The Catholic Lawyer

Volume 14
Number 1 *Volume 14, Winter 1968, Number 1*

Article 7

Statute Requiring Period of Residency for Receipt of Welfare Benefits Held Violative of the Equal Protection Clause

Follow this and additional works at: https://scholarship.law.stjohns.edu/tcl

 Part of the Fourteenth Amendment Commons

This Recent Decisions is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in The Catholic Lawyer by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.

RECENT DECISIONS

Statute Requiring Period of Residency for Receipt of Welfare Benefits Held Violative of the Equal Protection Clause

In July 1966, plaintiffs, husband and wife, moved to Delaware in order to facilitate the husband's attempts to find work as a construction laborer. Thereafter, he found employment with successive contractors but, due to bad weather and lay-offs, he averaged less than forty dollars a week to support his family of nine. Plaintiffs were granted public assistance by the state in December 1966, but this aid was discontinued when it was discovered that they had not fulfilled the state's one year statutory residency requirement. After exhausting their administrative remedies, plaintiffs brought a class action in the federal courts seeking a declaratory judgment that the residency provisions of the statute were unconstitutional and for an injunction against their enforcement. In granting plaintiffs' motion for summary judgment, the United States District Court of Delaware *held* that the residency provisions of the welfare law violated the equal protection clause of the fourteenth amendment in that they created an invidious discrimination against individuals who had not fulfilled the residency requirement of the state. *Green v. Department of Public Welfare,* 270 F. Supp. 173 (D. Del. 1967).

Statutory distinctions between residents and non-residents have often been employed by the states in order to preserve certain benefits for their own residents by excluding or discouraging non-residents from participation in certain activities. Since the initial statutory discriminations were basically concerned with property rights, the early attacks upon such distinctions concerned themselves with the privileges and immunities clause and the commerce clause of the Constitution. For

example, in *Ward v. Maryland*,[1] the Supreme Court considered the validity of a Maryland law which required that traders within that state be licensed and which inflicted certain criminal penalties upon non-residents who failed to comply. Under the statute, the cost of a license for a resident varied from twelve to one hundred fifty dollars, depending upon the value of his stock, whereas the cost of a license for a non-resident was three hundred dollars annually. Petitioner, a non-resident of Maryland, was convicted of violating this provision and fined the minimum penalty of four hundred dollars. In reversing the conviction, the Court noted that although the states have the power to tax stock within the state belonging to both resident and non-resident merchants, it felt that the Maryland statute was an unreasonable discrimination against non-residents and, hence, violative of the privileges and immunities clause of article IV, section 2 because, at the very least, this clause means the right to be secure in the pursuit of commerce without molestation. Further, the Court stated that, if the states were permitted to promulgate such measures, Congress' power to regulate interstate commerce would soon become valueless.

In *McCready v. Virginia*,[2] the Supreme Court considered a Virginia statute which prohibited non-residents from planting oysters in the soil covered by her tidewaters. Petitioner had violated this statute and been fined. The Court held that since the law merely regulated the use of property owned by the people of Virginia in common, the privileges and immunities clause was inapplicable because that clause did not invest citizens of one state with any interest in the common property of citizens of another state. The Court found that there was no real question presented with regard to the commerce clause, since commerce "has nothing to do with land while producing, but only with the product after it has become the subject of trade." [3]

Seventy-two years later, the scope of the *McCready* rule was limited by *Toomer v. Witsell*.[4] This case involved certain South Carolina statutes which set up a license fee of twenty five dollars for each shrimp boat owned by a resident and $2,500 for one owned by a non-resident and which required persons shrimping within the three-mile maritime belt to dock at a South Carolina port to unload, pack and stamp their catch before shipping or transporting it to another state. In discussing the privileges and immunities clause, the Supreme Court indicated that such clause did not preclude disparity between residents and non-residents where such discrimination was based upon valid independent reasons. However, the Court established the criterion that, notwithstanding the existence of such reasons, the privileges and immunities clause would be violated if the resultant discrimination was not reasonably related to the legitimate harm intended to be prevented by the statute. Applying this standard, the Court held that although the state had a legitimate interest in protecting its natural resources, the degree of discrimi-

[1] 79 U.S. (12 Wall.) 418 (1870).
[2] 94 U.S. 391 (1876).
[3] *Id.* at 396.
[4] 334 U.S. 385 (1948).

nation used against non-residents was not reasonably related to the purposes sought to be achieved. The *McCready* case was referred to as an exception to the constitutional mandate of the privileges and immunities clause and distinguishable upon two grounds. In *McCready,* the state had more control over the oysters, since they would remain within its borders until removed by man, while the shrimp involved in *Toomer* were only in South Carolina territory temporarily. Furthermore, the former case involved inland water restrictions while the latter concerned restrictions on the open sea.[5] With regard to the South Carolina statute requiring the shrimp boats to dock in that state, the Court held that, since that procedure increased the costs of non-resident fishermen who would normally take their catch directly to a neighboring state, the enactment was an unconstitutional burden on interstate commerce.

Mr. Justice Frankfurter believed that the majority had misapplied the meaning of the privileges and immunities clause and would have based the decision solely on the commerce clause, since he felt that the privileges and immunities clause was not "meant to obliterate all special relations between a State and its citizens" [6] and must be read in light of the tenth amendment.

Although many of the older decisions involving property concepts were decided under the commerce and privileges clauses of the Constitution, the more modern statutes restricting personal rights and liberties have often included arguments under the equal protection clause of the fourteenth amendment. One of the most common types of statutes involving personal rights are those which impose residency requirements in the area of voting legislation. For example, *Carrington v. Rash* [7] involved a provision of the Texas Constitution which provided that a serviceman living in that state was required to vote only in the county where he resided at the time of entry into the service.[8] Petitioner, an Army sergeant from Alabama, entered the service in 1946. In 1962, he moved to El Paso, Texas, purchased a house and established a small business. The Texas Supreme Court refused petitioner's petition for a writ of mandamus which would have ordered local election officials to allow him to vote in Texas. The Supreme Court of the United States reversed the decision, holding that the provision violated the equal protection clause of the fourteenth amendment. The Court began its analysis by asserting that a state "has unquestioned power to impose reasonable residence restrictions on the availability of the ballot."[9] However, what is reasonable will depend, not upon whether members of a class drawn by a state law are treated equally, but upon the relationship the classification bears to the

[5] The Court cited United States v. California, 332 U.S. 19 (1947), for the proposition that "neither the thirteen original colonies nor their successor States separately acquired 'ownership' of the three-mile belt." *Id.* at 31.

[6] 334 U.S. at 408 (concurring opinion).

[7] 380 U.S. 89 (1965).

[8] TEXAS CONST. art. VI, § 2.

[9] 380 U.S. at 91.

purpose of the legislation.[10] In defense of the statute, respondent presented two primary purposes to support the classification. First, it was argued that the state sought to prevent a possible situation in which an organized bloc vote by military personnel would subordinate the voice of the civilian community. Second, the state, by means of the statute in question, sought to shield local voting rights from infiltration by transients. The Court ruled that the first alleged purpose was invalid in itself, since a state could not withhold the right to vote due to a fear of how that right would be exercised. As to the second legislative goal, the Court felt that since the statute denied a soldier the opportunity to successfully controvert the presumption of non-residence, it imposed an invidious discrimination in violation of the fourteenth amendment.[11]

Legislation establishing residency requirements applicable to recipients of welfare benefits faced constitutional attack as early as the 1940 case of *Matter of Chirillo*.[12] The case involved a New York statute[13] which provided for the removal of non-resident poor who were being supported by the state, to another state in which someone was willing to lend support to the removed person. Although the majority of the Court of Appeals dismissed upon a technical point relating to the formulation of the appeal,[14] the three dissenting judges discussed the relevant constitutional questions. They felt that the Court should have affirmed the order holding the statute valid under the state's police power. The challenge under the commerce clause was dismissed with the statement that, absent congressional action, the state may, via its police power, act even though there was some interference with interstate commerce.[15] As for the claims of privileges and immunities clause of article IV, section 2, and the equal protection clause of the fourteenth amendment, the dissent indicated that since the law affected all persons similarly situated in a like fashion, the provisions were not violated.[16] It also felt that there was no validity to a due process challenge because when New York had joined the Union, it still retained its police powers, which included

---

[10] Judicial inquiry under the Equal Protection Clause . . . does not end with a showing of equal application among the members of the class defined by the legislation. The courts must reach and determine the question whether the classifications drawn in a statute are reasonable in light of its purpose. . . . McLaughlin v. Florida, 379 U.S. 184, 191 (1964).

[11] 380 U.S. at 96. The dissenting opinion felt that since the categories of servicemen and transients were synonymous in most cases, there existed a rational classification even though the provision would disenfranchise bona fide voters in some cases.

[12] 283 N.Y. 417, 28 N.E.2d 895 (1940).

[13] N.Y. PUB. WELFARE LAW § 71.

[14] N.Y. CIV. PRAC. ACT § 588(3) allowed direct appeal to the Court of Appeals where the only issue involved in the case was the constitutionality of a state or federal statute. Here, the majority felt that interpretation of the statute was in question and hence dismissed the appeal. Now, CPLR § 5601(b)(2).

[15] 283 N.Y. at 435, 28 N.E.2d at 903 (dissenting opinion). *See* Clauson v. Indiana, 306 U.S. 439 (1939); Welch Co. v. New Hampshire, 306 U.S. 79 (1939); Plumbley v. Massachusetts, 155 U.S. 461 (1894).

[16] 283 N.Y. at 436-37, 28 N.E.2d at 904.

the right to deport all persons not legally present.[17]

Another early case concerning this problem involved an Illinois statute which required that a welfare recipient reside in the jurisdiction furnishing aid for the three years immediately preceding his application.[18] Here, the petitioners had fulfilled the statutory prerequisite, except that during the three year time limitation, they had each spent short periods of time elsewhere seeking employment. In sustaining the defendants' demurrer, the Illinois Supreme Court concluded that the statute did not violate the due process and equal protection clauses of the fourteenth amendment and was a valid exercise of the state's police power. It reasoned that the purpose of the statute was to prevent the state from becoming a haven for the transient poor and, therefore, the classification drawn by the statute was not unreasonable in light of this purpose.

In 1941, the United States Supreme Court heard, for the first time, a case involving one of the elements of residency requirements and indigents. In *Edwards v. California*,[19] the petitioner was convicted under a statute which made it a misdemeanor to bring into the state a non-resident known to be indigent. The Court, while acknowledging that the states may to some extent affect interstate commerce, held that the statute was not a valid exercise of the police power and that it imposed an unconstitutional burden on interstate commerce. The Court reasoned that since the transportation of human beings falls within the protection of the commerce clause, the California statute effectively reduced the possibility of the free flow of transients.[20] Mr. Justice Douglas chose to support his concurring opinion on the belief that an individual's right to interstate travel was "an incident of *national* citizenship protected by the privileges and immunities clause of the Fourteenth Amendment against state interference."[21]

Recently, there appears to have been an upsurge of litigation concerning the right of a state to place a residency requirement as a prerequisite to the successful attainment of welfare benefits. It should be noted that since the *Edwards* decision was the first United States Supreme Court pronouncement in an area analogous to the present situation, it is important as a guide to petitioners in the formulation of their constitutional arguments, although it is easily distinguishable upon its facts. For example, in *Harrell v. Board of Commissioners*,[22] decided in 1967, the District Court for the District of Columbia considered an application for the convening of a three-judge court in an action to enjoin the enforcement of an act which required that an individual seeking welfare benefits reside in the Dis-

---

[17] *Id.* at 432-34, 28 N.E.2d at 901.

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

[19] 314 U.S. 160 (1941).

[20] *Id.* at 172-73. *See* Mitchell v. United States, 313 U.S. 80 (1941); Caminetti v. United States, 242 U.S. 470 (1917).

[21] The decision in this case was without dissent. The majority (5) of the Court based its decision on the commerce clause, while four justices decided on the ground of the privileges and immunities clause of the fourteenth amendment.

[22] 269 F. Supp. 919 (D.D.C. 1967).

trict of Columbia for one year preceding the filing of the application.[23] In denying the application, the court ruled that no substantial constitutional question was raised, since the residence requirement was a reasonable restriction which Congress was empowered to make. In support of its conclusion, the court expressed a fear that in the absence of a residence requirement the District of Columbia might become a "Mecca" for indigents, especially because of the generous payments made there. The court considered a violation of the right to travel "too far-fetched and remote to justify extended discussion."[24] This case is distinguishable from *Edwards* in that here the court was not concerned with the bringing in of indigents to the District of Columbia but the problem of how long they should be there to obtain welfare aid.

Three days prior to the decision in the *Harrell* case, the United States District Court for Connecticut passed upon the constitutionality of a somewhat similar state statute in *Thompson v. Shapiro*.[25] In June 1966, plaintiff moved from Massachusetts, where she had been receiving certain welfare benefits, to Connecticut, to live closer to her relatives. In November, plaintiff's request for public assistance was denied since she had not fulfilled the statutory residence requirement.[26] In this action to declare the statute unconstitutional, the court gave judgment for plaintiff, ruling that the statute had "a chilling effect on the right to travel"[27] and violated the equal protection clause of the fourteenth amendment. The court noted that the privileges and immunities clause of article IV, section 2, was inapplicable to the case, since "that clause only outlaws discrimination by one state against citizens of another state."[28] Since the Connecticut law applied to all applicants for public assistance alike, the statute was valid under this section. However, the court sustained plaintiff's contention that the privileges and immunities clause of the fourteenth amendment had been violated because, although the statute treated all alike, it unduly restricted the vested right to travel. Furthermore, the court found that the residency requirement was a violation of the equal protection clause because the classifications drawn by the statute were unreasonable. Defendant had conceded that the purpose of the statute was to protect the state finances by discouraging an influx of indigents. The court felt that this statutory classification of newly arrived residents according to the amount of money they brought with them into the state was unreasonable in light of the purpose of the statute, since it was not proven that, in the long run, newly-arrived indigents put more of a burden on the state treasury than those arriving with a cash stake or those with one year's residence.[29] The dissent vigorously maintained that the statute was a valid legislative classification which the state had the discretion and authority to enact. It was argued that there was no

[23] D.C. CODE ANN. § 3-203 (Supp. V 1966).
[24] 269 F. Supp. at 921.
[25] 270 F. Supp. 331 (D. Conn. 1967).
[26] CONN. GEN. STAT. REV. §17-2d (Supp. 1965).
[27] 270 F. Supp. at 336.
[28] *Id.* at 334.
[29] *Id.* at 337-38.

prohibition of travel between the states, but merely deterrence of those who would enter the state solely to receive its liberal welfare benefits.[30]

In the instant case, plaintiffs had moved into Delaware in July 1966. In December 1966, the State granted plaintiffs public assistance, but this relief was terminated when it was found that the plaintiffs had not complied with the statutory requirement of one year residency in order to receive welfare. The plaintiffs alleged that the residency requirement was unconstitutional on the grounds that it violated the due process clause, the equal protection clause, and the privileges and immunities clause of the fourteenth amendment and also infringed upon their right to travel under the privileges and immunities clause of article IV, section 2, and the commerce clause.

The Court first examined plaintiffs' contentions with regard to the equal protection clause. At the outset, it was noted that the equal protection clause did not preclude all discrimination by a state but only *invidious* discrimination. Therefore, it was necessary for the plaintiffs to establish that the one year residency requirement did not bear any reasonable relationship to the purpose of the statute.[31] In discussing the purpose of the provision, the Court first looked to Delaware's Public Assistance Code itself, which provided that its function was:

> to promote the welfare and happiness of all people of the State, by providing public assistance to all of its needy and distressed; that assistance shall be administered promptly and humanely with due regard for the preservation of family life. . . .[32]

The Court concluded that the residency requirement tended to frustrate, rather than implement, the aim of the statute. Since the aim of the statute was to support all people of the state, *i.e.*, domiciliaries, defined in Delaware common law as one physically present with the intent to remain indefinitely, the one year legislative residency requirement was not an objective test sufficient to establish the requisite intent. And, since such a test would deny the necessities of life to those who were validly domiciled within the state with the requisite intent, the statute violated the equal protection clause of the fourteenth amendment. The Court noted that there were more accurate alternatives available to ascertain an individual's intent "without exacting the protracted waiting period with its dire economic and social consequences. . . ."[33] It should be noted that the Court found it unnecessary to reach the question of whether or not a state could constitutionally restrict the benefits of its own public welfare programs to its own domiciliaries. Finally, the Court dismissed the defendant's assertion that the statute's purpose was to discourage the migration of indigents into Delaware and thereby protect the public purse. Citing *Edwards*, the Court answered:

> The protection of the public purse, no matter how worthy in the abstract, is not a permissible basis for differentiating

[30] *Id.* at 339 (dissenting opinion).

[31] 270 F. Supp. at 176; *see generally* Tussman & ten Broek, *The Equal Protection of the Laws*, 37 CALIF. L. REV. 341 (1949).

[32] DEL. CODE ANN. tit. 31, § 501 (1960).

[33] 270 F. Supp. at 178.

> between persons who otherwise possess the same status in their relationship to the State of Delaware.[34]

Since the Court found that the Delaware provisions were unconstitutional under the equal protection clause, there was no need for it to consider the plaintiffs' other arguments.

The repercussions of the *Green* case and other recently decided cases are far-reaching. Initially, it is significant that, as the dissent in the *Thompson* case pointed out, forty states have some sort of residency requirement for receipt of welfare benefits.[35] One of the reasons this legislation is so widespread is that the Social Security Act, in making grants to the states for the support of needy families with children, impliedly permits the states to employ a residence requirement not exceeding one year.[36] Do the decisions involving the Connecticut and Delaware laws mean that these similar statutes of the various states will also be held unconstitutional? The answer to this question will depend to some extent upon the theory used to attack their validity. The equal protection clause of the fourteenth amendment requires a court first to ascertain the purpose of the statute. The court must then determine whether the classification set up by the statute is reasonably related to that purpose. Thus, for any of the statutes to be upheld, they must be found to isolate one factor exclusively possessed by the persons classified, and this factor must be the object aimed at by the laws. The only factor possessed in common by the persons classified under a residency statute is length of residence, while there are significant differences in other traits, especially intention to establish domicile within the state. This one common factor, length of residence, would not appear to be a sufficient basis for a state's denial of welfare benefits under any purpose that might be conceived. This would seem so even in light of the fact that one of the main purposes of a residency statute is to prevent a fraud against the state. The situation appears to be analogous to one where a state asserts a residency requirement to allow individuals within its borders the right to vote in national elections. The intent of such a requirement would be to identify the voter and to assure that the individual voter is in fact a member in the community and has an interest in matters pertaining to the government of the state.[37] However, the need for the necessities of life possesses an immediacy which differentiates welfare benefits from the right to vote. In light of the urgency involved, it would seem that some classification other than an arbitrary residency requirement should be established. Since the primary questions with regard to the state are the issues of intent and fraud in relation to welfare expenditures, an alternative solution would have to consider these elements.

---

[34] *Id.* at 177.

[35] Thompson v. Shapiro, 270 F. Supp. 331, 338-39 (D. Conn. 1967) (dissenting opinion). States which do not have any waiting period are Alaska, Georgia, Hawaii, Kentucky, Maine, North Dakota, South Dakota, New York, Rhode Island, and Vermont. *Id.* at 339 n. 1(b).

[36] 76 Stat. 185, 188 (1962), 42 U.S.C. § 602 (b) (1964).

[37] Drueding v. Devlin, 234 F. Supp. 721 (D. Md. 1964), *aff'd per curiam*, 380 U.S. 125 (1965) (equal protection argument dismissed).

A possible solution to the problem may be a more detailed examination of the reasons a person entered into a state, any attempts to find worthwhile job opportunities, whether any children are enrolled in the state educational system, business opportunities attempted and other factors. It would seem equitable under these conditions to require an applicant for aid to fill out certain forms and swear to the truth of the statements.

Moreover, the argument that such laws violate an individual's right to interstate travel would not have such a consistent result. If this claim is followed to its natural conclusion, it will be noted that a state will infringe upon the right to travel in proportion to the amount of aid withheld. In other words, a state providing generous welfare benefits, by requiring that the individual live within the state a certain period of time before he can take advantage of these state services, will, hypothetically, hamper an indigent's travel more than a state granting meager benefits. As a result, while state statutes such as those in Connecticut and Delaware may be found to clearly violate this right to travel, similar statutes enacted by states which do not provide as generously may be declared to have a negligible effect on this right.

One of the principal contentions of the advocates of statutory residence requirements is that such laws prevent an influx of indigents seeking more generous welfare benefits. The merits of such an argument are speculative at best. One writer has reported that "California which has about the most stringent residence laws in the country was second only to Florida in attracting new residents."[38] It was further noted that in New York, which has no residence requirement, only 1.8 percent of the welfare recipients in 1955 and 1.5 percent in 1960 had resided in the state for less than one year, and, furthermore, only 18 percent of the 1955 group needed assistance over an extended period of time.[39] Another study further developed these statistics and found that when the 18 percent of this 1955 group were multiplied over a ten year period and added to the 1.8 percent coming in each year, there resulted a total increase exceeding 5 percent in an eleven year period.[40] In other words, at the end of a ten year period, only 3.2 percent of all the people on welfare aid are those who could be hypothesized to have entered merely to take advantage of the liberal rules.

Another important question arising from the instant case is whether or not it will influence the various other statutes which include residency requirements as means of governmental control. Examples of such statutes include residence requirements for the receipt of scholarship loans, aid in the schooling of blind children, holding of a liquor permit, and employment in the state merit system.[41] The multitude of these state statutes establishing a residency requirement differ from

---

[38] LoGatto, *Residence Laws—A Step Forward or Backward?*, 7 CATHOLIC LAW. 101, 106 (1961).

[39] *Id.* at 107.

[40] Harvith, *The Constitutionality of Residence Tests for General and Categorical Assistance Programs*, 54 CALIF. L. REV. 567, 617 (1966).

[41] Thompson v. Shapiro, 270 F. Supp. 331, 340 (D. Conn. 1967) (dissenting opinion).

the welfare laws only in the type of service provided by the state. However, the type of service offered may have a large bearing on the purpose of the program. As a result, a classification based on length of residence may be reasonably related to the purpose of legislation. Therefore, under the reasoning of the Court in applying the equal protection clause in the instant case, it would be necessary in each case to determine the purpose of the statute and whether the classification set up by the law is reasonably related to that purpose.

These recent cases holding a statutory residence requirement for receipt of welfare benefits unconstitutional may exert some influence on cases involving statutes which merely distinguish between, rather than classify, residents and nonresidents. This influence might best be seen in the case of *American Commuters Association, Inc. v. Levitt*,[42] presently being heard in the United States District Court for the Southern District of New York. Plaintiffs in this class action are members of a New Jersey corporation and reside in New Jersey and Connecticut but earn substantially all of their income in New York. The action seeks a declaration that the New York income and earnings taxes are unconstitutional and an injunction against their enforcement. Plaintiffs' contention is that, although they paid the taxes, they were refused many of the benefits due to the fact that they were nonresidents. In particular, one of the plaintiffs was denied admission and a scholarship to the State University of New York and was denied a state-supported student loan by the Bankers Trust Company. Another was denied admission to the Bronx High School of Science, another was forced to pay a higher fee for a New York fishing license, and a third was denied welfare and Medicaid benefits. Plaintiffs claim that the state, by imposing the taxes but denying certain benefits, has violated the equal protection and due process clauses of the fourteenth amendment and the privileges and immunities clause of Article IV, Section 2, of the United States Constitution. In support of their argument with regard to the fourteenth amendment, plaintiffs have relied on the *Thompson* case, which held unconstitutional the Connecticut residency requirement for welfare assistance, while the defendant cited *Harrell*.

A very important factor to be kept in mind is that the statute upheld in *Harrell* was enacted by the Congress, while the laws involved in the *Green* and *Thompson* cases were passed by state legislatures. As noted earlier, Congress has the exclusive authority to regulate interstate commerce so that it has the power to pass certain laws which would be invalid if enacted by the states. Nevertheless, it would seem that the American Commuters Association has misplaced its reliance on the *Thompson* decision. That case, like *Green,* merely invalidated a statute which established a residency requirement, not a restriction that state benefits would be confined to residents. It would seem that plaintiffs' claim in the pending New York action might best be

[42] Docket Number 67 Civil 2534; Defendant's Memorandum of Law in Opposition to Plaintiffs' Motion to Convene a Three-Judge Court on file with St. John's Law Review.

supported on the theory of the privileges and immunities clause of article IV, section 2, which outlaws discrimination by one state against citizens of another. The questions raised by the case fall more within the scope of the decisions in *Ward, McCready, Toomer,* and *Blake,* rather than *Thompson* and *Green.* Under the former cases it would appear that a proper ratio must be established between the percentage of taxes paid and the benefits received. However, unlike the earlier cases, we are here involved not with privileges and immunities that arise from United States citizenship but those that are specifically provided by a particular state for its own citizens.

The fundamental significance of the instant case is in the fact that it established a workable test to be used when applying the equal protection clause of the fourteenth amendment to constitutional challenges against residency requirements for welfare benefits. The classification and purpose of the statute are now to be investigated. Such a test appears to validly protect the rights of the individual because, if properly applied, the actual intent of an applicant will be investigated before any decision as to the availability of benefits is determined. However, the problem which remains is whether or not the state may validly restrict aid to its own domiciliaries. In light of the greater burdens that are now being placed upon state treasuries to provide adequate services to residents of a particular state, it would seem that a legitimate requirement may be legislated, *i.e.*, one which reasonably protects the state against the fraud of an applicant but legitimately balances against this the true intent of the individual.

Applicability of Sixth Amendment Guarantees to Military Proceedings

Defendant appealed from an order of the United States District Court of Kansas dismissing his petition for a writ of habeas corpus which had been brought on the grounds that, at his special court-martial, he had been denied his sixth and fifth amendment guarantees as well as those of military due process in that he was assigned a non-legally trained officer in response to his request for qualified counsel.[1] The United States Court of Appeals, Tenth Circuit, in affirming the dismissal of the petition, *held* that the defendant's sixth amendment rights had not been denied since the crime for which the accused had been charged was equivalent to a misdemeanor at civil law and the sixth amendment's assistance of counsel provision had not, as yet, been

[1] 10 U.S.C. § 827(c) (1964) (Article 27(c) of the Uniform Code of Military Justice [hereinafter cited as UCMJ]).