civ.-CA (S.D. Fla. 1967); Sheard v. Department of Social Welfare, Civil No. 67-C-521-EC (N.D. Iowa 1967); Wallace v. Hursh, Civil No. 467-Civ.-327 (D. Minn. 1967); Northway v. Carter, Civil No. 67-C-292(2) (E.D. Mo. 1967); Cooley v. Juras, Civil No. 67-662 (D. Ore. 1967); Martinez v. State Dep't of Pub. Assistance, Civil No. 7455 (W.D. Wash. 1967). Complaints have been filed in the following actions: Weidner v. Houston, Civil No. 5700 (W.D. Mich. 1967); Charles v. Rivers, Civil No. 67-849 (D.S.C. 1967).

[43] 270 F. Supp. 173 (D. Del. 1967).

[44] The constitutionality of the residence requirement was attacked on the basis of the privileges and immunities clause of the fourteenth amendment, the general right to travel, the commerce clause and the equal protection clause. After invalidating the statute on equal protection grounds, the court found no reason for determining the other constitutional issues. Green v. Department of Pub. Welfare, 270 F. Supp. 173, 179 (D. Del. 1967).

ing the constitutionality of the residence requirement, the court found nothing inherently "suspect" about the statutory classifications.[45] But the court examined the classifications in relation to the purpose of the Delaware Welfare Code and found that the avowed purpose of the Code was to promote the welfare and happiness of the people of Delaware by providing assistance to all of its needy people and that the one-year residence requirement bore no reasonable relation to that purpose.[46] Not only could the legislative purpose of the Welfare Code be effected without the imposition of a residence requirement but such a requirement actually "frustrates" this purpose by depriving some needy persons in Delaware of welfare benefits.[47] Therefore the classification was found to be arbitrary and unconstitutional under the equal protection clause.

Other purposes for the residence requirement offered by the state were rejected by the court. The state urged that the purpose of the requirement was to protect the public purse by discouraging indigents from migrating to Delaware. Nevertheless the requirement was found untenable under *Edwards*, apparently because it infringed upon the right to travel and settle.[48] In addition, protection of the public purse did not justify discriminating between equally needy persons who, except for their length of residence, possessed the same status in respect to Delaware.[49] Finally, the court dismissed an analogy drawn between the welfare residence and a comparable voting requirement because the voting requirement did not have the effect of forcing individuals to live under greatly deprived conditions during the residence period. But where food, clothing and lodging are involved, there is a certain "immediacy" which distinguishes the welfare applicant from the voter.[50]

IV. GREEN—THE MEANING AND SIGNIFICANCE

The welfare objective is to aid needy families during periods of financial hardship. Through welfare aid, it is hoped that family continuity can be preserved and productive status achieved. It was expressly noted in *Green* that the Delaware residence requirement was based upon an unreasonable and arbitrary classification with no substantial relation to this stated welfare objective.[51] The court simply meant that a period of residence has no

[45] The court apparently considered classifications based upon race, creed, color, etc., as inherently suspect.

[46] Green v. Department of Pub. Welfare, 270 F. Supp. 173, 177 (D. Del. 1967).

[47] *Id.*

[48] *Id.* It might be argued that *Edwards* is not applicable to residence requirements because *Edwards* involved a more direct restriction on the right to travel. Residence requirements, however, do have a substantial effect. In fact, to those who are unable to live without assistance for the requisite period, residence requirements pose a direct bar to interstate movement. "Also, it does not seem proper to distinguish *Edwards* and *Crandall* as involving a more direct interference with interstate movement than that imposed by assistance residence tests. The statute invalidated in *Edwards* penalized the person who knowingly assisted the nonresident indigent to enter California. The tax in *Crandall* struck directly at the pocketbook of the migrant, but so do the residence tests. Moreover, losing eligibility for assistance probably is, to an indigent, a worse penalty than a threat of fine or imprisonment." Harvith, *The Constitutionality of Residence Tests for General and Categorical Assistance Programs*, 54 CALIF. L. REV. 567, 589-90 (1966).

[49] Green v. Department of Pub. Welfare, 270 F. Supp. 173, 177 (D. Del. 1967).

[50] *Id.* at 178.

[51] *Id.* at 177.

connection with a family's needs or with the efficacy of welfare aid in strengthening family solidarity. Indeed, under *Green*, the very purpose of the Welfare Code is "frustrated" by the requirement because the unity of needy families who are denied benefits for at least one year may be weakened during the statutory waiting period beyond later restoration.[52] Thus, by imposing a residence requirement and thereby realizing immediate financial saving, a state may convert a temporary welfare burden into a permanent one.[53]

Protection of the public purse as the justification for the residence requirement is not sound for two reasons. (1) By attempting to conserve state funds through the implementation of a residence requirement, the state has infringed upon the fundamental right to travel and settle under *Edwards*. *Edwards* may have posed a more direct bar to interstate travel, but its rationale is nevertheless applicable to welfare cases.[54] It is applicable because a statute need not directly prohibit the right to travel to be unconstitutional.[55] Instead, an analogy to first amendment rights suggested that if a statute merely discourages or "has a chilling effect" upon the right to travel, it is unconstitutional.[56] (2) Under *Green*, the protection of the public purse is not a valid justification for the statutory classification because it violates the equal protection clause. The need for differing treatment did not outweigh the impact of such a classification upon the individual rights of newly arrived indigents.[57] Moreover, the residence requirement is not reasonably related to the protection of the public purse, since, in the long run, there is no showing that those applicants meeting the residence requirement will be lesser welfare burdens than newly arrived applicants.[58]

If the purpose of the residence requirement is to eliminate payments to those who enter a state solely for the purpose of procuring welfare benefits, it may still be unconstitutional. First, this limited purpose also proposes a restriction on travel and is therefore offensive to *Edwards*. Secondly, discrimination against even those indigents entering a state solely for welfare is forbidden by the equal protection clause.[59] Thirdly, assuming that a state could discriminate against those entering for welfare purposes, without violating *Edwards* or the equal protection clause, the present Delaware residence statute is nevertheless ineffective because it fails to distinguish be-

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[52] *Id.*

[53] Without financial assistance for the initial year, a family unit may be subjected to such severe pressure that rehabilitation becomes impossible. The state will therefore be forced to permanently support the family unit after the one-year period has passed.

[54] *See* note 48 *supra*. *But cf.* Thompson v. Shapiro, 270 F. Supp. 331, 339 (D. Conn. 1967) (Clarie, J., dissenting). Judge Clarie rejects the application of *Edwards* to welfare residence cases and considers the majority decision has infringed upon the tenth amendment by passing on the wisdom of the state legislature in establishing the requirement rather than limiting its decision to the constitutionality of such a statute.

[55] United States v. Guest, 383 U.S. 745 (1966).

[56] Thompson v. Shapiro, 270 F. Supp. 331, 338 (D. Conn. 1967).

[57] *Id.*

[58] *See id.* Indeed the residents who have been there for one year may be more of a burden since a year of waiting may have ruined any rehabilitation possibilities. It is possible that a few temporary payments to newcomers might be enough to preserve the family unit as rehabilitation begins, and thereby save the state considerable costs later.

[59] "Even a classification denying aid to those whose sole or principal purpose in entry is to seek aid, however, would not be sustainable." *Id.* at 337.

tween indigents entering Delaware for welfare reasons and indigents entering for other reasons.[60] Indeed, the contrary is apparent since the residence requirement gives rise to an irrebuttable presumption that all persons moving to Delaware are moving for welfare purposes.[61] The statute broadly sweeps all new immigrants into the class of those actually seeking to exploit the Delaware treasury. The result is an arbitrary discrimination against at least some needy persons who move to Delaware with a genuine desire to establish residence.[62]

Aside from the constitutional reasons, a practical and humanitarian consideration probably induced the court in *Green* to invalidate the Delaware residence requirement. The minimal additional cost imposed upon the state by requiring it to aid all needy residents without respect to length of residence does not outweigh the need to preserve human life and dignity.[63] Under traditional concepts either the state or the federal government must shoulder the burden of supporting indigents wherever they choose to reside.[64] Furthermore, recent studies have indicated that the additional cost to the state in supporting all indigents is nominal.[65] In fact, several states have concluded that administering residence laws may be more expensive than would be expenditures for all the additional indigent residents.[66] One city maintained a seventy-six member social staff consuming a payroll of $250,000 which devoted itself almost entirely to verifying the length of residence for welfare applicants.[67] In light of this strong social policy and the relatively small cost to Delaware, it is little wonder that *Green* found a constitutional reason for striking down the residence requirement.

V. CONCLUSION

Green represents what may be the final step toward the long-overdue abolition of residence requirements for welfare distribution. Final affirma-

[60] The statute might have been upheld if the residence requirement was for a short time only and was designed to permit the state to make investigations concerning the applicant's financial eligibility. It is clear, however, that the residence requirement in *Green* was not directed toward that end.

[61] The residence requirement might also violate due process since it denies the opportunity for rebuttal. "This Court has held more than once that a statute creating a presumption which operates to deny a fair opportunity to rebut it violates the due process clause of the Fourteenth Amendment." Heiner v. Donnan, 285 U.S. 312, 329 (1932).

[62] There is no evidence that the majority of transients even consider welfare when contemplating a move. Indeed, the contrary would appear to be the rule. "Public welfare residence laws neither attract nor deter people from moving to a specific state. Studies show that they move for employment, for better economic opportunities, for better living conditions, for a better climate, and to rejoin relatives and friends." N.Y. STATE DEP'T OF SOCIAL WELFARE, THE MOVEMENT OF POPULATION AND PUBLIC WELFARE IN NEW YORK STATE 2 (1958). *See also* Ramos v. Health & Social Servs. Bd., 276 F. Supp. 474 (E.D. Wis. 1967).

[63] In Thompson v. Shapiro, 270 F. Supp. 331, 337 (D. Conn. 1967), the court noted that the estimated burden on the state by supporting all indigents without respect to length of residency would be about two per cent additional welfare.

[64] *See* LoGatto, *Residence Laws—A Step Forward or Backward?*, 7 CATHOLIC LAWYER 101 (1961).

[65] N.Y. STATE DEP'T OF SOCIAL WELFARE, THE MOVEMENT OF POPULATION AND PUBLIC WELFARE IN NEW YORK STATE 2 (1958).

[66] *Id.*

[67] NATIONAL TRAVELER'S AID ASS'N, ONE MANNER OF LAW—RESIDENCE REQUIREMENTS IN PUBLIC ASSISTANCE 6 (1961). *See also* Leet, *Rhode Island Abolishes Settlement*, 18 SOC. SERV. REV. 283 (1944): "We are pretty certain that the cost of assisting these persons is not nearly as great as the administrative costs which were necessitated under the old law, which made it necessary to establish settlement or residence for every individual before he received assistance."

tion by the Supreme Court remains. Affirmation should be forthcoming for two reasons. (1) *Green* is based on adequate precedent and can be substantiated by *Crandall*, the commerce clause, privileges and immunities clause of the fourteenth amendment or the equal protection clause. (2) Residence requirements should be recognized for what they are—punitive measures designed for a relatively immobile society.[68] What may have been justified in a pre-industrialized era is perhaps inequitable in today's world. The strength of the American social and economic structure is at least partly attributable to mass movement.[69] For example, migratory workers stimulate the economy by moving with the harvest seasons. But residence requirements penalize these transient workers when work is unavailable or when a family crisis arises.[70] In regard to any newcomer the punitive effect of residence requirements is strikingly unfair because most communities advertise for new residents. The community purposely attracts newcomers, usually better trained and better educated, most of whom succeed in their new surroundings. The community accepts the benefit of the successful majority but is unwilling to carry the burden of the failing minority. Instead the burden is shifted by giving these indigents a little pocket change and a bus ticket to the next town. Such a punitive policy neither benefits the indigent nor the community as a whole.

Although the disposal of welfare residence requirements may be demanded by the Constitution and socio-economic policies, the result may not be entirely beneficial. It is possible that a few welfare-minded states will suffer a greater burden.[71] The disposal of residence requirements may compel these states to limit their welfare programs or to enact proportionately greater taxes. Thus the disposal of residence requirements may actually deter rather than promote the overall welfare system.

As a result of this potential detriment, it may be that greater federal participation in welfare programs will ensue. Federalizing the welfare system might eliminate the present disparity between state welfare payments,[72] spread the cost of welfare equally throughout the country, and be more efficiently administered. Furthermore, under a well designed federal approach, welfare might serve to rehabilitate recipients by elevating them to a productive status—and ultimately off the welfare rolls. Present state programs tend to frustrate this rehabilitation because they destroy the incentive to provide for one's own needs. Presently a recipient may earn a

[68] "Residence laws, in view of the new learning, of new attitudes of rehabilitation, tend, as they were meant to be in their inception, to be suppressive rather than supportive." LoGatto, *Residence Laws—A Step Forward or Backward?*, 7 CATHOLIC LAWYER 101, 111 (1961).

[69] "Underneath the heavy layer of philosophical and legal arguments supporting the right to free movement there is a very practical aspect which must not be forgotten—and that is that mobility is the essence of the economy of the United States as a nation." *Id.* at 109.

[70] "This is of particular importance to migrant labor, which suffers high casualties in terms of seasonal work, lack of insurance protection, and of discrimination in such vital services as health and welfare." *Id.* at 110.

[71] A one per cent increase in welfare payments would amount to additional welfare costs of several million dollars per year. Harvith, *The Constitutionality of Residence Tests for General and Categorical Assistance Programs*, 54 CALIF. L. REV. 567, 618 (1966). An influx of "cheap labor" to any given area might also be prejudicial to native labor.

[72] *See* Thompson v. Shapiro, 270 F. Supp. 331, 339 (D. Conn. 1967), for comparison of state welfare payments.

specified amount of money without forfeiting welfare benefits. But there is no incentive to earn additional money since earning even one dollar above the specified amount will result in forfeiture of welfare payments. Under the proper program incentive might be retained. One suggested approach calls for the use of a negative income tax.[73] This approach would grant a specified amount of income to a basic family unit and then tax any additional income earned by the recipient at a comparatively high (*e.g.*, fifty per cent) tax rate until the total amount of income adjusted by the high tax equals the amount of disposable income under the positive tax system. In effect, the negative income tax system provides each eligible recipient with a minimum income and then reduces the net benefit proportionately by the amount of money earned by the recipient. Thus, contrary to present state programs, incentive to earn money is not reduced at any given point.[74] But regardless of whether a negative income tax or any other federal approach is adopted, it is apparent that *Green* heralds some sort of social reform.

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Depreciation of Pipeline Easement Costs

Shell Pipe Line Corporation transports crude oil and petroleum products through a pipeline system composed of gathering lines, secondary trunk lines, and primary trunk lines.[1] For federal income tax purposes Shell was allowed to depreciate its right-of-way easement costs only for its gathering lines.[2] Shell brought suit in the District Court for the Southern District of Texas for refund of excess income taxes paid, claiming that it should be allowed to depreciate both primary and secondary trunk line easement costs as well. Prior to trial, the Internal Revenue Service conceded that Shell was entitled to a depreciation deduction for its secondary pipeline rights-of-way, leaving in issue only the deduction claimed for the primary trunk line rights-of-way. *Held*: Primary trunk line rights-of-way costs incurred by an oil pipeline common carrier are depreciable because such assets have a limited useful life which can be estimated with reasonable accuracy. *Shell Pipe Line Corp. v. United States*, 267 F. Supp. 1014 (S.D. Tex. 1967).

I. Investments in Pipeline Rights-of-Way

The typical pipeline right-of-way agreement involves the payment of a lump sum for the privilege of laying and maintaining the pipeline.[3] The

[73] *See* Tobin, *Is a Negative Income Tax Practical?*, 77 Yale L.J. 1 (1967).

[74] It is recognized that neither program can actually compel a recipient to work at all. However, the negative income tax approach at least does not discourage those who are willing to work.

[1] This classification is used by Shell Pipe Line Corporation only for tax purposes. It is not prescribed by the Interstate Commerce Commission system of accounting, which distinguishes only between gathering systems and trunk systems.

[2] During the years 1930-1943 the Internal Revenue Service allowed a depreciation deduction on all pipeline rights-of-way. However, since 1943 the Internal Revenue Service has refused to allow Shell and all other such pipeline companies a depreciation deduction on the capitalized costs of its primary and secondary pipeline rights-of-way.