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DURATIONAL RESIDENCY REQUIREMENTS AND THE MASS MIGRATION THEORY: GETTING TO THE HEART OF THE CURRENT WELFARE DILEMMA

The patchwork of national and state welfare systems has resulted in differential payments to indigents and program variations among the states. The Supreme Court in *Shapiro v. Thompson*¹ took the first major step toward making a uniform social welfare system a reality. The Court invalidated state laws that required a one year's residency before an applicant could qualify for welfare benefits.² Categorical assistance programs were primarily affected.³ In past discussions concerning the validity of residency requirements, proponents have relied on the substantial, detrimental effect on state finances should residency be eliminated.⁴ Their primary concern was the fear that a much-discussed and factually unproved theory of mass indigent migration would become a reality. According to this theory, the abolition of residency requirements would result in a migration of indigents, moving themselves, their families, and their belongings to more prosperous states

1. 89 S. Ct. 1322 (1969). The decision directly affected residency tests in Connecticut, the District of Columbia, and Pennsylvania. The term "residency requirement" will hereinafter be used interchangeably with "durational residency requirement."

2. See DIVISION OF PROGRAM OPERATIONS, SOCIAL AND REHABILITATIVE SERVICE, ASSISTANCE PAYMENTS ADMINISTRATION, RESIDENCES AS AN ELIGIBILITY FACTOR (1968). As of April 22, 1968, fifteen states or territories had no durational residence requirement for Aid to Families with Dependent Children programs. They were Alaska, Connecticut, Delaware, Georgia, Guam, Hawaii, Kentucky, Maine, New Jersey, New York, Puerto Rico, Rhode Island, Massachusetts, Vermont, and the Virgin Islands. In addition, a number of jurisdictions were holding in abeyance the application of residence requirements as a result of court action. They were Arizona, California, the District of Columbia, Illinois, Maryland, Pennsylvania, Texas, and Wisconsin. See 3 LAW IN ACTION, April, 1969 at 1. See also 21 VAND. L. REV. 379, 386 (1968).

3. Harvith, *Federal Equal Protection and Welfare Assistance*, 31 ALBANY L. REV. 210 (1967) discusses the scope of categorical assistance programs provided for under the Social Security Act. These include Old Age Assistance (hereinafter referred to as OA), Aid to the Blind (AB), Aid to the Disabled (AD), Medical Assistance for the Aged (MA), programs combining two or more of the proceeding, Aid to Needy Families with Children (ADC, often referred to as Aid to Dependent Children or Aid to Families with Dependent Children), and Medical Assistance (MA).

4. *Shapiro v. Thompson*, 89 S. Ct. at 1328. See also *Edwards v. California*, 314 U.S. 160 (1941), where it was held that a state's interest in protecting its treasury did not justify a statute prohibiting the transportation of indigents into its borders.

solely to receive higher welfare payments.⁵ For those states which have experienced the elimination of residency, the fear has not materialized. For those states about to be affected, the fear of a flood of indigents swelling their public assistance programs is apparently not a major concern. The removal of durational residency requirements, however, has brought to the surface a very real and growing concern in all the states: increasing demands for welfare services administered through widely varying programs throughout the states.⁶ This statistical study will present the effects of the removal of residency requirements through a comparison involving those states that have experienced, and those that are about to experience, the maintenance of an adequate yet progressive welfare system without residency as a prerequisite for eligibility. The purpose of this empirical survey is to present an accurate portrayal of the status of our natural welfare system and the real concerns and desires of the individual states.

RESIDENCY REQUIREMENTS: A BRIEF PERSPECTIVE

Inherent in the concept of settlement under the English Poor Laws is the characteristic that localities should exercise control and financing of programs assisting indigents residing in their community.⁷ Even with the initiation of federal subsidies in certain categorical aid programs, the American welfare system historically has had a pronounced state and local influence.⁸ In attempting to provide more adequate and broader categories of assistance through a system of matched funding, the federal government did not abolish or limit the existing state durational residency requirements.⁹ The result has been that prior to *Shapiro*,

5. In the Congress, sponsors of federal legislation to eliminate all residency 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.

Shapiro v. Thompson, 89 S. Ct. at 1328.

6. CONNECTICUT DEPARTMENT OF WELFARE, XV PUBLIC WELFARE TRENDS FOR APRIL-JUNE 1968, at 5.

7. See Note, *Residence Requirements in State Public Welfare Statutes—I*, 51 IOWA L. REV. 1080 (1966). See also Note, *Social Welfare—An Emergency Doctrine of Statutory Entitlement*, 44 NOTRE DAME LAW. 603, 605-06 (1969).

8. "The Social Security Act of 1935 presents a fundamental change in the American approach to the problems of poverty by bringing the federal government into an area heretofore dominated by the states." 44 NOTRE DAME LAW., *supra* note 7, at 606-07.

9. Finally, the majority found that, based on legislative history and statutory wording, Congress had not approved the residence requirement in Section 402(b), of the Social Security Act, 42 USC § 602(b), but merely pro-

few states had eliminated residency as a requirement through their own initiative.¹⁰

In order to evaluate the validity of residency requirements, it must be recognized that all programs of public assistance need some procedure to determine the eligibility of the applicant. Utilizing length of residency as a criterion of eligibility, however, presents a direct confrontation between state welfare interests and the rights of the individual indigent.¹¹

The Supreme Court in the past has not hesitated to invalidate conditions attached to welfare benefits which infringed upon first amendment rights.¹² Under the traditional view, categorical assistance programs are designed to provide benefits sufficient to satisfy the everyday needs and medical expenses of those adjudged to be eligible.¹³ These programs are not intended to benefit any specific state or local resident to the exclusion of the newly arrived indigent. There is no logical basis of proof for the rationale that indigents who have resided in a state for less than one year are less needy than those who have established residency for one year.¹⁴

Some see durational residency requirements in conflict with the essence of a public assistance program.¹⁵ To withhold assistance payments from an otherwise eligible indigent, because he has not resided in the state for a prescribed length of time, is "constitutionally impermissible."¹⁶ Residency requirements are descendants of the depression and the thirties,¹⁷ and if their existence is warranted, it must be

vided that a state plan containing such a provision should not be disapproved.

17 *Welfare L. Bull.* 2, 3 (1969). See generally 51 *IOWA L. REV.*, *supra* note 7, at 1082.

10. The only states without meaningful residency requirements were New York, Rhode Island, and Hawaii. 36 *FORDHAM L. REV.* 612, 615 (1968). Since that time, other states have been enjoined from enforcing residency requirements. Those states in this category who participated in this study will be discussed in Section I.

11. See *Thompson v. Shapiro*, 270 F. Supp. 331, 338 (D. Conn. 1967). See also *Sherbert v. Verner*, 374 U.S. 398 (1963); *Speiser v. Randall*, 357 U.S. 513 (1958).

12. See *Sherbert v. Verner*, 374 U.S. 398, 403 (1963); *Speiser v. Randall*, 357 U.S. 513, 529 (1958). But see *Flemming v. Nestor*, 363 U.S. 603 (1960), where the Court found a constitutionally valid purpose behind the statute in question.

13. "The welfare objective is to aid needy families during periods of financial hardship." Note, *The Constitutionality of Welfare Residence Requirements*, 22 *Sw. L.J.* 341, 346 (1968).

14. *Shapiro v. Thompson*, 89 S. Ct. at 1327.

15. See 43 *N.Y.U.L. REV.* 570, 574 (1968).

16. *Shapiro v. Thompson*, 89 S. Ct. at 1329.

17. See generally 51 *IOWA L. REV.*, *supra* note 7, at 1081-82.

proved in light of their recent judicial interpretation and its impact on state welfare programs.

RESIDENCY REQUIREMENTS STRUCK DOWN: *Shapiro v. Thompson*

The petitioner Thompson had changed residence from Massachusetts to Connecticut, relinquishing assistance benefits from the state of Massachusetts. Unable to support herself and her family, she applied for assistance and was refused under the Connecticut statute¹⁸ solely for failure to satisfy residency. In declaring the Connecticut statute unconstitutional,¹⁹ a three judge federal district court found the statute violative of the privileges and immunities and equal protection clauses of the Fourteenth Amendment.²⁰ On appeal, the Supreme Court affirmed, finding that residency requirements restrict freedom of travel²¹ and establish "invidious discrimination denying equal protection of the laws."²²

The Court found that the effect of durational residency requirements was to establish two classes of indigent residents, differing only in length of residence.²³ Upon this distinction alone, the newly arrived indigent could not be denied assistance. The distinction gains no further merit even if the new state of residence affords higher welfare benefits.²⁴ Implicit in the majority opinion was the Court's direct refutation of Connecticut's actual intent in enacting the statute—to discourage those indigents seeking Connecticut's greater assistance payments.²⁵ Whether the legislative intent is to deny assistance to those seeking higher benefits or indigents generally, "the purpose of inhibiting migration by needy persons into the state is constitutionally impermis-

18. CONN. GEN. STAT. ANN. § 17-2d (Supp. 1966), as amended, § 17-2c (Supp. 1969).

19. *Thompson v. Shapiro*, 270 F. Supp. 331, 338 (D. Conn. 1967). The State of Connecticut was enjoined from denying the plaintiff ADC aid because she had not satisfied the one year residency requirement.

20. *Id.* at 335-37.

21. 89 S. Ct. at 1329. See also *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); *Crandall v. Nevada*, 73 U.S. 35 (1867).

22. 89 S. Ct. at 1327. See also *Green v. Department of Public Welfare*, 270 F. Supp. 173, 178 (D. Del. 1967), where the one year residing requirement in question also was found "to create an invidious distinction as to the class represented by plaintiffs and are therefore in violation of the equal protection clause." See also *Ramos v. Health & Social Servs. Bd.*, 276 F. Supp. 474, 478 (E.D. Wis. 1967), where the court relied solely on the equal protection clause in holding the Wisconsin residency requirement unconstitutional.

23. 89 S. Ct. at 1327.

24. *Id.* at 1330.

25. *Id.* at 1328.

sible.”²⁶ The contentions that residency requirements protect the state’s treasury,²⁷ prevent fraud, promote fiscal planning, and are necessary for efficient administration²⁸ were found unwarranted.²⁹

Connecticut’s contentions were premised upon the fear that once residency is removed as a factor of eligibility, a heavy influx of indigents into states paying the most generous benefits would be inevitable.³⁰ Implied in this reasoning is the belief that every indigent who comes into a state enters for the sole purpose of advancing his welfare status. Past experience tends to refute the idea that a state with a liberalized welfare program will become a haven for welfare-seeking indigents.³¹ In states where the standard of living is high and economic opportunities are attractive, the incentive to migrate is great despite strict residency requirements.³² Motives such as better living conditions, better employment conditions, and the presence of family and friends must be considered. In addition, better and inexpensive housing, climate, and educational opportunities appear to influence the prospective migrant indigent rather than liberal welfare laws.³³ It can be questioned whether the indigent moving to a new state knows and comprehends the welfare economy of his new state, or the percentage of the minimum subsistence welfare standard his state is able to meet. Simply stated, there is considerable doubt that indigents move from one locality to another solely to acquire higher welfare benefits. The popular belief that vast numbers of welfare seekers are constantly on the move in search of more generous assistance payments has been held by many, yet statistical evidence in support of this belief has not been forthcoming.³⁴

26. *Id.* at 1328-29.

27. *Thompson v. Shapiro*, 270 F. Supp. 331, 336-37 (1967). See *Harrell v. Board of Comm’rs*, 269 F. Supp. 919 (D.D.C. 1967), where the court held constitutional a welfare residency requirement similar to the Connecticut requirement. The court said the residency requirement was necessary to protect the taxpayers. *Id.* at 921.

28. See *Smith v. Reynolds*, 277 F. Supp. 65, 68 (E.D. Pa. 1967).

29. 89 S. Ct. at 1331-33.

30. *Id.* at 1328.

31. See 36 *FORDHAM L. REV.*, *supra* note 10, at 615-16. Section I of this study will present current data and information concerning states recently enjoined from enforcing their one year residency requirements.

32. See *Ramos v. Health & Social Servs. Bd.*, 276 F. Supp. 474, 478 (E.D. Wis. 1967).

33. The studies of the states in Section I and Section II of this report clearly indicate a number of reasons for the transfer of indigents. These reasons are not limited to more generous welfare benefits.

34. For example, Judge Clarie in his dissenting opinion predicted a migration of indigents into Connecticut solely to seek welfare benefits. No statistical support for this prediction was given. *Thompson v. Shapiro*, 270 F. Supp. 331, 339 (1967).

The fear of a mass indigent migration is closely related to state defenses of residency requirements in that it is argued that residency protects the state treasury, fosters budget predictability, and leads to more efficient state-controlled local welfare programs.³⁵ The equal protection clause requires that a state not discriminate against any of its residents on the basis of economic condition.³⁶ Yet in *Shapiro*, the Court referred to state contentions upholding the validity of residency requirements upon this very ground of discrimination, founded in the fear of a mass movement of welfare-seeking indigents.³⁷ Few states today can argue the existence of a threat to its treasury due to mass migration of indigents as actual and severe as the California experience in the 1930's.³⁸ Yet in effect, this is exactly what the proponents of residency requirements offer today.

THE PRESENT STUDY

On June 3, 1969, the Department of Health, Education, and Welfare issued interim regulations, effective upon publication to apply the rule laid down in *Shapiro* to all states.³⁹ No state may impose a durational residency requirement in any of its federally aided public assistance programs. The following statistical information and commentary is intended to project the impact of the Court's decision upon those states which now must administer their welfare programs without durational residency requirements. The states not affected by the decision, those who have already removed residency as a requirement of eligibility, will function as a control group to illustrate what has happened when durational residency requirements have been eliminated. Section I will discuss the experience of these states. Section II will utilize projections relative to the effects of residency removal in those states now required to eliminate durational residency as a requirement. Section III will present the question of federal participation. It should first be noted that there is concern in all of the states participating in this survey as to the efficient and progressive operation of their welfare programs in the light of increasing welfare rolls and costs. Through an examination of the impact of residency requirement elimination with

35. 89 S. Ct. at 1331.

36. *Id.* at 1330.

37. *Id.* at 1328.

38. See 44 NOTRE DAME LAW., *supra* note 7, at 624.

39. 34 Fed. Reg. 8715 (1969). Letter from J. Carroll Wilson, Director, Public Inquiries Division Department of Health, Education, and Welfare, to the *William and Mary Law Review*, July 23, 1969.

respect to the mass migration theory, this commentary attempts to diagnose the real malady plaguing state welfare programs in their endeavor to maintain present welfare programs and facilitate future planning.

I. EFFECTS OF ELIMINATION OF RESIDENCY REQUIREMENTS PRIOR TO *Shapiro v. Thompson*

The California Experience

Since the federal district court's decision in *Burns v. Montgomery* in April 1968,⁴⁰ California has administered its categorical assistance programs without durational residency requirements as factors of eligibility. Therefore, the impact of residency removal in California dates back to April 1968. The increase in caseloads due to the elimination of residency requirements for fiscal 1968-69 and the projected increase for fiscal 1969-70 are illustrated in Table I.⁴¹

TABLE I

<i>Program</i>	<i>Fiscal Year 1968/69</i>	<i>Fiscal Year 1969/70</i>
Aid to the Blind (AB).....	No durational residency requirement prior to April 1968	
Old Age Security (OAS).....	8,600	11,600
Aid to the Needy Disabled (ATD)...	2,040	2,825
Aid to Families with Dependent Children (AFDC and AFDC-U)...	5,780	6,600

The increase in caseload is striking at first glance. John C. Montgomery, State Director of the California Department of Social Welfare, was careful to point out, however, that the rapid increase during fiscal 1968-69, was due more to an acceleration in the rate in which recipients became eligible, than from any migration into California.⁴² The state has recognized the fact that, to a great degree, the increase in welfare rolls can be attributed to California residents of less than one year rather than to a shift of indigents from other states. Yet, cries of California becom-

40. Letter from John C. Montgomery, Director, California Department of Social Welfare, to the *William and Mary Law Review*, May 16, 1969.

41. *Id.*

42. *Id.*

ing a "welfare bonanza and fair game nationwide" still persist.⁴³

The estimated cost in California due to the elimination of residency requirements is summarized in Table II.⁴⁴

TABLE II

<i>Program</i>	<i>Fiscal Year 1968/69</i>	<i>Fiscal Year 1969/70</i>
AB.....	0	0
OAS.....	\$10,863,000	\$15,354,000
ATD.....	2,922,000	3,976,000
AFDC and AFDC-U.....	12,778,000	15,907,000
Total.....	\$26,563,000	\$35,237,000

Director Montgomery in estimating the future costs of welfare programs stated that in fiscal 1969-70, California will reach a level where increase in costs will not continue to rise rapidly.⁴⁵ The entire program will stabilize, costs and increase in caseload will tend to reach a plateau, and no adverse effects are foreseen from any substantial influx of indigent residents into California.⁴⁶ Of further interest is the fact that even with the removal of residency requirements, California was able to project the budgetary increase for fiscal 1969-70.

Illinois

The impact of the removal of residency requirements in Illinois dates from February 13, 1968, when that state was enjoined by the United States District Court for the Northern District from enforcing any residency requirements in its welfare programs.⁴⁷ Illinois offers the ideal statistical situation to prove that some indigents do indeed move into a state which pays generous benefits. What these figures cannot prove is

43. Once the residence requirement in California is no longer a prerequisite in qualifying for liberal welfare benefits, the state becomes a welfare bonanza and fair game nationwide: "come one, come all."

Letter from John S. Mize, Executive Officer, Board of Supervisors, County of Los Angeles Department of Public Social Services to all members of the California delegation to the Congress, Apr. 28, 1969.

44. Letter from John C. Montgomery, *supra* note 40.

45. *Id.*

46. *Id.*

47. Letter from Gershom Hurwitz, Assistant to the Director, Illinois Department of Public Aid, to the *William and Mary Law Review*, July 18, 1969.

that these indigents came into Illinois solely to seek higher welfare payments. Table III gives the number of cases accepted for assistance having residence of less than one year when declared eligible.⁴⁸ The figures are grouped by place of previous residence.

TABLE III
ILLINOIS DEPARTMENT OF PUBLIC AID
PUBLIC ASSISTANCE AND GENERAL ASSISTANCE CASES WITH
LESS THAN ONE YEARS RESIDENCE BY PLACE OF PREVIOUS RESIDENCE *
FEBRUARY 1968—APRIL 1969

Place of Previous Residence	Total	Federally Aided Programs	General Assistance
GRAND TOTAL:	4,169	3,222	947†
STATES ADJOINING ILLINOIS			
TOTAL:	1,071	811	260
Missouri	414	328	86
Indiana	193	141	52
Michigan	182	135	47
Kentucky	111	75	36
Wisconsin	99	75	24
Iowa	72	57	15
SOUTHERN STATES			
TOTAL:	1,715	1,357	358
Mississippi	615	528	87
Arkansas	241	211	30
Tennessee	202	159	43
Texas	139	104	35
Alabama	124	89	35
Florida	108	79	29
Louisiana	107	64	43
Other Southern States (8)	179	123	56
ALL OTHER			
TOTAL:	1,383	1,054	329
Foreign	247	237	10
California	242	180	62
Puerto Rico	202	166	36
New York	111	66	45
Ohio	96	59	37
Unknown	61	50	11
Other	424	296	128

*Includes only a fractional share of February 1968. Data on Receiving Units only in GA.

†General Assistance cases only through March, 1969.

Table III indicates a large increase in caseload from those states adjoining Illinois and from the southern states, and it would appear that some of these indigents came to Illinois to live in a more prosperous and economically progressive locality. A migration of sorts has undoubtedly occurred; a migration solely to seek higher welfare benefits is doubtful. The table does indicate, however, that there may be other reasons for residing in Illinois other than to partake in a vigorous welfare system. From February 1968 to April 1969, 242 cases were opened for former California residents and 111 for former New Yorkers. The cost differential between Illinois and California maximum ADC payments is \$58.00 per month. The difference between New York and Illinois is \$1.00 per month.⁴⁹ Illinois and New York relief checks provide 100 percent of the basic needs for a family of four, while California provides 91 percent.⁵⁰ It is highly unreasonable to assume that 111 families would move from New York to Illinois *solely* to collect one dollar extra per month. Similarly, a trip from California, a state which provides 91 percent of the basic needs of a family of four, to Illinois *solely* to obtain higher benefits where basic requirement costs are higher is equally implausible. Migration into Illinois did occur, but given the state's geographical location and an economy capable of paying 100 percent of basic ADC needs, Illinois presents a unique situation. It would seem that a movement of indigents solely to seek higher wel-

TABLE IV

Number of Months	All Programs	AABD	ADC	General Assistance
TOTAL CASES:	4,169	958	2,264	947
Less than One Month	195	...	2	193
1 Month—Less than 3	900	154	415	331
3 Months—Less than 5	532	118	281	133
5 Months—Less than 7	654	177	382	95
7 Months—Less than 9	654	166	339	99
9 Months—Less than 11	566	137	365	64
11 Months—Less than 12	235	75	140	20
Not Reported	433	131	290	12

49. U.S. Department of Health, Education and Welfare statistics for April 1968 reveal that the maximum ADC aid payment allowed for a family of four is \$221 per month in California, \$278 in New York, and \$279 in Illinois. U.S. NEWS & WORLD REPORT, May 5, 1969, at 33.

50. New York and Illinois provide ADC benefits which meet 100 per cent of basic needs for a family of four. California meets 91 per cent of these needs. *Id.*

fare benefits cannot, therefore, be responsible for 4,169 additions to the Illinois caseload.

Table IV⁵¹ depicts the number of months the applicant resided in Illinois before applying for assistance. It is noteworthy to observe the relative consistency of term of residence between three and eleven months prior to application. This denotes some degree of permanent residence prior to applying for aid, and like the California experience, it appears that the rapid rise in recipients during the period could be due to an increase in the rate indigents become eligible rather than from any migration into Illinois.

The 1,195 recipients added with prior residence of less than three months appear to indicate a sudden rise in applicants; this figure must be read, however, in terms of a span of a fifteen-month period. The constancy of monthly additions to the rolls as presented in Table V must also be considered.

Table V indicates the magnitude of the caseload increase on a monthly basis.⁵² What is striking about this table is the consistency of

TABLE V

MONTH	Total	Federally Aided	General Assistance
February 1968.....	105	13	92
March.....	127	51	76
April.....	285	222	63
May.....	128	73	55
June.....	166	68	98
July.....	272	185	87
August.....	309	235	74
September.....	286	242	44
October.....	314	256	58
November.....	332	282	49
December.....	317	258	59
January 1969.....	350	266	84
February.....	325	273	52
March.....	274	218	56
April.....	...	265	..

51. Letter from Gurshom Hurwitz, *supra* note 47.

52. *Id.*

cases added during the past eight months. This appears to be the realization of Director Montgomery's prediction in California that after an initial flurry, the caseload will reach a plateau and caseloads will not continue to skyrocket.⁵³ Illinois has experienced a migration over the first fifteen months after residency requirements had been eliminated, but the statistics do not offer conclusive proof that this rise is attributable only to persons seeking more generous welfare benefits.

Pennsylvania, New Jersey, and Maryland

Durational residency requirements were removed in Pennsylvania on January 12, 1968.⁵⁴ In the three and one-half months following, 780 cases were added to the rolls.⁵⁵ With regard to residence in Pennsylvania prior to receipt of assistance, 477 applicants had been in residence from three months to one year.⁵⁶ Table VI lists the place of residence prior to receiving aid in Pennsylvania.⁵⁷

Of particular significance are the cases from California, New Jersey, New York, Illinois, Michigan, and Massachusetts, all of which offer higher assistance payments than Pennsylvania.⁵⁸

Additionally, Maryland, Ohio, and North Carolina provided 100 per cent of the basic needs of a family of four, though their monthly payment averaged less than in Pennsylvania.⁵⁹ Under these conditions, it cannot be argued that the mass migration theory has been proved in Pennsylvania.

New Jersey has not had residency requirements for general assistance payments in over twenty years, and since 1960, no requirements have existed in the ADC program.⁶⁰ Irving J. Engleman, director, has stated that the *Shapiro* decision has not had and will not

53. Letter from John C. Montgomery, *supra* note 40.

54. Letter from Thomas W. Georges, Jr., M.D., Secretary, Pennsylvania Department of Public Welfare, to the *William and Mary Law Review*, June 17, 1969.

55. *Id.*

56. *Id.*

57. *Id.*

58. HEW statistics for ADC type aid state that for April 1968, the maximum aid payment allowed for a family of four in California was \$221; in New Jersey \$332; in New York \$278; in Illinois \$279; in Michigan \$246; and in Massachusetts \$288. Pennsylvania allows a maximum benefit of \$213. *U.S. News & World Report*, May 5, 1969, at 33.

59. In meeting 100 per cent of the basic needs of a family of four, Maryland allows a monthly payment of \$178, Ohio \$193, and North Carolina \$144. *Id.*

60. Letter from Irving J. Engelman, Director, Division of Public Welfare, New Jersey Department of Institutions and Agencies to the *William and Mary Law Review*, August 14, 1969.

TABLE VI

Place	PLACE OF RESIDENCE PRIOR TO MOVING TO PENNSYLVANIA		
	PERSONS		
	Number of Cases	Number	State Ranking
TOTAL	780	2,369	..
Alabama	13	42	14
Arizona	6	18	27
Arkansas	3	9	33
California	64	212	3
Colorado	5	19	26
Connecticut	9	27	20
Delaware	9	26	21
District of Columbia	9	21	23
Florida	71	234	2
Georgia	16	39	15
Idaho	3	16	29
Illinois	31	82	11
Indiana	12	34	18
Iowa	4	20	24
Kansas	4	17	28
Kentucky	4	16	29
Louisiana	2	2	39
Maine	1	1	44
Maryland	38	103	9
Massachusetts	12	28	19
Michigan	16	25	22
Mississippi	11	43	13
Missouri	6	20	24
Nevada	2	8	35
New Hampshire	4	9	33
New Jersey	64	144	5
New Mexico	2	6	36
New York	49	113	7
North Carolina	27	89	10
Ohio	104	353	1
Rhode Island	1	1	44
South Carolina	16	64	12
South Dakota	1	1	44
Tennessee	10	35	17
Texas	13	38	16
Utah	2	2	39
Vermont	2	4	38
Virginia	38	107	8
Washington	4	12	32
West Virginia	45	142	6
Wisconsin	7	14	31
Colombia	1	1	44
France	1	6	36
Italy	2	2	39
Lebanon	1	2	39
Peru	1	2	39
Puerto Rico	34	160	4

have any measurable impact on New Jersey programs for assistance.⁶¹

As a result of *Mantell v. Dandridge*, on December 1, 1967, Maryland was enjoined from enforcing residency requirements.⁶² The suspension of the Maryland residence rule resulted in a small increase to the assistance caseload. Table VII summarizes by month the percentage of public assistance cases not meeting former residence rules.⁶³ Relative to the total caseload, the former non-resident caseload has grown only one-tenth of one per cent per month since December 1967.⁶⁴

TABLE VII

December 1967—July 1968

December 1967	0.09%
January 1968	0.2%
February 1968	0.3%
March 1968	0.4%
April 1968	0.5%
May 1968	0.5%
June 1968	0.6%
July 1968	0.7%

Connecticut

The Connecticut experience dates from June 19, 1967, when the *Shapiro* district court rejected the state contention that residency requirements were necessary to keep ADC assistance at a reasonable level.⁶⁵ Since then, the Connecticut State Welfare Department has in departmental reports, praised the elimination of state residency requirements and has advocated the elimination of these requirements nationally.⁶⁶

61. *Id.*

62. *Mantell v. Danridge*, No. 18792 (D. Md. Nov. 27, 1967). Letter from Raleigh C. Hobson, Director, Maryland Department of Social Services, to the *William and Mary Law Review*, June 4, 1969.

63. *Id.*

64. Circular letter No. 556 from John R. Schneid, Chief, Division of Research, Circular Maryland Department of Social Services, to Directors, Local Departments of Social Services, Sept. 10, 1968.

The NR caseload has grown on the average 13% each month after the initial month of December, 1967. . . . While this growth is both sharp and constantly increasing, it would be noted that the NR caseload as a whole is an extremely small fraction of all cases assisted.

65. 270 F. Supp. 331, 337 (1967).

66. CONNECTICUT DEPARTMENT OF WELFARE, XV PUBLIC WELFARE TRENDS FOR APRIL-JUNE 1968, at 4.

Connecticut statistics exemplify the month to month fluctuations inherent in a welfare program, and the reasons behind these changes. From January to March, 1968, 758 more applications were received than in the previous quarter.⁶⁷ This increase was attributed to the changes in the 1967 Social Security Act which began to take effect on the administration of the welfare program, and the restraining order in February which prevented the state from denying assistance to persons who had recently moved into the state.⁶⁸ In the April to June quarter, total applications received were 858 less than the previous quarter.⁶⁹ The decrease was attributed to the 1967 Social Security Act amendments and seasonal employment.⁷⁰ From July to September, applications received for assistance exceeded the previous quarter by 1,022.⁷¹ The largest increase, in the ADC category, was explained by strikes in the state.⁷² These statistics tend to show that even without residency requirements, fluctuations in the number of welfare applicants will occur as a result of many different factors. In the *Shapiro* case, the state had projected that the total cost increase in the ADC category due to the elimination of residency requirements would be only two percent.⁷³

Additional State Experience Under No Residency Requirements

At the time of the Department of Health, Education, and Welfare's directive to the states implementing the *Shapiro* decision, Wisconsin had been under a court injunction prohibiting the use of a durational

67. CONNECTICUT DEPARTMENT OF WELFARE, XV PUBLIC WELFARE TRENDS FOR JANUARY-MARCH 1968, at 14.

68. *Id.*

69. PUBLIC WELFARE TRENDS FOR APRIL-JUNE 1968, *supra* note 66, at 21.

70. *Id.* The reasons for this large decrease are to be found in the sections of the 1967 Social Security Act which exclude mothers from the unemployment section of the program, require men to be unemployed for thirty days before applying for assistance, and deny assistance to men who are receiving unemployment compensation.

71. CONNECTICUT DEPARTMENT OF WELFARE, XV PUBLIC WELFARE TRENDS FOR JULY-SEPTEMBER 1968, at 14.

72. *Id.*

73. Connecticut's argument that the residency requirement was necessary in order to maintain the cost of AFDC at reasonable levels was unacceptable because the state estimates that the indigents who would enter Connecticut in the absence of the residence test would increase the cost of AFDC by only 2 per cent.

270 F. Supp. at 337 n. 4. See also 21 VAND. L. REV. 379, 387 (1968).

residency requirement.⁷⁴ The Court's decision had little effect upon the Wisconsin welfare program, yet that state offers high ADC benefits.⁷⁵ Wisconsin's initial comment was that now other state welfare programs would have to accept persons moving from Wisconsin, as it had accepted persons from other states.

Rhode Island has had a long period of exposure to the effects of residency requirement elimination, since that state removed its requirement for the receipt of public assistance benefits in the early 1940's.⁷⁶ The state's director of social welfare reported no significant impact due to elimination of residency requirements, and emphasized that the Rhode Island experience has shown that persons on the welfare rolls came into the state for reasons other than seeking higher welfare benefits.⁷⁷

Maine has had no residency requirement for the last four years,⁷⁸ and the Court's decision will have no direct effect in that state.⁷⁹ Indirectly, however, the decision will benefit the state, for in the past Maine has had continued assistance payments to those who moved to another state which did enforce residency requirements.⁸⁰ Now these continued assistance payments will no longer be necessary. Kentucky, another state which had eliminated residency as a requirement prior to *Shapiro*, had no noticeable increase in caseload.⁸¹ Alaska has not had residency requirements for their ADC program. Like Maine, Alaska

74. Letter from Frank Newgent, Administrator, Division of Family Services, Wisconsin Department of Health & Social Services, to the *William and Mary Law Review*, June 3, 1969.

75. Our average payments have been above those of a number of states. As a result, there has in the past been considerable complaint that people were moving to Wisconsin to take advantage of our aid program. We recognize that this probably has little merit insofar as a number of cases are concerned, but very often the cases are the type that draw attention.

Id.

76. Letter from Anthony P. Trivisono, Director, Rhode Island Department of Social Welfare, to the *William and Mary Law Review*, June 13, 1969.

77. *Id.*

78. Letter from Robert O. Wyllie, Director, Bureau of Social Welfare, Maine Department of Health & Welfare, to the *William and Mary Law Review*, July 18, 1969.

79. The Size [sic] of the ADC caseload increased steadily from 1953 to 1962.

There was a general decline between the years 1962 and 1965. Since 1965 the trend has been improved. The general increasing trend is related to many demographic and economic variables.

BUREAU OF SOCIAL WELFARE, MAINE DEPARTMENT OF HEALTH & WELFARE, CHARACTERISTICS OF FAMILIES AND CHILDREN RECEIVING ADC, at 17 (Dec. 1967).

80. Letter from Robert O. Wyllie, *supra* note 78.

81. Letter from Merritt S. Deitz, Jr., Commissioner, Kentucky Department of Economic Security, to the *William and Mary Law Review*, July 17, 1969.

expects to benefit from the elimination of its continued assistance programs.⁸²

Finally, Alabama, Delaware, and Hawaii had eliminated residency requirements prior to *Shapiro* and were not directly affected. Delaware underwent an increase in caseload, but was unable to state what proportion was due to the elimination of residency requirements.⁸³ Hawaii has never imposed a residency requirement as a factor in determining initial eligibility.⁸⁴ Alabama reported that in fiscal 1967-68, 356 cases were closed due to loss of residence. No comparable information was available concerning the number of applications denied for this reason.⁸⁵

Therefore, utilizing the experience of the aforementioned states, the increased needs of welfare departments to satisfy rising costs and caseloads is a growing concern among the states. It appears that experience has shown that the elimination of durational residency requirements did not result in a migration of welfare seekers solely to obtain higher welfare benefits. Those states which have experienced an increase in caseload cannot conclusively explain this phenomenon by the mass migration theory, as indigents change residence for many reasons. Furthermore, these same states have reached a level where the monthly increase of recipients has become relatively constant, indicative of the fact that the bulk of the initial increase was due to the presence of persons within the states waiting to satisfy the residency requirement. Budget predictability and protection of the state treasury have not been violated, and any difficulties which may have occurred will be diminished as welfare rolls and costs stabilize. In summary, it would seem that the mass migration theory has not affected to any significant degree those states which have had experience with a welfare system with no residence eligibility requirement.

82. Letter from Ray C. Pagenkopf, Social Services Program Coordinator, Division of Public Welfare, Alaska Department of Health & Welfare, to the *William and Mary Law Review*, Aug. 21, 1969. Alaska has had an over-a-year durational residency requirement for its Aid to the Blind and Disabled programs, and has had reciprocal agreements with other states.

83. Letter from Mary Lee Berry, Chief, Program Development, Public Assistance, Delaware Department of Public Welfare, to the *William and Mary Law Review*, July 18, 1969.

84. Letter from William G. Amory, Director, Hawaii Department of Social Services, to the *William and Mary Law Review*, July 17, 1969.

85. Letter from Ruben K. King, Commissioner, Alabama Department of Pensions and Security, to the *William and Mary Law Review*, May 29, 1969.

II. PROJECTED IMPACT OF RESIDENCY REQUIREMENT ELIMINATION ON THOSE STATES DIRECTLY AFFECTED BY SHAPIRO

Section II presents statistical information and commentary concerning those states which have abolished residency as a requirement for welfare eligibility pursuant to the H.E.W. directive of June 3, 1969. To provide a comprehensive and meaningful study of the status of the individual states, and to present regional conditions where migration is most likely to occur, those states participating in this project have been grouped into common geographical areas.⁸⁶

The South

The projections from the southern states seem to reveal a consensus that there will be no significant impact in this sector following the Court's decision. The primary reason for this uniformity of opinion is that the relatively low assistance grants provided will discourage any increased movement of indigents into these states solely to receive more generous benefits. West Virginia is currently meeting 52 per cent of its basic needs in its federally subsidized public assistance programs.⁸⁷ In addition, the state has liberally construed its residency requirement for some time. Consequently, the Commissioner of the West Virginia Department of Welfare predicts no significant impact upon either its programs or the funding related to them.⁸⁸ South Carolina is in accord.⁸⁹ North Carolina has more emigration than immigration, and provides welfare-assistance payments for a reasonable time, not to exceed three months, for former residents who move to states which have not yet adjusted their policy.⁹⁰ Arkansas also expects to gain from the Court's decision. In the past, the state has had a policy of continued assistance of as long as five years to those who move to another state and cannot

86. New Hampshire was the only New England state in this category to participate in the survey. In the first two months since residency requirements have been eliminated in that state, there has been no dramatic effect on their caseloads nor has there been any noticeable increase in the number of applications. Letter from George E. Murphy, Director, Division of Welfare, New Hampshire Department of Health & Welfare, to the *William and Mary Law Review*, Sept. 3, 1969.

87. Letter from Edwin F. Flowers, Commissioner, West Virginia Department of Welfare, to the *William and Mary Law Review*, July 15, 1969.

88. *Id.*

89. Letter from Arthur B. Rivers, Director, South Carolina Department of Public Welfare, to *William and Mary Law Review*, Aug. 4, 1969.

90. Letter from Clifton M. Craig, Commissioner, North Carolina Department of Social Services, to the *William and Mary Law Review*, Aug. 1, 1969.

attain residency there.⁹¹ Arkansas also provides relatively low welfare grants⁹² and thus expects no movement of indigents into the state solely to secure higher benefits. The Commissioner observed, however, that recipients will move to other states not for the primary purpose of receiving larger assistance payments but usually to be near children or relatives.⁹³ The situation in Mississippi closely parallels that of Arkansas, and the state's welfare director stated that indigents come to Mississippi primarily because of a desire to be with relatives.⁹⁴

Virginia, as the Department of Welfare and Institutions had anticipated, has experienced a negligible impact since *Shapiro*. Table VIII gives the number and distribution of applications for public assistance in the commonwealth for June 1969.⁹⁵

TABLE VIII

STATUS	Total Applications	Old Age Assistance	Medical Assistance for the Aged	Aid to Dependent Children	Aid to the Permanently and Totally Disabled	General Relief	Foster Care	SERVICE ONLY	
								Child Welfare	Other
Pending first of month	5,260	576	157	1,510	1,274	670	28	49	996
Received during month	6,103	573	171	1,328	531	1,005	387	811	1,297
Percentage change from last month	+5.7	+13.0	+19.6	+3.4	+23.2	+8.2	+8.7	-3.3	+0.9
Percentage change from same month last year	+27.3	+60.1	+3.0	+54.4	+28.0	+33.3	+35.3	+11.7	+5.5
Total during month	11,363	1,149	328	2,838	1,805	1,675	415	860	2,293
Disposed of during month	5,974	532	177	1,215	458	986	373	818	1,415
Percentage change from last month	+0.2	+0.6	-0.6	-3.3	-1.3	+6.4	+5.7	-3.2	+0.5
Percentage change from same month last year	+26.0	+53.3	+17.2	+39.2	+19.3	+21.6	+31.8	+12.1	+21.6
Approved	4,684	375	145	756	197	792	371	816	1,232
Denied	1,290	157	32	459	261	194	2	2	183
Pending end of month	5,389	617	151	1,623	1,347	689	42	42	878
Percentage change from last month	+2.5	+7.1	-3.8	+7.5	+5.7	+2.8	+50.0	-14.3	-11.8
Percentage change from same month last year	+24.9	+31.3	-13.2	+29.1	+32.2	+13.3	+110.0	-36.4	+25.1

In the first month after removal of residency requirements, July 1969, the increase in accepted applications was not significant: thirty-seven

91. Letter from Len E. Blaylock, Commissioner, Arkansas Department of Public Welfare, to the *William and Mary Law Review*, June 23, 1969.

92. Arkansas in April 1968 was meeting 56 per cent of its basic ADC need. The maximum monthly aid payment for a family of four was \$90. U.S. NEWS & WORLD REPORT, May 5, 1969, at 33.

93. Letter from Len E. Blaylock, *supra* note 91.

94. Letter from Helen Rees, Director, Division of Public Assistance, Mississippi Department of Public Welfare, to the *William and Mary Law Review*, June 5, 1969.

95. BUREAU OF RESEARCH AND STATISTICS, VIRGINIA DEPARTMENT OF WELFARE AND INSTITUTIONS, XXX PUBLIC WELFARE STATISTICS, at 2 (June 1969).

cases were added which formerly would have been denied on the ground of inadequate residency in the state. During this same period, twenty-eight cases were dropped since the policy of continued eligibility for a twelve-month period after a recipient leaves Virginia was discontinued.⁹⁶ When this net increase is compared to the total case figure depicted in Table VIII, the impact since the Court's decision is made clear.⁹⁷

The Central States

The general feeling among the participating central states seemed to be that the *Shapiro* decision would have no appreciable impact in their area. Kansas is a rural state which pays reasonably adequate assistance benefits.⁹⁸ It has had experience with the removal of restrictions for inter-country transfers, and recognizes that young families may and probably will seek a change to receive ADC assistance. An initial flurry is expected, to be followed by a leveling out process.⁹⁹

The Nebraska welfare department predicts that the number of recipients they will add from within their own borders will be offset by the loss of those residents leaving the state.¹⁰⁰

Colorado's director of welfare foresees a possible impact on the state treasury, but points out that some of the impact will be negated by the transfer of current Colorado recipients living out of state.¹⁰¹

The Midwest

Minnesota statistics compiled in 1968 reveal that 91 applicants for categorical assistance were refused aid because of failure to satisfy the

96. Letter from George B. Minter, Information Director, Virginia Department of Welfare and Institutions, to the *William and Mary Law Review*, Sept. 15, 1969.

97. The following statement was adopted by the Virginia Board of Welfare and Institutions on July 25, 1969. It is intended to disseminate news of the Supreme Court's decision to Virginia residents.

Written notification of the change in requirements is to be given by September 3, 1969, to identifiable persons whose applications have been denied during the past year because of durational residence requirements.

Id.

98. According to April, 1968 figures, Kansas was meeting 100 per cent of its basic ADC need for a family of four. The maximum monthly ADC benefit allowed was \$237. *U.S. NEWS & WORLD REPORT*, May 5, 1969, at 33.

99. Letter from Marvin E. Larson, Director of Social Welfare, Kansas Department of Social Welfare, to the *William and Mary Law Review*, June 12, 1969.

100. Letter from E. D. Warnsholz, General Counsel, Nebraska Department of Public Welfare, to the *William and Mary Law Review*, July 21, 1969.

101. Letter from Charline J. Birkins, Director, Division of Public Welfare, Colorado Department of Social Services, to the *William and Mary Law Review*, June 19, 1969.

residency requirement. Minnesota officials do not see this as a significant amount.¹⁰² The state has a favorable balance between recipients living outside of Minnesota and those from other states living in Minnesota.¹⁰³ Consequently, it would seem that the state will lose more cases than it will gain. Other factors such as general relief recipients who did not meet Minnesota residency requirements, and the transfer of cases to categorical aid programs now that residency has been eliminated as a requirement, must also be taken into consideration.¹⁰⁴ In this respect, the county agencies would gain federal and state funds and not bear the total cost themselves. There will be some shifting of recipients between states and within the state itself, but the Court's ruling will not significantly alter Minnesota's welfare programs.

Ohio did not have the statistical information to project any effect on its welfare program. However, the Director reported that there were a few persons ineligible for assistance receiving medical care under a program where no residency was required.¹⁰⁵

Following the Court's decision, 381 cases were opened in Missouri which would not have met the former residency requirements.¹⁰⁶ Included in this figure were 154 cases opened which would not have been eligible for any type of assistance under former residency requirements.¹⁰⁷ These statistics reveal that many of the 381 new recipients were already present in Missouri prior to the Court's decision, and of the 154 cases which would not have been eligible for any program under

102. Letter from Morris Hursh, Commissioner, Minnesota Department of Public Welfare, to the *William and Mary Law Review*, June 27, 1969.

103. A current inquiry of our two larger urban counties indicates that for every OAA recipient from Minnesota living outside the state there are 72 recipients from other states living in Minnesota. On AFDC the ratio is 1 [sic] to 54, on Aid to the Disabled it is one to 52, and on Aid to the Blind it is one to one.

Id.

104. *Id.*

105. Letter from Denver L. White, Director, Ohio Department of Public Welfare, to the *William and Mary Law Review*, May 29, 1969.

106. Letter from Mr. Stokes and Mr. Stevenson to Proctor N. Carter, Welfare Director, Missouri Department of Public Health and Welfare, July 3, 1969, on file at the offices of the *William and Mary Law Review*.

107. Of the 154 cases opened which would not have been eligible under former durational residence requirements, 104 or 68 per cent were opened for OAA, 36 or 23 per cent for ADC, and 6 cases or 4 per cent for GR. Of these cases, 42 per cent had previous residence in a state bordering Missouri (including Arkansas 10 per cent, Illinois 10 per cent, and Kansas 8 per cent). . . . From states not bordering Missouri, 10 per cent had

former policy, a significant number were former residents of states affording higher benefits than Missouri. Table IX classifies by place of former residence the 154 new additions to the caseload.¹⁰⁸

It is also significant that after the change in residency policy, 85 welfare cases transferred from one program to another in order to

TABLE IX

State	OAA	ADC	PTD	GR	AB	BP	Unknown	Total
Alabama	1							1
Arizona	7							7
Arkansas	11	2		2				15
California	8	8						16
Colorado	3	1		1				5
Florida	2						1	3
Georgia				1				1
Idaho								0
Illinois	11	4						15
Indiana	1	1					1	3
Iowa	1	1					1	3
Kansas	9	4						13
Kentucky	6							6
Louisiana								0
Michigan	10	1		1				12
Minnesota								0
Mississippi	4	1	1					6
Montana								0
Nebraska	2	1					1	4
Nevada								0
New Mexico		1						1
New York		1		1				2
North Carolina								0
North Dakota								0
Ohio	1	3						4
Oklahoma	3	3						6
Oregon	3							3
Pennsylvania								0
South Carolina								0
South Dakota	3							3
Tennessee	3							3
Texas	9	1						10
Utah		1						1
Virginia								0
Washington	4	1						5
Washington, D. C.								0
West Virginia	1							1
Wisconsin		1						1
Wyoming	1							1
Undetermined	3							3
TOTAL	104	36	1	6	0	0	4	154

previous residence in California, 8 per cent in Michigan, and 6 per cent in Texas.

Id.

108. *Id.*

more closely meet their needs.¹⁰⁹ Removal of residency requirements, would seem therefore, to result in a more flexible system, better adapted to the specific needs of the individual.

Michigan has prepared, as of July 30, 1969, estimates for fiscal 1970 projecting total costs based on federal and state participation, number of cases, and case cost per month.¹¹⁰ This budget estimate was prepared with the assumption that there would be no residency requirements. Although Michigan could not predict the effect of the Court's decision, the preservation of the state budget predictability is noteworthy. Thus, at least preliminarily, a state can plan for the future without the fear of mass indigent immigration.

The Northwest

Montana is another state which expects to benefit from the removal of residency requirements. Montana's experience as a rural state subject to a mobile labor force, has shown that the prime motivating factor in the movement of welfare recipients is the proximity of friends and family.¹¹¹ Table X shows the results of a special report on changing of residency rules depicting the favorable balance of closures over openings.¹¹² While these initial figures may not be typical of the total effect, this general trend of an excess of closures over openings will continue.¹¹³ Of primary concern in Montana is the caseload increase in ADC, AD, and Medical Assistance programs. While it is expected that the change in residency will have little effect in the state, the welfare caseload is still increasing.¹¹⁴

Idaho is expected to experience both an increase in cost and recipients, particularly in ADC programs.¹¹⁵ ADC aid could double within the next three years, but for reasons unrelated to any mass migration theory. The Director of Adult Services and Eligibility foresees the in-

109. *Id.*

110. Letter from Ronald E. Fine, Director, Research and Program Analysis Division, Michigan Department of Social Services, to the *William and Mary Law Review*, July 30, 1969.

111. Letter from Thomas D. Egan, Research Analyst, Division of Statistics and Research, Montana Department of Public Welfare, to the *William and Mary Law Review*, Aug. 6, 1969.

112. DIVISION OF STATISTICS AND RESEARCH, MONTANA DEPARTMENT OF PUBLIC WELFARE, SPECIAL REPORT ON CHANGING OF RESIDENCE RULES (1969).

113. Letter from Thomas D. Egan, *supra* note 111.

114. *Id.*

115. Letter from Harold A. Taylor, Director, Adult Services and Eligibility, Idaho Department of Public Assistance, to the *William and Mary Law Review*, July 18, 1969.

TABLE X

New			Closed		
OAA.....	32	\$1,832	OAA.....	39	\$ 2,087
ADC.....	36	5,196	ADC.....	69	10,848
ANB.....	1	89	ANB.....	1	65
AD.....	5	271	AD.....	15	1,382
TOTAL..	74	\$7,388		124	\$14,382

crease due to the disregard of earned income, while the discontinuance of ADC aid when the mother becomes employed will not occur in many cases.¹¹⁶

Oregon and Washington were able to predict budget increases related to the change in residency policy. Oregon expects an increase as much as 6.5 billion dollars per biennium due to former rigid enforcement of residency requirements.¹¹⁷ The Washington estimate discloses that as much as ten million dollars more per biennium may be required, if current grant-in-aid procedures remain constant.¹¹⁸

The Far West

Nevada officials anticipate an increase in the total number of recipients for all categories due to a significant number of indigents already in the state waiting to meet the former residency requirements.¹¹⁹

New Mexico predicts no sudden or severe impact on the caseload. John G. Jasper, Executive Director of the Health and Social Services Department predicts that after the first year without residency requirements, immigration and emigration will balance.¹²⁰ This will tend to stabilize both cost and caseload. An information brief of May 3, 1968, indicates that New Mexico would have an increase in caseload of two to three per cent if residency requirements were to be eliminated.¹²¹

116. *Id.*

117. Letter from Mrs. Barbara J. Seymour, Administrative Assistant, Oregon Public Welfare Commission, to the *William and Mary Law Review*, June 19, 1969.

118. Letter from Sidney E. Smith, Director, Washington Department of Public Assistance, to the *William and Mary Law Review*, June 25, 1969.

119. Letter from John A. Cox, Chief, Staff Development, Welfare Division, Nevada Department of Health, Welfare and Rehabilitation, to the *William and Mary Law Review*, May 29, 1969.

120. Letter from John G. Jasper, Executive Director, New Mexico Health and Social Service Department, to the *William and Mary Law Review*, June 4, 1969.

121. RESEARCH AND STATISTICS SECTION, NEW MEXICO HEALTH AND SOCIAL SERVICE DEPARTMENT, INFORMATION BRIEF, May 3, 1968.

Utah will not experience a significant change in the number of recipients. Since the state's average monthly grant is sufficiently below the national average, immigration into Utah is unlikely.¹²² The Utah program, however, is presently taking notable and significant steps in the area of curative programs utilizing work incentives.¹²³ Although the state offers a progressive program, a mass indigent migration is not anticipated.

Residency Requirements and the Territories

Guam,¹²⁴ Puerto Rico,¹²⁵ and the Virgin Islands¹²⁶ have never imposed a durational residency requirement as a factor in determining eligibility for public assistance. Therefore, the Supreme Court's decision had no immediate effect in the territories. Puerto Rico and Guam are currently revising their welfare policy with the mandate of the *Shapiro* decision in mind. All three territories are very interested in the financial effects of the elimination of residency requirements, since the territories do not share in the federal funding program to the same extent as the states. Table XI presents comparative data as of June 30, 1968, listing the average grant per person in all federal categories.¹²⁷

TABLE XI

Category	Federal Maximum Average Payment Per Person	V. I. Average Payment	Federal Share	Federal Share Under Section 1118
Adult AFDC	\$37.50 10.00	\$40.00 28.50	\$18.75 9.00	\$20.00 14.25

An Increasing Urban Problem

While welfare programs long have been dealt with on a state level, urban welfare is becoming increasingly acute and deserves separate con-

122. Letter from John S. Lange, Director, Bureau of Research and Planning, Division of Family Services, Utah Department of Social Services, to the *William and Mary Law Review*, July 18, 1969.

123. *Id.*

124. Letter from Don A. Miller, Acting Social Services Administrator, Guam, to the *William and Mary Law Review*, July 23, 1969.

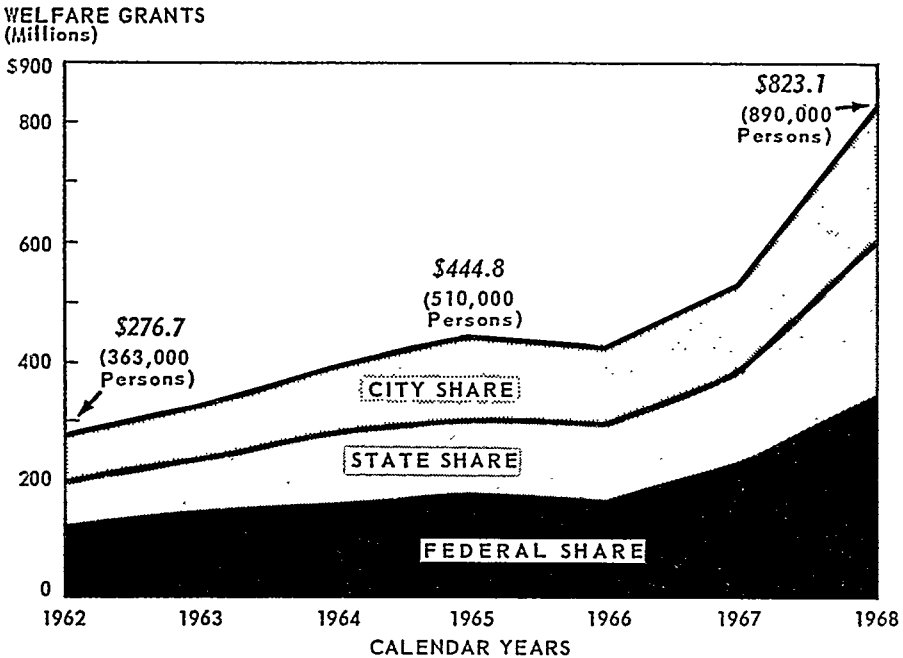
125. Letter from Abner Limardo, Chief Legal Advisor, Puerto Rico, Department of Social Services, to the *William and Mary Law Review*, Sept. 18, 1969.

126. Letter from Macon M. Berryman, Commissioner, Insular Department of Social Welfare, Virgin Islands, to the *William and Mary Law Review*, Aug. 11, 1969.

127. PUBLIC ASSISTANCE IN THE VIRGIN ISLANDS, REPORT BY MACON M. BERRYMAN, COMMISSIONER OF SOCIAL WELFARE, Feb. 1969, at 2.

sideration. In New York City, the caseload in December 1968 was composed of 361,000 cases or 942,000 persons.¹²⁸ The percentage of the city expense budget allocated to welfare and other services has risen sharply from 10.4 per cent in 1964-65 to 22.4 per cent in 1968-69.¹²⁹ Of greatest importance to the city treasury, the percentage of city-raised revenues comprising the local share of the welfare burden more than doubled from 4.5 per cent in 1962-63 to 11 per cent in 1968-69.¹³⁰ Table XII illustrates the magnitude of the welfare dilemma in New York City.¹³¹

TABLE XII
EXPENDITURES FOR WELFARE GRANTS
 NEW YORK CITY, 1962-1968



In Los Angeles, the preliminary 1969-70 budget stated that public assistance for the year would be provided to over 600,000 persons, one out of every twelve who live in the county, at a cost commanding 37

128. Letter from Natalie Jaffee, Director of Public Affairs, Human Resources Administration, New York City, to the *William and Mary Law Review*, June 11, 1969.

129. *Id.*

130. *Id.*

131. *Id.*

per cent of the total county budget.¹³² Caseloads in the ADC program are up 27 per cent over the current year.¹³³

In Connecticut, statistics reveal that the ADC caseload is a rapidly growing urban concern. In July 1968, 69.4 per cent of the ADC caseload was located in seven major central city areas which had 28.3 per cent of the total state population.¹³⁴ In a sample survey of ADC cases in Connecticut, 89.7 per cent of the caseload was located in a standard metropolitan area.¹³⁵ Finally, the city of Baltimore now has 68 per cent of the state of Maryland's public assistance caseload.¹³⁶ Thus, not only is welfare a national and state concern, but also a problem of the large metropolitan area. Big city budgets are being increasingly forced to bear the brunt of the welfare burden.

III. MORE VIGOROUS FEDERAL PARTICIPATION: THE REAL CONCERN OF STATE WELFARE PROGRAMS

As a consequence of the *Shapiro* decision, there has been renewed interest concerning the role of the federal government in assisting and funding state welfare programs. The variations in welfare payments throughout the states in the wake of increasing welfare costs and mounting welfare rolls are indicative of the inequity and inequality of the national system. State Welfare Department opinions concerning the degree of federal participation vary widely. Opinions ranged from 100 per cent federal financial participation in establishing a national minimal standard designed to guarantee a decent income for all individuals¹³⁷ to direct opposition to the setting of standards at the national level.¹³⁸ The general tenor of opinion of the states participating in this study is that the removal of residency requirements is only the first step towards a truly equitable and efficient welfare program. It must be followed by something more.

In pursuit of what the states themselves could foresee as the consequence of the elimination of durational residency requirements, information was solicited from state welfare departments concerning their views on the establishment of a national welfare system with national

132. *Id.*

133. *Id.*

134. CONNECTICUT DEPARTMENT OF WELFARE, XV PUBLIC WELFARE TRENDS FOR JULY-SEPTEMBER 1968, at 7.

135. *Id.*

136. Letter from John R. Schreid, *supra* note 64.

137. Letter from Morris Hursh, *supra* note 102.

138. Letter from E. D. Warnsholz, *supra* note 100.

minimal standards. The question was deliberately phrased to encourage the states to comment freely as to whether they approved or disapproved of increased federal participation in their own welfare programs, and to what degree. Table XIII summarizes the responses of those states which commented on this question. The near unanimity of these states in their desire for more expansive federal participation indicates the dissatisfaction with current federal funding practices. It further reveals the alarming concern of the individual states regarding the future viability of welfare in their states, as well as their ability to meet ever increasing welfare needs.

TABLE XIII¹³⁹

RESPONSES OF STATE WELFARE DEPARTMENTS
REGARDING THE ESTABLISHMENT OF A NATIONAL
WELFARE SYSTEM WITH NATIONAL MINIMAL STANDARDS

ALABAMA	[W]e are rapidly approaching the time when a national welfare program with national welfare standards will be the most satisfactory way of providing equity of treatment [to] needy people throughout the county. Ruben K. King, Commissioner, Department of Pensions and Security.
ARKANSAS	Arkansas will regard favorably the establishment of a national welfare program with national standards, provided the Federal government furnished any increased funds required. Len E. Blaylock, Commissioner, Department of Public Welfare.
CALIFORNIA	Minimum national standards may very well be in Secretary Finch's words "inevitable". However, we still believe that any program must maintain, to the fullest extent possible, the flexibility which comes from local control.

139. Table XIII includes opinions of State Welfare Departments who commented upon the establishment of a national welfare system with national minimal standards. It should be noted that the views presented are not always the views of the State Director or Commissioner, but are the opinions of those persons who responded to this question as well as the other statistical information embodied in this report.

John C. Montgomery, Director, Department of Social Welfare.

COLORADO

[Colorado] is on record for favoring an assistance program that at this time continues the current structure with the Federal Government establishing and funding a minimum assistance standard for each individual . . . , with matching funds on top of that, wherein the states might maintain their current level of funding. Charline J. Birkens, Director, Division of Public Welfare.

CONNECTICUT

The lack of Federally mandated standards causes a wide variation in public assistance benefits in the fifty states. Such variations range from granting a small percentage of a minimum subsistence standard in some of the poorest states to meeting 100% of basic needs on a more liberal standard in states like Connecticut, New York, New Jersey, and Massachusetts. Bernard Shapiro, Commissioner, State Welfare Department.

HAWAII

A national welfare program with national standards is a goal which the nation should strive for in order to raise the standard of assistance (living) throughout the United States so that all who need help will be treated equitably. . . . William G. Amory, Director, Department of Social Services.

ILLINOIS

Illinois has for many years advocated the establishment of national standards for all programs. Gershom Hurivity, Assistant to the Director, Department of Public Aid.

KANSAS

[W]e see [the establishment of a national welfare program with national standards] taking place some time in the future. [T]he elimination of durational residence requirements will speed up the process and . . . is

definitely a step in the right direction. Marvin E. Larson, State Director of Social Welfare.

KENTUCKY

We think such national [welfare] standards may have some merit. . . . Merritt S. Dertz, Jr., Commissioner, Department of Economic Security.

**CITY OF
LOS ANGELES**

Needs of the poor must be met, but on a national standard of benefits established by the Federal Government in concert with all fifty states. James S. Mize, Executive Officer, Board of Supervisors, County of Los Angeles.

MAINE

No [consistent program] can be expected without either additional Federal matching money or a totally different approach to the welfare system. Robert O. Wyllie, Director, Bureau of Social Welfare.

MARYLAND

[E]limination of residence requirements should have been accompanied by a nationwide floor with respect to public assistance allowances. Raleigh C. Hobson, Director, State Department of Social Services.

MINNESOTA

[Minnesota] favors the establishment of federal standards for maintenance grants at a level that would provide a decent income to people in need. [F]ederal financial participation should be 100% of that minimal standard. [T]he money payment provisions of the programs of Old Age Assistance, Aid to the Disabled and Aid to the Blind [should] be transferred to the Social Security System and the Public Welfare System [should] be expected to broaden its social service programs. Morris Hursh, Commissioner, Department of Public Welfare.

MISSISSIPPI

If [by a national welfare system is meant] the placing of a floor under the grants and the imposing of Federal standards of assistance, it

will of course be necessary for additional funds to be given to the poorer states in order to enable us to put such increased standards for basic maintenance into effect. Helen Rees, Director, Division of Public Assistance.

MONTANA

What we need is more money. . . . The 1967 Amendments to the Social Security Act mandated substantial increases in expenditures for the States, without any corresponding increases in Federal expenditures. Thomas D. Egan, Research analyst, Division of Statistics & Research.

NEBRASKA

[Nebraska is] opposed to . . . setting standards at the national level. [I]t is more practicable to have this done on the local level due to variations in living costs because of climate, custom, and prices. E. D. Warnsholz, General Counsel, Department of Public Welfare.

NEW HAMPSHIRE

Our consensus is that national welfare programs with national standards is [sic] desirable and necessary to lift the burden of welfare costs of states and municipalities and to permit the latter to concentrate on greater prevention and rehabilitation. Geoge E. Murphy, ACSW, Director, Division of Welfare.

NEW MEXICO

Since federal law and subsequent HEW regulations impose more and more administrative restrictions on the states, and yet do not result in equitable reimbursement to the nation's poor, it would seem that the recipient would certainly benefit from the establishment of a national welfare program with national standards. John G. Jasper, Executive Director, Health & Social Services Department.

NEW YORK CITY

[T]he welfare problem is national, rather than local, in scope and origin and therefore requires approaches that are national in scope and origin—national minimum standards of

eligibility and financial assistance, emanating from a Federal financial and administrative structure. Mitchell I. Ginsberg, Administrator N.Y.C., Human Resources Administration.

NEVADA

The present method of Federal funding does not induce states that have funding problems to initiate and maintain adequate assistance payment programs. John A. Cox, Chief, Staff Development, Department of Health, Education & Welfare.

NORTH CAROLINA

The elimination of durational residence requirements would seem to make it imperative that a national standard be set. Clifton M. Craig, Commissioner, Department of Social Services.

OHIO

[T]he elimination of residency requirements makes it important for the country to establish at least a minimum welfare program in every state. This, of course, does not mean just a question of standards but also a question of eligibility. Denver L. White, Director, Department of Public Welfare.

OREGON

Our governor has publicly endorsed the proposal of Governor Nelson Rockefeller of New York that Federal block grants to states for Public Assistance be made with nationally established standards from which states could deviate only upon demonstrating actual price differences from the national average. Mrs. Barbara J. Seymour, Administrative Assistant, State Public Welfare Commissioner.

PENNSYLVANIA

[A more vigorous system of federal standards] would be very helpful and productive and in many ways [is] to be desired. Thomas W. Georges, Jr., M.D., Secretary, Department of Public Welfare.

RHODE ISLAND

We have added approximately 1,000 families in each of the last 3 years to our Public Assistance caseload. This growth factor is such as to require modifications in the Federal approach to welfare assistance, calling for at least increased Federal participation in the assistance provided such families, if not total federalization insofar as cash assistance and administrative services are concerned. Anthony P. Trivisono, Director, Department of Social Welfare.

UTAH

Perhaps this [the development of pre-professional and work incentive programs by states which would not otherwise afford them] is one reason why a national welfare program with national standards would have merit. A state such as Utah could not possibly afford to finance programs of this type. Garth T. Harrison, Manager, Public Information Services.

WASHINGTON

Besides the inequity of the present federal-state system in its treatment of the poor differentially as a result of the lack of national standards, the present system must also bear the burden as a contributive factor in the development of several other national social problems. Honorable David J. Evans, Governor (May 9, 1969—A statement presented to The President's Commission on Income Maintenance Programs).

WISCONSIN

[T]here has in the past been considerable complaint that people were moving to Wisconsin to take advantage of our aid program. [T]his probably has little merit insofar as a number of cases are concerned. . . . Therefore, a set of standards on a national level would seem to be highly desirable. Frank Newgent, Administrator, Division of Family Services.

VIRGIN ISLANDS

We are deeply interested in the possible establishment of a nation-wide welfare program having national standards. We would hope, however, that such a program would not carry over the discriminating features existing in the present program. Macon M. Berryman, ACSU, Commissioner, Insular Department of Social Welfare.

CONCLUSION

A durational residency requirement is no longer a criterion to be utilized in the determination of whether an indigent meets the qualifications for a categorical assistance program. By abolishing a requirement that can only be termed primitive and outmoded in our modern mobile society, the Supreme Court's decision in *Shapiro v. Thompson* has enunciated the principle that welfare eligibility should be based on need and specific minimal factors inherent in the particular category involved. No arbitrary or discriminatory criteria are to be employed in determining eligibility.

Attempts to warrant the imposition of residency requirements cannot be justified on the grounds of any mass migration theory. Statistics presented in this study reveal that no mass migration of welfare-seeking indigents has occurred, nor is expected to occur in those states directly affected by the Court's decision. Those participating states which expect an initial flurry of caseload additions, also predict that the increase will reach a constant level in the near future. The evidence presented tends to prove that the lower income groups will change residence for various reasons, and not solely to seek higher assistance benefits.

Rather than any significant migration into the state, the state reports exhibit a deeper and more uniform interest over the addition of indigents already present in their state. Even with the change in former eligibility policy, indigents will continue to seek residence in other states for the same reasons they always have. Whether the indigent was present in the state for one year or one month, he was there, even though prevented from receiving assistance through the device of a residency requirement.

The elimination of residency requirements is the initial step in the realization of a program, more closely related to the original objectives of a welfare system—relief to the needy, maintaining and strengthening

family life, and the achievement of self-support.¹⁴⁰ The phenomenon that indigents did shift from one program to another more suitable to their individual requirements is indicative of the evolution of a capable and efficient system. The availability of budgets and cost increase projections for fiscal 1970 shows that even with the elimination of residency, budget predictability has been preserved. Lower administrative costs¹⁴¹ in many instances coupled with the lack of a significant migration of welfare-seekers tends to promote state fiscal integrity.

The mass migration theory is a myth when viewed in light of recent state statistics, and affords no justification for the imposition of durational residency requirements. The interest generated in the possibility of this migration becoming a reality, however, has served to bring to the surface the real concern behind the residency requirement controversy. What the states are faced with are increased demands upon a system that was not designed or structured to cope with the needs of today.

Welfare is an increasingly urban problem, with the result that the more populous states with large metropolitan centers are particularly susceptible to rapidly expanding welfare demands. New York City, without the availability of residency requirements, has experienced nearly a 200 per cent increase in financing its welfare assistance over the last four years.¹⁴² The statistics embodied in this study reveal that the welfare burden does not fall only on the populous states, but on every state regardless of population or geographical location.

The *Shapiro* decision represents a forthright affirmance of the accepted phenomenon that our social welfare system must be changed to meet the increasing needs of the future. "The general consensus appears to be that our present welfare system conceived in the thirties has not only failed to solve our poverty problem but has actually made the problem worse in many ways."¹⁴³ The clear majority of the states do not advocate a drastic and complete change, but there exists firm support for the proposition that our present system must undergo modifications and improvements to provide a progressive, contemporary program of assistance. This two-fold state dilemma of rising costs and caseload administered through an antiquated system on the national level points to

140. 42 U.S.C. § 601 (1964).

141. See 51 IOWA L. REV. *supra* note 7, at 1083-84.

142. TIME, Oct. 3, 1969, at 18.

143. PUBLIC WELFARE TRENDS FOR APRIL-JUNE 1968, *supra* note 66, at 3.

the ultimate state concern: greater and more vigorous federal participation.

The nation-wide elimination of durational residency requirements has presented the states with a potent weapon to achieve a national welfare system with national minimal standards.

The Supreme Court has taken the first step towards the establishment of an equal and uniform welfare system in the country. The fear of a mass indigent migration has been discounted; the false sense of protectionism of state programs through residency requirements has been dismissed. The primary concern of the states rests with the modernization and re-structuring of the welfare system through increased federal participation. The *Shapiro* decision and the controversy engendered by it have served to apply pressure on the federal government to take the next step: a national welfare system implemented through national minimal standards.

MICHAEL E. KRIS