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In the  
**Supreme Court of the United States**

JOHN W. VLANDIS,  
Director of Admissions,  
The University of Connecticut,

Appellant,

v.

MARGARET MARSH KLINE  
and  
PATRICIA CATAPANO,

Appellees.

No. 72-493

Washington, D. C.  
March 20, 1973

Pages 1 thru 43

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JOHN W. VLANDIS,  
Director of Admissions,  
The University of Connecticut.

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No. 72-493

Appellees.

Washington, D. C.,

Tuesday, March 20, 1973.

The above-entitled matter came on for argument at  
10:13 o'clock, a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States  
WILLIAM O. DOUGLAS, Associate Justice  
WILLIAM J. BRENNAN, JR., Associate Justice  
POTTER STEWART, Associate Justice  
BYRON R. WHITE, Associate Justice  
THURGOOD MARSHALL, Associate Justice  
HARRY A. BLACKMUN, Associate Justice

APPEARANCES :

JOHN G. HILL, JR., ESQ., Assistant Attorney General  
of Connecticut; for the Appellant.

JOHN A. DZIAMBA, ESQ., Tolland-Windham Legal Assistance, Inc., 746 Main Street, P.O. Box D, Willimantic, Connecticut 06226; for the Appellees.

C O N T E N T SORAL ARGUMENT OF:PAGE

John G. Hill, Jr., Esq.,  
for Appellant

3

In rebuttal

37

John A. Dziamba, Esq.,  
for Appellees

19

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments first in No. 72-493, Vlandis against Kline and others.

Mr. Hill, you may proceed.

ORAL ARGUMENT OF JOHN G. HILL, JR., ESQ.,

ON BEHALF OF THE APPELLANT

MR. HILL: Thank you, Your Honor.

Mr. Chief Justice, may it please the Court:

The named appellant in this case is John Vlandis, who is the Director of Admissions at the University of Connecticut.

The appellees were both students at the time of the bringing of this action, and what they seek to question is the constitutionality of a Connecticut general statute setting an out-of-State differential in tuition for students, and they particularly single-in on a line of the statute which states that once the out-of-State status has been determined, the student shall maintain the status for the balance of his or her attendance at the institution of higher education.

I would point out that although the word "permanent" is used throughout the briefs, and in the record below, the statute is not permanent in the complete sense, in that a student originally out-of-State may still come in to Connecticut before applying for admission; and at that time gain in-State status.



So I think what we've really got here is something more than permanent, I think what is really being argued is a durational test for tuition differentials. Now, this is the point that is specifically brought up on the amicus briefs that were filed by the University of Washington and also by the Civil Liberties Union of Ohio.

I think that is the real question that is here before the Court; namely, what durational test can a State place in making this discrimination as to in-State or out-of-State?

It's a question of considerable importance. One analyst estimates that some 300 to 400 million dollars may be at stake for State-supported institutions of higher education.

I think my particular problem, that I have to persuade the Court as to, is whether or not the Court's decision in Dunn v. Blumstein should be expanded to cover an out-of-State tuition situation rather than voting rights. And it's this I'm going to address myself to, because I think this is the particular question that I have to meet.

QUESTION: Well, in Dunn v. Blumstein, if he's there over the period of time, he's then eligible to vote.

MR. HILL: That is correct, Your Honor. This is according to --

QUESTION: But here, if he -- how long can you stay in college in Connecticut? Does it run up to a Ph.D.?

MR. HILL: Yes, Your Honor. Yes. A Ph.D. is offered.

QUESTION: So if a person enrolls in the university and the next day becomes a citizen and the next year votes, he's still a non-resident for seven years, so far as the university is concerned; isn't that correct?

MR. HILL: Well, Your Honor, that isn't the way it's been interpreted. Actually it's been interpreted that there could be a break after the award of a degree. But your principle is correct, Your Honor. That once he is established, say, he comes to the University of Connecticut, he's a freshman, if he's classified out-of-State to begin with, he's going to remain out-of-State.

QUESTION: And if he gets elected Mayor of the town of New Haven, he's still a nonresident?

MR. HILL: That is correct, Your Honor.

QUESTION: Then, how in the world do you justify that?

MR. HILL: Your Honor, I justify it on this basis: Dunn v. Blumstein set up a formula that applied to voting rights, it was almost a mechanistic formula, it said: any durational resident's requirement triggered this consuming State interest standard. A standard which -- I have to agree with the Chief Justice's words in that case -- is almost an insurmountable obstacle for the State to meet.

But I think it's fair for the State -- for this Court to limit the judgment in Dunn v. Blumstein to a voting situation or, as it did in Shapiro, to a welfare situation. I think we're talking about something different when we're talking about a tuition differential.

We're not trying to say in this case that the person cannot establish residency for voting purposes. We're not saying he can't establish it for purposes of receiving welfare, as Shapiro was based. What we are saying is that the Court ought to look to the nature of the right that is affected.

In this case it's the right to receive a subsidized education on the part of the State.

QUESTION: Well, you've just told us what you're not saying, and that's helpful; but, on the other hand, unless I'm mistaken, your brothers on the other side are not saying, either, that a State university may not charge a differential, a higher tuition of nonresidents than it does of residents. It's attacking only the definition. Isn't that fair?

MR. HILL: Well, I think it's a little more than that, Your Honor. I think what they're saying is that the State can't classify them for that four-year period. And I'm saying that really what we've got here is a durational requirement; because the person can establish residency, as long as they're not attending the institution.

QUESTION: Well, a nonmarried student would have to live for a solid year in Connecticut before applying, --

MR. HILL: That is correct, Your Honor.

QUESTION: -- as I understand your definitions; and a married student would have to be in Connecticut at the time he or she applied.

MR. HILL: That's correct. And I don't think that presents any particular hardship. What that means --

QUESTION: Well, that's your argument, I know. But just so that I can understand the issue, because it's not all that clear to me, I had thought that your opponents did not say, did not question the right of the Connecticut State Universities to charge a higher tuition of bona fide non-residents than they do of residents.

MR. HILL: They do not.

QUESTION: But they do attack the presumption that once a nonresident always a nonresident.

MR. HILL: They do.

QUESTION: And the inability of anybody to prove he actually is a bona fide resident of Connecticut, --

MR. HILL: That's right, sir.

QUESTION: -- at some stage in the game.

MR. HILL: They claim that they should have the opportunity to show changed circumstances.

QUESTION: Yes.

MR. HILL: And what I am arguing is that under the rational basis test this, what amounts to a one-year waiting period, is a rational approach for the State to take to help finance the system of higher education. Because we're not talking about even the out-of-State person deferring the entire cost of his education, this is still heavily subsidized by the State; and I think this is true in every State.

But what I am arguing is that this is a reasonable judgment for the Legislature to make, this is a reasonable way to approach the problem. And I think it's the same principle that --

QUESTION: How is it conceivable to say that the Mayor of New Haven is not a resident?

MR. HILL: He's not a resident for tuition purposes, Mr. Justice. We're not saying that he's not a resident, that he can't have all the other privileges of citizenship.

QUESTION: Well, assume that my hypothetical Mayor of New Haven is also a multimillionaire and is paying his taxes regularly.

MR. HILL: Well, I think the argument there, Mr. Chief Justice, -- Mr. Justice, is that --

QUESTION: Well, you say this is rational; I want to see how rational it is.

MR. HILL: All right. If --



QUESTION: How can it be rational that a man can never change his resident status? What's rational about that?

MR. HILL: What's rational is that the State is seeking to support higher education, and it in effect divides the students into two classes: out-of-State and in-State; and it does say --

QUESTION: I respectfully disagree. It draws a line between people who are outside of the State and people who are inside of the State. I'm talking about the one who becomes a resident the day after he is -- matriculates.

MR. HILL: Yes, sir, that is correct. And if that person wants --

QUESTION: Do you discriminate between the person who has matriculated as resident for one day -- is that right?

MR. HILL: That -- well, of course, you're taking the example --

QUESTION: Against those who have been a resident for a year.

MR. HILL: That is correct.

QUESTION: And what rationalization is there for that?

MR. HILL: Because the Legislature wanted to draw a line. The line it chose to draw was this one-year residence duration.

Now, this is not as --

QUESTION: Well, could that be rational for one

year's tuition or rational for seven years' tuition?

MR. HILL: My point is, Your Honor, any time this person wants to -- any time your Mayor of New Haven wants to establish residency for tuition purposes, all he has to do is withdraw from the university, and that indicates that he is not in the State purely for purposes of getting State education; he then puts in his year, while he's not a student, and then he can qualify and have all the privileges of education that the State offers.

This is a way to make a differentiation between people who are out-of-State and in-State.

QUESTION: But your rationalization after the year, whether he's in the State or out of the State, is not a rationalization that I can understand.

MR. HILL: Well, let me try it a different way.

QUESTION: I can understand that for the one year, he's a nonresident student for that one year.

MR. HILL: Well, the presumption -- what the statute really operates on, if I can read the legislative intent correctly, is that there is a presumption that the person who comes in to the State and attends an institution of higher education is here not to become a bona fide resident of the State, but to secure the advantages of public education.

QUESTION: Don't you think the State of Connecticut thinks that that's such a wonderful State, everybody will want

to stay there?

MR. HILL: Well, Your Honor, I would hope they would think that. But I think -- what I'm arguing here is what I think was the intent of the Legislature in passing this Act. And I think that was the design of it.

Not to necessarily discourage people from coming in, but saying they will not be subsidized. Recently arrived students -- this is the important thing -- recently arrived students will not receive the same subsidy as those who have been in the State for a longer period of time. And --

QUESTION: I think a really constitutional analysis of this might be promoted if we forget about residents and nonresidents and just -- the question is, whether or not the State can create the categories that you've just described; that a person, when he applies and is admitted to a State university in Connecticut, is a nonresident, can Connecticut say that no matter whether or not he later becomes a bona fide resident for every other purpose, nonetheless for this purpose we categorize him as a person who has to pay a higher tuition.

MR. HILL: That is the issue, Your Honor.

QUESTION: That's really it, isn't it?

MR. HILL: Yes, Your Honor, that is the issue.

QUESTION: I think maybe when we talk about residents for other purposes, we cloud the analysis a little bit.

MR. HILL: Very well. Then I won't talk about residents for other purposes.

QUESTION: Well, I'm just suggesting that, and for me, at least, it helps.

MR. HILL: All right, then I will zone-in on the particular question that we have here, and that is for educational purposes only.

This statute does not affect any other rights of citizenship, it does not affect voting, it does not affect the welfare; it is tied into a modest differential in tuition for out-of-State students. And this is the argument that I would make today, that State-supported education does not fall in the same category.

I think there has been a whole line of cases, that I've cited in my brief, that recognizes this.

And I would urge that the Court, in analyzing this factual situation, judge it by the rational basis test. And I think this is an example -- there are a whole number of statutes across the country on this basis; amicus brief is one of them, from the State of Washington.

It allows each State to meet its own educational situation in its own way. It lets each State be free to experiment with this type of statute. Many of them say you can't because -- that once an out-of-State always an out-of-State, as long as you are taking less than, say, six or nine --

more than six or nine credits at the institution.

Again, it's an attempt to differentiate between those who are coming in for educational purposes and those who are really exercising their right to travel. And it is admittedly an imperfect method of discrimination in the statute. Almost any type of classification has its imperfections.

I would argue that this statute is not so imperfect as to fail to satisfy the rational basis test. I have cited in the brief the expenses of education, the number of out-of-State students that are in Connecticut, the effect that this will have on the burgeoning State budget in education. And I would urge the Court to consider it in that context, because that's really the context we're talking about: How are the States going to finance their systems of higher education?

I would submit that the method adopted by Connecticut, which in effect is a year's durational requirement, is a reasonable approach to that very serious problem.

QUESTION: How much -- do you have any idea how much of the cost of education in Connecticut public institutions of higher learning is financed by the Federal Government?

MR. HILL: No, I don't, Your Honor. I know it has a --

QUESTION: Ten percent, twenty percent?

MR. HILL: It varies. At the University of



Connecticut it would be higher.

QUESTION: Be twenty-five percent?

MR. HILL: It could well be twenty-five percent.

That is correct.

QUESTION: Well, what about the justification of foreclosing the Federal subsidy to out-of-Staters? I mean you are --

MR. HILL: They would have the benefit of that subsidy at the institution -- at where they qualify.

QUESTION: Yes, but they're paying more for it.

MR. HILL: I'm afraid I don't understand your question, Mr. Justice.

QUESTION: Well, let's assume that all of the subsidy that you say is -- just assume that all of the subsidy you say students get at the University of Connecticut were furnished by the Federal Government; assume that it all was.

MR. HILL: That it all was? Oh, then I'd have a very difficult argument.

QUESTION: You certainly would, wouldn't you?

MR. HILL: But that is not the case.

QUESTION: Well, let's assume half of it is.

MR. HILL: I think I have figures here in my brief, where I cite that even the out-of-State student is subsidized more than half of the cost of his education, even though the government --

QUESTION: Yes, that's what I thought. Half of that half is perhaps government money?

MR. HILL: Some of it may well be Federal Government money in the form of all sorts of grants; that is correct. But --

QUESTION: Mr. Hill, didn't I understand one of your, or what I thought your response to Justice White's first question to be that, say, if a student from Colorado goes to Connecticut, the Connecticut rule may deny him the benefit of the federally subsidized Connecticut education, but presumably the State education in Colorado is also subsidized by the Federal Government, so that he would be entitled to --

MR. HILL: Really that was the answer -- yes, that was the answer I was trying to make. I don't mean to be facetious, but everybody has to be somewhere, and if the student -- as in this case, Mrs. Kline made her application, she had a choice at that time whether she could be a resident of either Arizona or California or Connecticut.

Now, if she chose to go to Connecticut, I say she gets that out-of-State status. But she could have moved into Connecticut and applied, because she was married and she would not be faced with this present situation.

This means the student himself has to make a choice before his application of what institution he's going to

attend. If he's going to attend Colorado and he wants in-State status, -- and Colorado's is fairly similar to ours -- he would have to move to Colorado, establish that status, and then he would receive the benefits of it. If he lived in Colorado to begin with and he wanted to go to Connecticut, he would have to pay the differential.

It means the student at the time of his application has status in one particular State and is unable to change it. Except by moving. The mere fact of admission and signing up to vote in the new State would not do it.

QUESTION: Suppose the student went to Connecticut and enrolled in a private college, attended that college for one year, maintaining his residence there, of course, then he'd meet the eligibility standard of the Connecticut statute to move to a State university the next year.

MR. HILL: He certainly would, Mr. Chief Justice. That's exactly my point. This is not an absolute bar to a person that's obtaining in-State status. It's a durational type thing, it's an effort by the State to make a reasonable classification between in- and out-of-State.

QUESTION: Well, in that hypothetical case, then the person might or might not. If he were the son of parents living in Chicago, who were paying all his expenses, and if he were driving a car with Chicago license plates, and went back for every vacation and spent the summers back home in

Illinois, he wouldn't have become a resident.

MR. HILL: Of course not, and he shouldn't.

QUESTION: Well, isn't that more or less a typical student, at least --

MR. HILL: Oh, I don't think so today, Your Honor. I think more often you would find --

QUESTION: Well, most of them have living parents, and who go home for vacations, and who retain their --

MR. HILL: Well, a good number of them don't, Mr. Justice.

QUESTION: Well, maybe a number of them don't, but isn't it therefore a question of fact in each case, whether a person has actually become a resident of the place where he's going to college?

MR. HILL: Under the example that the Chief Justice gave, that would be a question of fact. If this were a student who, say, went to Trinity College in Hartford, and spent every summer and every vacation --

QUESTION: And went home for Christmas.

MR. HILL: Right. -- he would not have --

QUESTION: And that home was, say, back in Chicago, he wouldn't be a resident of Connecticut.

MR. HILL: Right. He would not have established the bona fides necessary; that's correct.

QUESTION: Your response to my hypothetical, then,

included the proposition that in attending Yale or some other private school in Connecticut, he had also taken all the other steps to establish legal residence --

MR. HILL: Yes, sir; that's correct, Mr. Chief Justice.

QUESTION: -- and then probably, I suppose it would be fair to say that most of the students who come to a university like Yale do not establish a residence for other purposes.

MR. HILL: Most of the undergraduates do not. Most of the graduate students do, interestingly enough. Most of them do establish a year-round residence and many of them that come to Connecticut come to establish a residence ahead of time, so that they can have the benefit of this in-State tuition.

But you're -- as far as undergraduates go, that is correct, most do not, most go home for the summer.

In conclusion, I would only urge the Court to consider that the fundamental legal proposition behind this, that this really I think is a case for a rational basis approach, rather than the compelling State interest. I am willing to acknowledge again that the compelling State interest gives me an obstacle which I don't think can be overcome.

On the rational basis --



QUESTION: Has it ever been overcome on that basis, that you know of, or --

MR. HILL: Not to my knowledge, Mr. Justice.

QUESTION: -- where the court begins by saying that we must find a compelling State interest, has the State ever won a case?

MR. HILL: Not that I know of, and that's why I didn't pursue that argument, I wouldn't take up the Court's time with it.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Hill.

Mr. Dziamba.

ORAL ARGUMENT OF JOHN A. DZIAMBA, ESQ.,

ON BEHALF OF THE APPELLEES

MR. DZIAMBA: Mr. Chief Justice, and may it please the Court:

I'd like to begin by responding to Mr. Justice Stewart's question and the Chief Justice's hypothetical as to the student going to Yale. Under Mr. Hill's answer, he said the student would not qualify under the present Connecticut statute unless he cloaked himself with other indicia of bona fide residence. However, I don't think that that's an accurate response, because under the present statute there is nothing he would have to do. He would not have to cloak himself with any indicia of residence; he would

just merely have to show that he lived in Connecticut for one year before he applied to a State university. He would be accepted, and he would be accepted as an in-State student.

QUESTION: Well, the statute talks in terms of legal address. Legal address.

Now, that doesn't say domicile or residence.

MR. DZIAMBA: Well, I think --

QUESTION: Maybe the student's legal address was at some number in Yale station, and maybe it was on some street out in Chicago, Illinois --

MR. DZIAMBA: Yes, but there would not, under the statute, Mr. Justice Stewart, there would not be a factual inquiry. The student would assert his legal address as being Box 22 at Yale or Trinity, or even if he were living in an apartment as Chapel Street in New Haven; that would be accepted, there would be no individual examination of other than --

QUESTION: But the test is legal address, whatever that may mean.

MR. DZIAMBA: Whatever that may mean. And I assume that under the statute whatever is asserted would be accepted.

The troubling part about this case is that -- I'd like to put it into perspective. First of all, that we're not dealing with college students as college students; we're dealing with individuals who happen to be in the particular stage in their life afflicted with the status of being college

students.

What I'm trying to say is that I don't think that this Court need evolve any particular and unique constitutional test for the bona fide of residence of individuals just because they happen to be students; that rational criteria exist and are easily applied in any factual situation to establish the bona fidea of residency.

For instance, --

QUESTION: But Connecticut says, We're not interested in the test -- in the ordinary conventional, traditional legal test of domicile or residence; instead of that we're going to make different categories. Whether or not a person later becomes a resident, we don't care. We're just going to say we're not dealing with individuals, we're dealing with many large groups, and for administrative convenience we're just going to say that a person who, when he applies to our State university, applies from outside of Connecticut, we're going to charge a higher tuition to that person so long as he attends our State university, whether or not he ever becomes a resident or doesn't.

MR. DZIAMBA: I don't think --

QUESTION: Now, that's the question in this case: whether Connecticut can do that.

MR. DZIAMBA: I think that --

QUESTION: Quite apart from any normal, traditional

concepts of common-law residence or domicile.

MR. DZIAMBBA: Well --

QUESTION: Isn't that the question?

MR. DZIAMBBA: No, I really don't think so, Mr. --

QUESTION: Well, why not?

MR. DZIAMBBA: -- Justice Stewart.

QUESTION: Reading the statute, that's what it says.

MR. DZIAMBBA: Because in the proper justifications by the State for adopting that statute they cite two reasons; they say the statute has to be this way because it gives us an administratively easy way of establishing the student's domiciliary intent. That's why they say they have to have it.

Secondly, they say that it allows cost equalization between those people who are contributing to the tax basis of the State of Connecticut and those that aren't.

QUESTION: Well, they make a presumption that an applicant from out-of-State probably has not been contributing to the tax basis of Connecticut until he -- before that time. Now, that may be a presumption in an individual case that's contrary to the fact. But the question is, can they constitutionally make such a presumption?

MR. DZIAMBBA: I don't think so, because as a result --

QUESTION: Well, that is the question.

MR. DZIAMBBA: -- as a result of that presumption --

QUESTION: Isn't that the question?

MR. DZIAMBA: Well, I still don't think that's the question. But if I may answer --

QUESTION: All right.

MR. DZIAMBA: As a result of that presumption, a student is not allowed, an individual is not allowed to show that he is contributing to the tax basis of the State.

QUESTION: Well, you're answering the question, but what I am asking is: what is the question in this case? It's not --

MR. DZIAMBA: The question is --

QUESTION: -- a matter of residence or nonresidence, is it, it's a matter of --

MR. DZIAMBA: Well, I think it is, as framed --

QUESTION: -- it's a matter of: can Connecticut have this particular law, constitutionally?

Now, isn't that it, to put it very simply?

MR. DZIAMBA: Yes, I think that may be the issue, but I think that the reasons the State says it needs this law, and what it is trying to accomplish by having this law, have to be taken into consideration. What they say is that the law allows us to determine the student's domiciliary intent and allows cost equalization.

If I may cite an example: cost equalization is not a -- contributing to the State tax basis is not an insurance type program. For instance, in Connecticut there are 2,000



out-of-State students in the University of Connecticut, and there are 16,000 total students. The total budget of the University of Connecticut is between 45 and 47 million dollars a year.

The sales tax and use tax, which are the primary sources of income in the State of Connecticut, produce an annual revenue of \$325 million a year. The gasoline tax produces an annual revenue of \$60 million a year. The cigarette tax -- I'm sorry, the cigarette tax produces an annual revenue of \$60 million a year. In a recent --

QUESTION: Isn't the gasoline tax restricted to the roads?

MR. DZIAMBA: As a highway tax?

QUESTION: Yes.

MR. DZIAMBA: Yes, Your Honor.

QUESTION: So what's that got to do with this case?

MR. DZIAMBA: I put it into perspective merely in showing the Court that the --

QUESTION: You're not putting it, you're throwing it!

MR. DZIAMBA: -- that in the total operating budget, and in the amount of money that it would cost the University, one of the arguments proffered by the State, and also in terms of cost equalization, anyone who is in Connecticut, who is either driving a car or buying merchandise is in fact

contributing to the cost, to the tax basis of the State.

QUESTION: Mr. Dziamba, do you attack the basic constitutional right of the State of Connecticut's universities and colleges to charge a higher tuition to bona fide nonresidents than they do to bona fide residents?

MR. DZIAMBA: No, Mr. Justice Stewart.

QUESTION: Well, then, what's all this about? Because a bona fide nonresident, certainly while he's in the State, uses the roads and pays the gasoline taxes and so on. But I didn't think you were making that attack.

MR. DZIAMBA: No, we're not. But I think that -- the attack is this: Mrs. Kline, for instance, who is the named appellee in the case, did not come into the State primarily for education. It was incidental. And as a result of that incidental, she's being penalized to the extent that she has to pay for the rest of her remainder at the university, she must pay twice the tuition.

What we're attacking is that the State has the right to adopt the differential between those who are bona fide residents and those who are not. It's the freezing in that status that we say violates very fundamental constitutional rights.

QUESTION: Mr. Dziamba, would you concede that a -- that the State of Connecticut could restrict its State-supported institutions to residents of the State?

MR. DZIAMBA: Are you indicating citizen's bona fide residence?

QUESTION: No, not necessarily; residents of the State.

MR. DZIAMBA: I think that's a very difficult question, and one that is, first of all, not presented by the facts of this case. And I think that it would have to be analyzed in terms of the standards already set down by this Court, and that is, the State may have a special public interest it wants to protect. But as the amicus points out in his table 1, a lot of that money comes from Federal funds. That there would have to be a clear showing, I think, in the record, first of all, as to what evil the State is trying to protect itself against by limiting a State benefit only to residents of that State.

QUESTION: It need not be to protect itself against any evil, but just what purpose is the State trying to accomplish; and that would be very obvious, it's trying to give a higher education to its residents, being a sovereign State.

MR. DZIAMBA: But it's the determination of who is a resident, which is the issue in the case.

QUESTION: Well, that's quite a different question. That's a wholly different question from the one Justice Blackmun asked you.

QUESTION: Mr. Dziamba, --

MR. DZIAMBA: Yes, sir.

QUESTION: -- isn't this kind of a classical case of the Legislature saying: from the existence of Fact A the existence of Fact B will be conclusively presumed. And when you're discussing the constitutionality of that, you don't discuss necessarily Fact B, or the relation between Fact B and Fact A, you discuss whether or not the Legislature can properly require the existence of Fact A. Because it says that one follows from the other.

I mean, that's more or less, I think, what Justice Stewart is saying.

MR. DZIAMBA: Well, I think that a legislative presumption that has no basis in fact is one that would not be allowed.

QUESTION: No, but you meet that by saying what the Legislature has in fact required is unconstitutional. That the particular law in Connecticut that is drawn here is unconstitutional, and it doesn't necessarily -- wouldn't necessarily turn, I would think, on other notions of residency.

MR. DZIAMBA: Well, I again come back to responding to Mr. Justice Stewart's question; but I think that that is the point. I think that the statute has to be analyzed, not only in what it says, but in the proffered purposes.

QUESTION: Well, getting back to whether or not they have to admit -- whether they could exclude nonresidents. Suppose Connecticut said the universities are open only to residents of the State of Connecticut, and I'm a resident of the State of Hawaii, and they refuse me admittance. Now, what constitutional right would I assert?

MR. DZIAMBA: Well, I think, first of all, Mr. Justice Marshall, those are not the facts presented in this case. But the question then would be, first of all, how do you establish residency? How can --

QUESTION: Well, I want to know what constitutional points you're talking about. What right do I, as a nonresident, have to go to the University of Connecticut?

MR. DZIAMBA: As a nonresident?

QUESTION: Yes, sir.

What constitutional --

MR. DZIAMBA: I think, Your Honor, that that is a different legislative judgment than the one made here. The legislative judgment made here is that you do have a right. Connecticut has not excluded -- you do have a right, but you, must pay more. That, I think, is the issue.

Connecticut has not gone that far, and I would not attempt to assess definitively the constitutional opinions of going that far.

QUESTION: Well, then you agree that maybe Connecticut



could do that?

MR. DZIAMBA: I would not say -- I'd say you'd have to look at the circumstances, at the amount, the degree of discrimination against whom they were trying to keep out, why? The Federal Government has recognized that education is a large problem shared by all of the States. I think these are all considerations that this Court has used in other types of situations, and I think that they would be employed to assess the constitutionality of this.

QUESTION: Well, do you say that this regulation is unreasonable? What is your point? The present regulation --

MR. DZIAMBA: The present regulation is unreasonable in that it does not allow a change in status.

QUESTION: But if Connecticut could exclude all people except its own residents, then would it not follow that it can allow nonresidents to come in on any terms that Connecticut wants to establish?

MR. DZIAMBA: I think, Mr. Chief Justice, that --

QUESTION: You don't seriously question that Connecticut could exclude all nonresidents from attendance on any terms, do you?

MR. DZIAMBA: I think, Mr. Chief Justice, the question is: How do you determine residence? And is that determination --

QUESTION: Well, that's a factual question.

MR. DZIAMBBA: -- a rational --

QUESTION: That's our difficulty with this argument, we're blending factual with the constitutional principle --

MR. DZIAMBBA: Yes, I understand.

QUESTION: You do concede that: that Connecticut could say, We're going to run our institutions of higher learning only for the people who live here.

MR. DZIAMBBA: No, I don't concede that.

QUESTION: Oh, you don't?

MR. DZIAMBBA: No, I don't. I say that that has to be examined --

QUESTION: I see.

MR. DZIAMBBA: -- on the particular basis in the record that Connecticut would put forth why they need that particular exclusion, just as --

QUESTION: Well, what provision of the Constitution would prohibit Connecticut from excluding all nonresidents?

MR. DZIAMBBA: I think that the privileges and immunities clause would prohibit them from excluding all nonresidents, unless they showed -- unless they could show a particular reason why and substantiate it in the basis and fact on the record. I think the issue in this case is: how do you establish residency? How do you define residency? And is that a rational definition of residency? And then, how do you establish that residency?

I think that what happened in this case since the invalidation of the statute by the lower court is very instructive, and that is that Connecticut has adopted adequate criteria and, as they say, that each case -- they say that each case is a question of domicile. The present standard that they have now. And that each case must be decided on its own particular facts, and that in reviewing the claim for reclassification --

QUESTION: That's the standard, the new standard?

MR. DZIAMBA: The new standard.

QUESTION: Since the decision --

MR. DZIAMBA: Since the decision.

QUESTION: -- of the District Court?

MR. DZIAMBA: Of the District Court.

QUESTION: Right. That's the Attorney General's opinion?

MR. DZIAMBA: The Attorney General's opinion, yes.

QUESTION: Right.

MR. DZIAMBA: And that relevant criteria for determining that status, in-State or out-of-State, resident or nonresident, A or B, include year-round residence, voter registration, place of filing tax returns, property ownership, driver's license, Connecticut registration, marital status, vacation employment. And that under the present system a student comes in and fills out an affidavit, and they ask him:

What is your parents' address? Who has custody of you, if your parents are separated? What is your age? What is your address? What is your marital status? All high schools and colleges that you've attended, with their addresses. Military service, periods of service. Voter registration; driver's license; automobile registration.

And provides that falsification of this will be grounds for expulsion.

I think, Mr. Justice Stewart, in all candor, that this is the objective of the State. It's not to say "only for State residents" or "only for Connecticut residents", but it's to determine who is a bona fide resident of the State.

And I think this point is borne out by the appellant's own brief, by stating again that the reason that this particular irrebuttable presumption is adopted is to allow the State to have facility in determining the student's domiciliary intent and to effect some type of cost equalization between those people who are contributing to the tax basis and those that are not.

Our position is that there is no reason for such a drastic irrebuttable presumption; that adequate criteria exist, as this Court has well recognized, and not limited merely to the issues of voting or welfare, but that if this is the objective of the State, we must take the State at its word; and if this is the objective of the State, that it must pursue

rational criteria to do that.

QUESTION: But when you have an irrebuttable presumption, you're no longer dealing with a method of proving something else, you're dealing with something that is itself a substantive requirement, aren't you?

MR. DZIAMBA: Well --

QUESTION: I mean Connecticut hasn't said that what we're really interested in here is residence; but we're going to require it to be proved in a certain way. As Justice Stewart has indicated, it has said that whatever residence may mean for other things, the requirement to get into Connecticut universities, and pay in-State tuition, are A, B, and C. And those are themselves substantive requirements.

MR. DZIAMBA: Yes, and I think that those requirements are unconstitutional, then, in that they effect a penalty on the right to travel.

I think that that's a proper analysis.

QUESTION: May I ask a question in that connection?

Your brief, in terms of constitutional analysis, is based, as your last statement indicates, on a restriction on the right to travel. You have agreed that a State may charge a higher fee for a person entering the State for the first time to attend its universities than to a person who has lived there, say, all his life.

MR. DZIAMBA: If that person -- excuse me, if that



person does not intend to become a resident of the State.

QUESTION: Oh, --

MR. DZIAMBA: Bona fide nonresident, yes.

QUESTION: Well, let's assume for the moment a bona fide nonresident. But the day he arrives, he's confronted by a very wide differential in fee, say five times as high. The day he arrives, he says, I want to become a student of Connecticut from now on.

MR. DZIAMBA: A resident, you mean?

QUESTION: A resident, yes.

So far as his right to travel is concerned, would that not be restricted, perhaps not as great as you suggest in this case, but, nevertheless, it would be a substantial restriction on his right to travel.

MR. DZIAMBA: In terms of --

QUESTION: Even though he said, I do want to become a citizen as of today and from now on.

MR. DZIAMBA: Yes. Yes. Then I think that the individual inquiry is the one that's going to bring out his reason.

QUESTION: But you come back basically to whether or not there is a restriction on the right to travel; that's your constitutional basis?

MR. DZIAMBA: Yes. I think that there is a restriction on the right to travel for those citizens who also find

themselves students, those bona fide residents of the State of Connecticut. I think that a student who comes in to Connecticut and says, I don't care about your State, I don't care about remaining in the State, I want the benefit of the tuition, and therefore I declare myself a Connecticut resident. I think that presents a vastly different -- I think the right to travel is one which has always been -- recently I would say -- connected with establishing bona fide domicile; a new start; a new life; a life with one's husband. As Mrs. Kline did in this case. Her husband was a lifelong resident of the State of Connecticut.

QUESTION: But Connecticut says he can do everything, including becoming the Mayor of Hartford. They don't interfere with any of that. That's Connecticut's story.

MR. DZIAMBBA: Well, I think that --

QUESTION: You can become a resident and you get a right to vote and a right to run for public office and, incidentally, a right to pay taxes; you get all those rights.

MR. DZIAMBBA: Sure. And you don't get any reduction in that obligation, either.

QUESTION: But I don't see where your argument covers that. He gets all of the rights except this one.

MR. DZIAMBBA: Well, he's also bearing all of the burdens. And that is that he doesn't get a reduction in his sales and use tax --

QUESTION: Well, Connecticut interferes with my right to travel at least twice a year, I have to pay gasoline tax when I got through; but I mean that's --

MR. DZIAMBA: Well, that's going through, that's not staying there to live.

QUESTION: Well, I stay there sometimes.

MR. DZIAMBA: But you don't consider Connecticut your home.

QUESTION: I'm wondering about your putting all of your eggs into the right-to-travel basket. That's what I'm worried about.

MR. DZIAMBA: Well, I think that the statute is inform, i.e., under the rational basis test, given the proffer of purposes by the State.

QUESTION: Well, are you going to get to the unreasonable and irrational point any time in your argument?

MR. DZIAMBA: I thought I covered that, Mr. Justice Marshall, by saying that the State has put forth the reasons why it needs this particular restriction.

QUESTION: Well, that's the State interest point. What's the unreasonable point?

MR. DZIAMBA: The unreasonable point, I think, is that there is no way of establishing residency for that particular purpose. And I think that that's unreasonable.

That if you are a bona fide resident of the State of

Connecticut for any and all purposes, and you're paying all the benefits -- you're paying all the burdens of taxation, why that particular benefit, why not exclude you from the hospitals? Why not exclude you from the State highways? Why not exclude you from the public libraries?

I think the State has to show a rational reason why they want to exclude a bona fide, new bona fide resident from that particular State benefit. And I don't think the State has sustained that burden here.

Thank you, Mr. Chief Justice.

MR. CHIEF JUSTICE BURGER: Mr. Hill, do you have anything further?

REBUTTAL ARGUMENT OF JOHN G. HILL, JR., ESQ.,

ON BEHALF OF THE APPELLANT

MR. HILL: I would just make one brief comment, Your Honor.

And it really -- I'm not rearguing the legal points in this; I think some of the questions pointed up some of the seriousness of this problem, and the effects of it.

If States are not allowed some latitude, I fear what might very well happen is that each State might adopt such stringent prohibitions or restrictions on admission of out-of-State students that they may very well lose the heterogeny of a university, which it really requires. And I think this is just a policy issue that I would bring to the Court's

attention.

QUESTION: How many States have the same statute as Connecticut?

MR. HILL: I don't think any has exactly the same.

QUESTION: Well, how would this case affect all the other States? If no other State has the statute but Connecticut.

MR. HILL: I think most States do have durational requirements, Mr. Justice; they don't have them specifically like Connecticut's. If you look at the amicus brief from the University of Washington, I think you'll find there they have a one-year limitation. I think --

QUESTION: But it doesn't apply forever. Isn't Connecticut --

MR. HILL: It applies as long as they are taking -- the student is taking less than six credits at the State institution.

QUESTION: What other State has it?

MR. HILL: All I -- North Carolina has it; Arizona has it; Nebraska has it, I cited the Nebraska case in my brief; California has it; your Starns vs. Malkerson, Minnesota has it. I think most of the States have a durational requirement for --

QUESTION: Most of the States have a statute that says that this is determined as of the day you go in there, and



it can never be changed?

MR. HILL: It can never be changed as long as the student is in attendance at the institution, taking a certain number of credits.

QUESTION: Well, that wasn't true in the Starns situation, was it?

MR. HILL: Yes, Your Honor, I think it was. I think in the University of Minnesota, as long as they are taking less than six credits they cannot establish residency.

I may be wrong. I'm quite sure that's the case in --

QUESTION: Well, Mr. Hill, tell me, suppose a family moves to Connecticut, they have two children, one of them applied to the University of Connecticut before they moved there, and he was admitted. The family moves with him, to Connecticut. Their second child is a senior in high school. So the older child, who goes in the University of Connecticut, is charged the out-of-State fee for four years, I take it, he has to be --

MR. HILL: That's correct.

QUESTION: -- under the law. The student who goes a year to high school there, the family lives there, and he enters the next year, he pays in-State fees; right?

MR. HILL: That's correct.

QUESTION: Now, tell me then, what's the explanation

between those two --just under the equal protection clause --  
rationalization --

MR. HILL: You have put your finger specifically  
on the part of this statute where there are problems raised.  
This is the specific type of thing where there is a hardship;  
and I recognize it is --

QUESTION: Well, it isn't -- my point is --

MR. HILL: Any classification --

QUESTION: Well, it's a hardship, but how about  
its constitutionality?

MR. HILL: I think it's constitutional on the  
grounds that this is a reasonable method for classification.  
Any type of classification is going to bring up fringe  
cases where there are hardships. I don't know how this can  
be avoided. And you've picked up one that has occurred to me.  
And it hasn't come up practically, but it occurs to me this is  
a hardship.

But I think this is true of any type of classifica-  
tion. I can't think of one --

QUESTION: Well, this is a -- the one in this case  
is a woman who is married to a Connecticut man; is that right?  
And he pays in-State fees and she pays out-of-State fees,  
no matter how long she lives there?

MR. HILL: She would have had no hardship, except  
she was caught while the law was in a period of flux. All that

the Klines had to do was move to Connecticut and she could apply, and she would have been granted in-State status. There's no problem there.

She was caught, because at the time when she first applied the Act was still pending. That's the only reason why Mrs. Kline was in trouble.

QUESTION: So she applied as a single woman, from out-of-State?

MR. HILL: I --

QUESTION: And then almost -- very soon thereafter married and moved to Connecticut.

MR. HILL: That's correct.

QUESTION: Those are the facts. It's a very similar case to Justice White's hypothetical case.

MR. HILL: But had she married before moving to Connecticut, there would have been no problem.

QUESTION: Exactly.

MR. HILL: She would have been admitted.

QUESTION: Exactly.

MR. HILL: No problem at all.

But I do recognize the worth of your example; this is one of the hardships, I agree with --

QUESTION: But the woman who married -- the other couple, who were married before they moved there, that woman gets in-State fees; right?

MR. HILL: I'm sorry, Your Honor?

The woman who --

QUESTION: Mrs. Vlandis [sic] doesn't get in-State tuition because she applied as a single woman; is that it?

QUESTION: No, she's from out-of-State.

MR. HILL: No, no.

QUESTION: Applied from out-of-State as a single woman?

MR. HILL: At the time -- well, no, this is what is interesting, Your Honor. She attended the University of California as an in-State resident.

QUESTION: Yes?

MR. HILL: And presumably could have continued to do so.

QUESTION: Yes?

MR. HILL: But she chose to go to Connecticut.

QUESTION: Yes?

MR. HILL: This was the point I was trying to respond to yours and, I think, Justice Rehnquist's question. Everybody has to be somewhere. She was a resident of California at that time, and I think she was then given that status.

QUESTION: But if she had married and moved to Connecticut before she applied --

MR. HILL: She would have been all right.

QUESTION: -- and been there one day --

MR. HILL: That's correct.

QUESTION: But she applied from out-of-State.

MR. HILL: That's correct.

QUESTION: Then that's a --

MR. HILL: Well, it's not so bad, you see, if you stop to think, she could --

QUESTION: Maybe that's --

MR. HILL: No, Your Honor, please. -- she could have applied to seven or eight State institutions, and then wait -- and then said, Well, I think I'll go to this one. And then come in and try to establish in-State status. This statute prevents that type of situation.

QUESTION: Yes.

QUESTION: I suppose your answer, in part, is that it's like paying your income tax one day late, you get a penalty for it because of the arbitrary classification.

MR. HILL: All classifications have to be drawn at some point. On either side of that, you're going to find difficult situations.

I thank the Court.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.  
The case is submitted.

[Whereupon, at 10:57 o'clock, a.m., the case was submitted.]