

because of her failure to meet the one-year residence requirement. Form of decree, including computation of amount of damages due, may be submitted by counsel for plaintiff on notice to counsel for defendant.

The above shall serve as the Findings of Fact and Conclusions of Law required by Fed. R. Civ. P. 52(a).

Dated at Hartford, Connecticut, this 19th day of June, 1967.

J. JOSEPH SMITH,
United States Circuit Judge.
M. JOSEPH BLUMENFELD,
United States Circuit Judge.

I dissent, with opinion.

T. EMMET CLARIE,
United States Circuit Judge.

CLARIE, District Judge, dissenting:

I respectfully dissent and disagree with the majority opinion that §17-2d of the Connecticut General Statutes is unconstitutional. The residence time qualification for welfare eligibility of non-residents coming into the State, as contained in the law, is a reasonable one directly related to the problem sought to be governed. It is a valid legislative classification, which the State has the discretion and authority to enact. It is not within the province of the judiciary to determine whether the remedy chosen is a wise one, but only whether it is constitutional. *Railway Express v. New York*, 336 U.S. 106, 109 (1949); *Daniel v. Family Ins. Co.*, 336 U.S. 220, 224-25 (1949); *Olsen v. Nebraska*, 313 U.S. 236, 246-7 (1941).

Forty other states of the United States, including Connecticut, have established a one-year residence requirement, as a condition of eligibility to qualify for aid to families with dependent children.¹ Congress itself has sanctioned the laws of these forty states, by enacting 42 U.S.C.A. § 602(b), which provides for a federal contribution to state administered programs, where the condition of eligibility does not exceed a one-year prior residence. As a practical matter, most states require a residence eligibility requirement or waiting period for all forms of welfare benefits.²

The majority opinion concedes that the purpose of §17-2d is to protect the state's fiscal responsibilities by discouraging entry of those who come into the state seeking relief.³ It goes even further and asserts that a classification denying aid to those whose sole or principal purpose in entering the state to seek aid would be unconstitutional. The principal basis for the majority position is that the law abridges the right of freedom to travel and to establish residence; and that because such a statute as §17-2d has a chilling effect on the right to travel, it is therefore unconstitutional. The landmark case cited to support this position is *Edwards v. California*, 314 U.S. 160 (1941).

The latter case can be distinguished from the issue being litigated here. It involved a state statute, which made it a crime to transport across the state line into California, one who was an indigent. This statute was ruled unconstitutional by the United States Supreme Court, because it not only restricted commerce between the several states, but it also actually limited the right of citizens to travel freely between the several states. On the contrary, the statute which is now in issue, does not prohibit travel between the states as such. What it does do and is intended to do, is to deter those who would enter the state for the primary or sole purpose of receiving welfare relief allotments.

Connecticut is comparatively generous in welfare grants. The legislature provides an open-end budget in its biennial appropriations to the State Welfare Department,⁴ so that no qualified applicant may be denied aid or caused personal hardship by delay or the arbitrary limitation of budgetary appropriations.

¹ (a) Stipulation of the Parties, Para. 61.

(b) States which do not have any waiting period are Alaska, Georgia, Hawaii, Kentucky, Maine, North Dakota, South Dakota, New York, Rhode Island, and Vermont. *Pocket Data Book USA, 1967*, U.S. Dept. of Commerce, Statistical Reports Division, Lib. Cong. Card No. A66-7638.

² Some thirty-five (35) states require that an applicant must have resided within the state five of the preceding nine years, including the immediate past year to be eligible to receive old age, deaf and blind benefits. Five (5) other states require simply a one-year residence to receive these benefits. See, *Characteristics of State Public Assistance Plans Under the Social Security Act*, U.S. Gov. Print. Off. (1965). Also see, 42 U.S.C.A. §§ 1202, 1352.

³ *Supra*, note 1(b) at 182.

⁴ CONN. GEN. STAT. (Rev. 1958) § 4-95.