VLANDIS v. KLINE
412 U.S. 441 (1973)

MR. JUSTICE STEWART delivered the opinion of the Court.

Like many other States, Connecticut requires nonresidents of the State who are enrolled in the state university system to pay tuition and other fees at higher rates than residents of the State who are so enrolled. The constitutional validity of that requirement is not at issue in the case before us. What is at issue here is Connecticut's statutory definition of residents and nonresidents for purposes of the above provision.

Section 126 (a)(2) of Public Act No. 5 provides that an unmarried student shall be classified as a nonresident, or "out of state," student if his "legal address for any part of the one-year period immediately prior to his application for admission at a constituent unit of the state system of higher education was outside of Connecticut." With respect to married students, § 126 (a)(3) of the Act provides that such a student, if living with his spouse, shall be classified as "out of state" if his "legal address at the time of his application for admission to such a unit was outside of Connecticut." These classifications are permanent and irrebuttable for the whole time that the student remains at the university, since § 126 (a)(5) of the Act commands that: "The status of a student, as established at the time of his application for admission at a constituent unit of the state system of higher education, shall be his status for the entire period of his attendance at such constituent unit." The present case concerns the constitutional validity of this conclusive and unchangeable presumption of nonresident status from the fact that, at the time of application for admission, the student, if married, was then living outside of Connecticut, or, if single, had lived outside the State at some point during the preceding year.

Appellees brought suit contending that § 126 of Public Act No. 5 infringed their rights to due process of law and equal protection of the laws, guaranteed by the Fourteenth Amendment to the Constitution.

The appellees do not challenge the option of the State to classify students as resident and nonresident students, thereby obligating nonresident students to pay higher tuition and fees than do bona fide residents. The State's right to make such a classification is unquestioned here. Rather, the appellees attack Connecticut's irreversible and irrebuttable statutory presumption that because a student's legal address was outside the State at the time of his application for admission or at some point during the preceding year, he remains a nonresident for as long as he is a student there. This conclusive presumption, they say, is invalid in that it allows the State to classify as "out-of-state students" those who are, in fact, bona fide residents of the State. The appellees claim that they have a constitutional right to controvert that presumption of nonresidence by presenting evidence that they are bona fide residents of Connecticut.

Statutes creating permanent irrebuttable presumptions have long been disfavored under the Due Process Clauses of the Fifth and Fourteenth Amendments. The State proffers three reasons to justify that permanent irrebuttable presumption. The first is that the State has a valid interest in equalizing the cost of public higher education between Connecticut residents and nonresidents, and that by freezing a student's residential status as of the time he applies, the State ensures that its bona fide in-state students will receive their full subsidy. The State's objective of

cost equalization between bona fide residents and nonresidents may well be legitimate, but basing the bona fides of residency solely on where a student lived when he applied for admission to the University is using a criterion wholly unrelated to that objective. A student may be a bona fide resident of Connecticut even though he applied to the University from out of State. Thus, Connecticut's conclusive presumption of nonresidence, instead of ensuring that only its bona fide residents receive their full subsidy, ensures that certain of its bona fide residents do *not* receive their full subsidy, and can never do so while they remain students.

Second, the State argues that even if a student who applied to the University from out of State may at some point become a bona fide resident of Connecticut, the State can nonetheless reasonably decide to favor with the lower rates only its established residents, whose past tax contributions to the State have been higher. According to the State, the fact that established residents or their parents have supported the State in the past justifies the conclusion that applicants from out of State -- who are presumed not to be such established residents -- may be denied the lower rates, even if they have become bona fide residents.

Connecticut's statutory scheme, however, makes no distinction on its face between established residents and new residents. Rather, the State purports to distinguish between residents and nonresidents by granting the lower rates to the former and denying them to the latter. In these circumstances, the State cannot now seek to justify its classification of certain bona fide residents as nonresidents, on the basis that their residency is "new."

Moreover, § 126 would not always operate to effectuate the State's asserted interest. For it is not at all clear that the conclusive presumption required by that section prevents only "new" residents, rather than "established" residents, from obtaining the lower tuition rates. For example, a student whose parents were lifelong residents of Connecticut, but who went to college at Harvard, established a legal address there, and applied to the University of Connecticut's graduate school during his senior year, would be permanently classified as an "out of state student," despite his family's status as "established" residents of Connecticut. Similarly, the appellee Kline may herself be a "new" resident of Connecticut; but her husband is an established, lifelong resident, whose past tax contribution to the State, under the State's theory, should entitle his family to the lower rates. Conversely, the State makes no attempt to ensure that those students to whom it does grant in-state status are "established" residents of Connecticut. Any married person, for instance, who moves to Connecticut before applying to the University would be considered a Connecticut resident, even if he has lived there only one day. Thus, even in terms of the State's own asserted interest in favoring established residents over new residents, the provisions of § 126 are so arbitrary as to constitute a denial of due process of law.

The third ground advanced to justify § 126 is that it provides a degree of administrative certainty. The State points to its interest in preventing out-of-state students from coming to Connecticut solely to obtain an education and then claiming Connecticut residence in order to secure the lower tuition and fees. The irrebuttable presumption, the State contends, makes it easier to separate out students who come to the State solely for its educational facilities from true Connecticut residents, by eliminating the need for an individual determination of the bona fides of a person who lived out of State at the time of his application. Such an individual determination, it is said, would not only be an expensive administrative burden, but would also be very difficult to make, since it is hard to evaluate when bona fide residency exists. Without

the conclusive presumption, the State argues, it would be almost impossible to prevent out-of-state students from claiming a Connecticut residence merely to obtain the lower rates.

The State's interest in administrative ease and certainty cannot, in and of itself, save the conclusive presumption from invalidity under the Due Process Clause where there are other reasonable and practicable means of establishing the pertinent facts on which the State's objective is premised. In the situation before us, reasonable alternative means for determining bona fide residence are available. Indeed, one such method has already been adopted by Connecticut; after § 126 was invalidated by the District Court, the State established reasonable criteria for evaluating bona fide residence for purposes of tuition and fees at its university system. These criteria, while perhaps more burdensome to apply than an irrebuttable presumption, are certainly sufficient to prevent abuse of the lower, in-state rates by students who come to Connecticut solely to obtain an education.

In sum, since Connecticut purports to be concerned with residency in allocating the rates for tuition and fees in its university system, it is forbidden by the Due Process Clause to deny an individual the resident rates on the basis of a permanent and irrebuttable presumption of nonresidence, when that presumption is not necessarily or universally true, and when the State has reasonable alternative means of making the determination. Rather, standards of due process require that the State allow such an individual the opportunity to present evidence showing that he is a bona fide resident entitled to the in-state rates. Since § 126 precluded the appellees from ever rebutting the presumption that they were nonresidents of Connecticut, that statute operated to deprive them of a significant amount of their money without due process of law.

We are aware, of course, of the special problems involved in determining the bona fide residence of college students who come from out of State to attend that State's public university. Our holding today should in no wise be taken to mean that Connecticut must classify the students in its university system as residents, for purposes of tuition and fees, just because they go to school there. Nor should our decision be construed to deny a State the right to impose on a student, as one element in demonstrating bona fide residence, a reasonable durational residency requirement, which can be met while in student status.[1] We fully recognize that a State has a

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[1] In *Starns* v. *Malkerson*, 326 F. Supp. 234 (Minn. 1970), the District Court upheld a regulation of the University of Minnesota providing that no student could qualify as a resident for tuition purposes unless he had been a bona fide domiciliary of the State for at least a year immediately prior thereto. This Court affirmed summarily. 401 U.S. 985 (1971). Minnesota's one-year durational residency requirement, however, differed in an important respect from the permanent irrebuttable presumption at issue in the present case. Under the regulation involved in *Starns*, a student who applied to the University from out of State could rebut the presumption of nonresidency, after having lived in the State for one year, by presenting sufficient other evidence to show bona fide domicile within Minnesota. By contrast, the Connecticut statute prevents a student who applied to the University from out of State, or within a year of living out of State, from ever rebutting the presumption of nonresidence during the entire time that he remains a student, no matter how long he has been a bona fide resident of the State for other purposes.

legitimate interest in protecting and preserving the quality of its colleges and universities and the right of its own bona fide residents to attend such institutions on a preferential tuition basis.

We hold only that a permanent irrebuttable presumption of nonresidence -- the means adopted by Connecticut to preserve that legitimate interest -- is violative of the Due Process Clause, because it provides no opportunity for students who applied from out of State to demonstrate that they have become bona fide Connecticut residents. The State can establish such reasonable criteria for in-state status as to make virtually certain that students who are not, in fact, bona fide residents of the State, but who have come there solely for educational purposes, cannot take advantage of the in-state rates. Indeed, such criteria exist; and since § 126 was invalidated, Connecticut has adopted one such reasonable standard for determining the residential status of a student.

We hold that the permanent irrebuttable presumption of nonresidence violates the Due Process Clause of the Fourteenth Amendment.

MR. JUSTICE WHITE, concurring in the judgment.

I concur in the judgment because Connecticut, although it may legally discriminate between its residents and nonresidents for purposes of tuition, here invidiously discriminates among classes of bona fide Connecticut residents. The State has only the most attenuated interest in terms of administrative convenience in maintaining this bizarre pattern of discrimination among those who must or must not pay a substantial tuition to the University. The discrimination imposed by the State is invidious and violates the Equal Protection Clause.

MR. CHIEF JUSTICE BURGER, with whom MR. JUSTICE REHNQUIST joins, dissenting.

I find myself unable to join the action taken today because the Court in this case strays from what seem to me sound and established constitutional principles in order to reach what it considers a just result in a particular case; this gives meaning to the ancient warning that "hard cases make bad law." The Court permits this "hard" case to make some very dubious law.

A state university today is an establishment with capital costs of many millions of dollars of investment. Its annual operating costs likewise may run into the millions. Parents and other taxpayers willingly carry this heavy burden because they believe in the values of higher education. It is not narrow provincialism for the State to think that each State should carry its own educational burdens. Until we redefine our system of government -- as we are free to do by constitutionally prescribed means -- the States may restrict subsidized education to their own residents. This much the Court recognizes and it likewise recognizes that the statutory scheme under review reasonably tends to support that end.

Commendably, the Court has tried to cast the opinion in the narrowest possible terms. The Court categorizes the Connecticut statutory classification as a "permanent and irrebuttable presumption"; it explains that this "presumption" leads to unseemly results in this and other isolated cases; and it relies upon the State's stopgap guidelines for determining bona fide residency to demonstrate that "the State has reasonable alternative means of making the crucial

determination." This is the language of strict scrutiny. Distressingly, the Court invalidates Connecticut's statutory scheme without explaining why the statute impairs a genuine constitutional interest truly worthy of the standard of close judicial scrutiny.

There will be, I fear, some ground for a belief that the Court now engrafts the "close judicial scrutiny" test onto the Due Process Clause whenever we deal with something like "permanent irrebuttable presumptions." But literally thousands of state statutes create classifications permanent in duration, which are less than perfect, as all legislative classifications are, and might be improved on by individualized determinations so as to avoid untoward results produced due to very unusual facts. The doctrinal difficulties of the Equal Protection Clause are indeed trying, but today the Court makes an uncharted drift toward complications for the Due Process Clause comparable in scope and seriousness with those we are encountering in the equal protection area. The urge to cure every disadvantage human beings can experience exerts an inexorable pressure to expand judicial doctrine. But that urge should not move the Court to erect standards that are unrealistic and indeed unexplained for evaluating the constitutionality of state statutes.

MR. JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE and MR. JUSTICE DOUGLAS join, dissenting.

Believing as I do that the Connecticut statutory scheme is a constitutionally permissible means of dealing with an increasingly acute problem facing state systems of higher education, I dissent.

This country's system of higher education presently faces a serious crisis, produced in part by escalating costs of furnishing educational services and in part by sharply increased demands for those services. Because state systems have available to them state financial resources that are not available to private institutions, they may find it relatively easier to grapple with the financial aspect of this crisis. But for this very reason, States have generally felt that state resources should be devoted, at least in large part, to the education of children of the State's own residents, and that those who come from elsewhere to attend a state university should have to make a more substantial contribution toward the full costs of the education they would receive than the all but nominal tuition required of those who come from within the State.

One way to accomplish such a differentiation would be to make the tuition differential turn on whether or not the student was a "resident" or "nonresident" of the State at the time tuition is paid. The Court, at least by implication, concedes that such a differentiation would violate no command of the Constitution, but even a casual examination of how such a plan would operate indicates why it did not commend itself to the Connecticut Legislature. The very act of enrolling in a Connecticut university with the intention of completing a program of studies leading to a degree necessitates the physical presence of the student in the State of Connecticut. Additional indicia of residency, by which the Court apparently sets great store -- obtaining a Connecticut motor vehicle registration or driver's license, registering to vote in Connecticut -- impose no significant burden on the out-of-state student in comparison with the thousands of dollars he will save in tuition and fees during the pursuit of a four-year course in undergraduate studies. Thus, what the Court concedes to the States in the way of distinguishing between resident and nonresident students is all but useless in making students who come from out of State pay even a

portion of their fair share of the cost of the education that they seek to receive in Connecticut state universities.

The system to which Connecticut has turned is one that limits the subsidy that is afforded to those who pay in-state tuition to those who resided in Connecticut at the time of applying for admission, and whose residence in Connecticut did not result from their desire to attend the state universities. Some such plan must be devised by any State that wishes to differentiate between those who have paid taxes to the State over a period of years in order to support the university, and those who have simply come to the State in order to attend the university. Since institutions of higher learning are not built in a year or in a decade, such a distinction strikes me as entirely rational, and I do not understand the Court to hold otherwise.

Understandably, any such general principle will have a number of specific applications that appear to diverge from the principle that the State is attempting to enforce. But the fact that a generally valid rule may have rough edges around its perimeter does not make it unconstitutional under the Due Process Clause of the Fourteenth Amendment

Throughout the Court's opinion are found references to the "irrebuttable" presumption as to residency created by the Connecticut statutes. But a fair reading of these laws indicates that Connecticut has not chosen to define eligibility for a state-subsidized education in terms of "residency" at the moment that the applicant seeks admission, but instead has insisted that the applicant have some prior connection with the State of Connecticut independent of the desire to attend a state university. Meaningful differentiation between children of families who have supported the state educational system by payment of taxes, and children from families who have not done this, would be impossible if the test were residency as of the date of admission, or the date on which tuition is due, at least as the Court enunciates such a test. But this is not what Connecticut tried to do, and, as I read the Court's opinion, Connecticut is not limited to the imposition of such an easily circumvented test. For the Court reaffirms *Starns* v. *Malkerson*, 326 F. Supp. 234 (Minn. 1970), aff'd, 401 U.S. 985 (1971), in which the State of Minnesota had by regulation provided that no student could qualify as a resident for tuition purposes unless he had been a bona fide domiciliary of the State for at least a year immediately prior thereto. A regulation such as Minnesota's enables the State partially to maintain the distinction that Connecticut has sought to protect here. The Court indicates that the critical distinction between the Minnesota regulation and the Connecticut statute is that the Minnesota regulation operated to fix nonresidency only for the first year of attendance at the university while Connecticut's endures for four years. This is admittedly a factual difference, but one may read the Court's opinion in vain to ascertain why it is a difference of constitutional significance.

The Court's invalidation of the Connecticut plan is quite inconsistent with doctrines of substantive due process that have obtained in this Court for at least a decade, and to which I would continue to adhere.