The Burger Court Opinion Writing Database

Vlandis v. Kline
412 U.S. 441 (1973)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University

No. 72-493 - Vlandis v. Kline

MR. CHIEF JUSTICE BURGER, 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 "do justice" in a particular case; this is an example of 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 op costs likewise may run into the millions. Parents and other taxpayers willingly carry this heavy burden because they believe the values of higher education. It is not narrow provincialism the state to think that each state should carry its own educatio burdens. Until we redefine our system of government -- as we free to do by constitutionally prescribed means -- the states ma restrict subsidized education to their own residents. This much the Court recognizes and it likewise recognizes that the statutor scheme under review reasonably tends to support that end.

Commendably, the Court has tried to cast the opinion in the narrowest possible terms, but it seems none the less to accomplis a transferrence of the elusive and arbitrary "compelling state inter

Printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-493

John W. Vlandis, Director of Admissions, the University of Connecticut, Appellant, *v.* Margaret Marsh Kline and Patricia Catapano.

On Appeal from the United States District Court for the District of Connecticut.

[June —, 1973]

MR. CHIEF JUSTICE BURGER, 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, but it seems none the

To: Mr. Justice Douglas
Mr. Justice Brennan
Mr.
Mr.
Mr.

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-493

John W. Vlandis, Director of Admissions, the University of Connecticut, Appellant, v. Margaret Marsh Kline and Patricia Catapano

On Appeal from the United States District Court for the District of Connecticut.

Circ

Recirc 6/8/73

[June 11, 1973]

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.

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Commendably, the Court has tried to cast the opinion in the narrowest possible terms, but it seems none the

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 29, 1973

Dear Bill:

This confirms my oral message that I am with you in your dissent in 72-493, Vlandis v. Kline.

William O. Douglas

Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 14, 1973

MEMORANDUM TO THE CONFERENCE

No. 72-493 Vlandis v. Kline

I circulate herewith self-explanatory correspondence between Potter and me in the above case.

W.J.B. Jr.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 14, 1973

RE: No. 72-493 Vlandis v. Kline

Dear Potter:

Thurgood asked me to write this for both of us. We owe you an apology. Both of us had told you that we might be able to join the approach taken in your opinion rather than basing the result on the right to travel as in Shapiro and Dunn v. Blumstein. We've come to the conclusion that we were wrong.

We have no doubt that States may confine to their residents the payment of welfare benefits, the right to vote and attendance at state colleges and universities. But the Connecticut statute goes beyond this in discriminating among actual bona fide residents for tuition purposes. Insofar as the distinction is predicated on common experience that few out-of-state students actually acquire a residence, we think it would be impossible to strike down the classification under the mere rationality test, particularly in light of the readiness of the Court to assume any reasonable state of facts that might justify it. We therefore think that if the strict scrutiny test is the proper one, and we think it is, it is essential to recognize that in discriminating among bona fide residents for purposes of tuition in the state university system, the statute impinges upon the constitutionally guaranteed right to travel in order to change one's state of residence. For Connecticut has provided that a conclusive and irrebutable presumption of non-residency shall arise for tuition purposes from the fact that a student, if married, was legally residing outside of the State at the time he applied for admission to the state university, or, if single, was legally residing outside of the state at any time during the year prior to when he applied for admission. As is true of State laws which

establish durational residency requirements for the receipt of public welfare, see Shapiro v. Thompson, 394 U.S. 618 (1969), or for the exercise of the state franchise, see Dunn v. Blumstein, 405 U.S. 330 (1972), the Connecticut residency statute singles out a "class of bona fide . . . state residents who have recently exercised [their] constitutionally protected right" to travel -- a right that "includes the 'freedom to enter and abide in any State in the Union'" -- "and penalize[s] such travel directly," id., at 338. It may be that Connecticut's residency statute for tuition purposes does not actually deter exercise of the right to travel. But as we pointed out in Dunn, supra, at 339-340, a determination that the challenged statute is actually deterring travel is "irrelevant"; rather, to call for strict scrutiny of the residency law it is enough that the state has conditioned exercise by certain persons of their right to travel and ultimately to change their residence upon surrender of in-state tuition benefits, thereby penalizing otherwise bona fide residents for the exercise of this constitutional right.

Under these circumstances, the Connecticut residency law can be sustained only if the State is able to demonstrate that it is "necessary to promote a compelling governmental interest." Shapiro v. Thompson, 394 U.S., at 634. See also id., at 643-644.

But the State's concern for certainty in limiting the benefits of a state subsidized education to bona fide residents cannot justify the permanent, unassailable presumption of nonresidency that attaches for tuition purposes to certain otherwise bona fide residents because of their recent interstate travel. Where, as here, "there are other, reasonable ways to achieve [that goal] with a lesser burden on constitutionally protected activity, a State may not choose the way of greater interference." Dunn v. Blumstein, 405 U.S., at 353.

Are you disposed to restructure your opinion or would you prefer that we file our own concurrence along these lines? Again, I am sorry we have caused you unnecessary work.

Sincerely,

Mr. Justice Stewart

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Stewart, J.

2nd DRAFT

Circulated: APR 30 1973

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 72-493

John W. Vlandis, Director of Admissions, the University of Connecticut, Appellant, *v.* Margaret Marsh Kline and Patricia Catapano.	On Appeal from the United States District Court for the District of Connecticut.

[May —, 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. Conn. Gen. Stat. § 10-329 (b), as amended by Public Act No. 5, § 122 (June Session 1971).[1] The constitutional validity of that requirement is not at issue in the case before us. What is at issue here is Connecticut's

[1] Section 122 of that Act provides that "the Board of Trustees of the University of Connecticut shall fix fees for tuition of not less than three hundred fifty dollars for residents of this State and not less than eight hundred fifty dollars for nonresidents . . . ." Pursuant to this statute, the University promulgated regulations fixing the tuition per semester as follows:

	Fall semester 1971-72	Spring semester 1972, and thereafter
In-state student	None	$175.00
Out-of-state student	$150.00	$425.00

In addition, out-of-state students must pay a $200 nonresident fee per semester.

6, 11, 12, 15

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Stewart, J.

3rd DRAFT

Circulated: _____

Recirculated: MAY 3 1973

SUPREME COURT OF THE UNITED STATES

No. 72–493

John W. Vlandis, Director of Admissions, the University of Connecticut, Appellant, *v.* Margaret Marsh Kline and Patricia Catapano. | On Appeal from the United States District Court for the District of Connecticut.

[May —, 1973]

MR. JUSTICE STEWART delivered the opinion of the Court.

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In addition, out-of-state students must pay a $200 nonresident fee per semester.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

May 14, 1973

Re: No. 72-493, Vlandis v. Kline

Dear Bill,

My Conference notes in this case indicate that the strong view of a majority in our Conference discussion was that this case should not be decided on the basis of the right to travel; but rather, as I have suggested in my proposed opinion, on the type of analysis used in Carrington, which, of course, is not a right-to-travel case. One of the biggest obstacles to basing this case on the right to travel is, as you know, our summary affirmance in Starns v. Malkerson, 401 U.S. 985, upholding the validity of a one-year durational residency requirement to qualify for in-state tuition at the University of Minnesota.

I would appreciate it, however, if you would circulate your letter to me and this reply to the Conference, so as to obtain the views of the Brethren on this matter at their early convenience. If a majority indicate that they would prefer your analysis, based on the right to travel, I would be glad to attempt a restructuring of my opinion along those lines.

Sincerely yours,

P.S.

Mr. Justice Brennan

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5, 16

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Stewart, J.

4th DRAFT

Circulated: _____

Recirculated: MAY 18 1973

SUPREME COURT OF THE UNITED STATES

No. 72-493

John W. Vlandis, Director of Admissions, the University of Connecticut, Appellant, v. Margaret Marsh Kline and Patricia Catapano.	On Appeal from the United States District Court for the District of Connecticut.

[May —, 1973]

MR. JUSTICE STEWART delivered the opinion of the Court.

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In addition, out-of-state students must pay a $200 nonresident fee per semester.

May 24, 1973

MEMORANDUM TO THE CONFERENCE

Re: 72-493, Vlandis v. Kline

My earlier drafts relied on both the Equal Protection Clause and the Due Process Clause. Because of the fragmentation among the majority with respect to the Equal Protection Clause ground, this draft relies exclusively upon the Due Process Clause.

P. 8.

entirely recast
for p 5 on

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Stewart, J.

Circulated: _____

Recirculated: MAY 24 1973

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-493

John W. Vlandis, Director of Admissions, the University of Connecticut, Appellant, v. Margaret Marsh Kline and Patricia Catapano.	On Appeal from the United States District Court for the District of Connecticut.

[May —, 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. Conn. Gen. Stat. § 10-329 (b), as amended by Public Act No. 5, § 122 (June Session 1971).[1] The constitutional validity of that requirement is not at issue in the case before us. What is at issue here is Connecticut's

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In addition, out-of-state students must pay a $200 nonresident fee per semester.

STYLISTIC CHANGES THROUGHOUT.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Stewart, J.

Circulated: _____

Recirculated: MAY 31 1973

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72–493

John W. Vlandis, Director of Admissions, the University of Connecticut, Appellant, *v.* Margaret Marsh Kline and Patricia Catapano. } On Appeal from the United States District Court for the District of Connecticut.

[May —, 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. Conn. Gen. Stat. § 10–329 (b), as amended by Public Act No. 5, § 122 (June Session 1971).[1] The constitutional validity of that requirement is not at issue in the case before us. What is at issue here is Connecticut's

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7th DRAFT

From: Stewart, J.

Circulated: _____

Recirculated: JUN 6 1973

SUPREME COURT OF THE UNITED STATES

No. 72-493

John W. Vlandis, Director of Admissions, the University of Connecticut, Appellant, v. Margaret Marsh Kline and Patricia Catapano. | On Appeal from the United States District Court for the District of Connecticut.

[May —, 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. Conn. Gen. Stat. § 10-329 (b), as amended by Public Act No. 5, § 122 (June Session 1971).[1] The constitu-

*MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL join the opinion of the Court with the qualification noted in MR. JUSTICE MARSHALL's concurring opinion, *post*, p. —.

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

June 12, 1973

MEMORANDUM TO THE CONFERENCE

Re: Cases Held for Vlandis v. Kline, 72-493.

In No. 72-635, Glusman v. Board of Trustees of the University of North Carolina, the North Carolina Supreme Court upheld the respondent's rule, which provides that a student, to be eligible for resident tuition rates, must have maintained his domicile in the State for at least six months without being enrolled in the University during that period. This rule creates a permanent and irrebuttable presumption of nonresidency which continues throughout a student's stay at the University, unless he maintains a continuous domicile in the State for six months while not a student. Since this rule is almost identical to the one involved in Vlandis, I would reverse and remand this case for reconsideration in light of Vlandis.

In No. 72-1041, Douglas v. Covell, the Colorado Supreme Court held unconstitutional a state statute providing that a student who applied from out-of-State shall not qualify

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for the in-state rates unless he has first completed one year of continuous non-student residence in the State. Since this statute, too, creates a permanent conclusive presumption almost identical to that in Vlandis, I would deny certiorari.

P. S.

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-493

John W. Vlandis, Director of Admissions, the University of Connecticut, Appellant, *v.* Margaret Marsh Kline and Patricia Catapano.	On Appeal from the United States District Court for the District of Connecticut.

[June —, 1973]

MR. JUSTICE WHITE, concurring in the judgment.

In *Starns* v. *Malkerson*, 401 U. S. 985 (1971), a regulation issued by the Board of Regents provided that no student could qualify for the lower, in-state tuition to the University of Minnesota until he had been a bona fide domiciliary of the State for one year. The District Court upheld the law, 326 F. Supp. 234 (Minn. 1970), and we affirmed summarily, although the effect of the Regents' regulation was to prevent an admitted Minnesota domiciliary from being treated as a nondomiciliary for a period of one year. I thought the case warranted plenary treatment, but I did not then, nor do I now, disagree with the judgment. Because I have difficulty distinguishing, on due process grounds, whether deemed procedural or substantive or whether put in terms of conclusive presumptions, between the Minnesota one-year requirement and the Connecticut law that, for tuition purposes, does not permit Connecticut residence to be acquired while attending Connecticut schools, I cannot join the Court's opinion.

I concur in the judgment, however, because Connecticut, although it may legally discriminate between its residents and nonresidents for purposes of tuition, here

/B

p. 4

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: White, J.

No. 72-493

Circulated: _____

Recirculated: 6-6-73

John W. Vlandis, Director of Admissions, the University of Connecticut, Appellant, *v.* Margaret Marsh Kline and Patricia Catapano.	On Appeal from the United States District Court for the District of Connecticut.

[June —, 1973]

MR. JUSTICE WHITE, concurring in the judgment.

In *Starns* v. *Malkerson*, 401 U. S. 985 (1971), a regulation issued by the Board of Regents provided that no student could qualify for the lower, in-state tuition to the University of Minnesota until he had been a bona fide domiciliary of the State for one year. The District Court upheld the law, 326 F. Supp. 234 (Minn. 1970), and we affirmed summarily, although the effect of the Regents' regulation was to prevent an admitted Minnesota domiciliary from being treated as a nondomiciliary for a period of one year. I thought the case warranted plenary treatment, but I did not then, nor do I now, disagree with the judgment. Because I have difficulty distinguishing, on due process grounds, whether deemed procedural or substantive or whether put in terms of conclusive presumptions, between the Minnesota one-year requirement and the Connecticut law that, for tuition purposes, does not permit Connecticut residence to be acquired while attending Connecticut schools, I cannot join the Court's opinion.

I concur in the judgment, however, because Connecticut, although it may legally discriminate between its residents and nonresidents for purposes of tuition, here

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To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 72-493

Recirculated: MAY 21 1973

John W. Vlandis, Director of Admissions, the University of Connecticut, Appellant, v. Margaret Marsh Kline and Patricia Catapano.	On Appeal from the United States District Court for the District of Connecticut.

[May —, 1973]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, concurring in the result.

Only recently in *San Antonio Independent School District* v. *Rodriguez*, — U. S. — (1973), the Court reaffirmed that the nature of judicial scrutiny of state statutory classifications under the Equal Protection Clause is dependent upon the character of the disadvantaged class and of the interests adversely affected by any particular classification. There the Court embraced the view that:

> "We must decide, first, whether the [challenged state scheme] operates to the disadvantage of some suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution, thereby requiring strict judicial scrutiny. . . . If not, the [challenged] scheme must still be examined to determine whether it rationally furthers some legitimate, articulated state purpose and therefore does not constitute an invidious discrimination in violation of the Equal Protection Clause . . ." *Id.*, at —.

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To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

From: Marshall, J.

Circulated: _____

Recirculated: JUN 4 1973

SUPREME COURT OF THE UNITED STATES

No. 72-493

John W. Vlandis, Director of Admissions, the University of Connecticut, Appellant, *v.* Margaret Marsh Kline and Patricia Catapano.	On Appeal from the United States District Court for the District of Connecticut.

[June —, 1973]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, concurring.

I join the opinion of the Court except insofar as it suggests that a State may impose a one-year residency requirement as a prerequisite to qualifying for in-state tuition benefits. See *ante*, at 12 and n. 9. That question is not presented by this case since here we deal with a permanent, irrebuttable presumption of nonresidency based on the fact that a student was a nonresident at the time he applied for admission to the state university system. I recognize that in *Starnes* v. *Malkerson*, 401 U. S. 985 (1971), we summarily affirmed a district court decision sustaining a one-year residency requirement for receipt of in-state tuition benefits. But I now have serious question as to the validity of that summary decision in light of well-established principles, under the Equal Protection Clause of the Fourteenth Amendment, which limit the States' ability to set residency requirements for the receipt of rights and benefits bestowed on bona fide state residents. See *Dunn* v. *Blumstein*, 405 U. S. 330 (1972); *Shapiro* v. *Thompson*, 394 U. S. 618 (1969). Because the Court finds sufficient basis in the

WD

Supreme Court of the United States
Washington, D. C. 20543

Hold 3/9/73

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 2, 1973

Re: No. 72-493 - Vlandis v. Kline

Dear Potter:

Please join me.

Sincerely,

H.A.B.

Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 15, 1973

Re: No. 72-493 - Vlandis v. Kline

Dear Potter:

I, for one, prefer the structuring of your opinion as you recirculated it on May 3. An analysis resting on a right to travel does not persuade me, and I would not join an opinion based on that theory.

Sincerely,

Harry

Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 29, 1973

Re: No. 72-493 - Vlandis v. Kline, et al.

Dear Potter:

I am still with you on your recirculation of May 24.

Sincerely,

H. A. B.

Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 1, 1973

No. 72-493 Vlandis v. Kline

Dear Potter:

Please join me in your fine opinion.

Sincerely,

Lewis

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 15, 1973

No. 72-493 Vlandis v. Kline

Dear Potter:

This refers to the correspondence between you and Bill Brennan concerning the above case.

I had thought, as you did, that there was no sentiment at the Conference for deciding this case on a "right to travel" basis. But we all have a right to change our minds - as I frequently do - and so I address the substance of the position now favored by Bill and Thurgood.

I could not accept the view that the "compelling governmental interest" standard is applicable. As has been noted by you and others, once we hold that this is the appropriate standard no state has ever been able to meet it. This would result, inevitably I think, in the states being unable to protect their educational institutions from a serious intrusion of nonresidents purporting to exercise their unquestioned right to travel.

There is little parallel between state action protecting educational institutions and state action imposing limitations on the right to vote and upon receipt of welfare payments. Voting rights and welfare payments involve no qualitative factor, whereas colleges and universities vary widely in quality, history and goals. They also vary in the diversity of their curricula, strength of faculty, and scope of degrees offered. Their appeal to the young also may depend upon attractiveness of location, current fashion as to "in-schools", and even the quality and extent of physical facilities.

If, in the exercise of the right to travel, young people were allowed - in effect - to attend tuition free (or with reduced tuition) the most prestigious and desirable state universities merely by saying

they have become domiciliaries of the state, some of our finest state universities could be overwhelmed with applications. Most of these already are overcrowded, and have some guidelines as to the number of nonresidents accepted. If a state is denied the right to impose reasonable limitations on the influx of out-of-state students who immediately claim (often quite honestly) to be bona fide residents, injustice - as well as a certain amount of fraud will result. Lower standards of admission are customarily provided for the children of bona fide residents, including many from underprivileged families who simply could not afford to leave their homes to seek an education in another state.

The question of domicile is largely a matter of one's intent, a highly subjective factor. The objective indications of intent (registering to vote, changing license tags, and paying state taxes) are all relatively easy to accomplish without any fixed intent or plans to do more than reside in a state for the duration of a four-year education, and even then to reside there only during the school months. This is especially true in the present age of high mobility of the young people who have the means to travel.

If a state had to meet the virtually impossible compelling interest test, it is clear that the one-year residency requirement affirmed in Starns v. Malkerson, 401 U. S. 985, as a reasonable element in determining bona fide domicile, would be held invalid. In this case, the Connecticut statute is egregiously irrational, as your opinion demonstrates. It is therefore unnecessary to go beyond the conventional standards.

In sum, I would be unwilling to join in an opinion which requires a state to show a compelling interest for any restrictions which it imposes to protect the quality of its own institutions of higher learning as well as to protect its own established residents. In any event, it is unnecessary to go so far in a case where traditional equal protection standards abundantly suffice to deal with the Connecticut statute.

Sincerely,

Lewis

Mr. Justice Stewart

cc: The Conference

lfp/ss

May 16, 1973

No. 72-493 Vlandis v. Kline

Dear Potter:

I deliver herewith a letter which addresses the suggestion by two of our Brothers that your opinion be rewritten to hold that the constitutional right to travel is implicated, and that therefore a state must show a compelling interest as supporting any action it takes.

In reviewing your decision more carefully since our talk, and in discussions with my law clerks, I am now concerned as to possibility that in its present form the opinion might be construed as restricting state action as much as a formulation based on "right to travel". My clerks, in particular, think that the opinion in its present form could be read as requiring no more restrictive standard than a case-by-case determination of the domicile or residential status of a new student. Apparently this is the thrust of the Connecticut Attorney General's opinion. Yet, as we all know, a case-by-case determination of this slippery and largely subjective issue could possibly have a serious effect on a state's capacity to protect a prestigious university against large numbers of out-of-state students. It is a relatively simply matter, especially in view of the mobility of the young these days, to adopt all of the conventional badges of domicile and to shed them with equal facility.

I know from our discussion, and from your note 11 impliedly approving Starns, that you have no intention of reducing a state to the position where every student can claim to be a resident the day he arrives, and have a fair chance of meeting the customary "benchmarks" of residency or domicile.

I wonder, therefore, whether you may not wish to clarify your opinion in this respect. You could put the substance of footnote 11 in the text, and make it clear that the Minnesota formula represents an example of one way in which a state reasonably may protect its legitimate interest. Other changes also are possible. I enclose a rough draft of a possible rider to be inserted on page 15, if it appeals to you.

Sincerely,

Mr. Justice Stewart

lfp/ss

May 27, 1973

No. 72-493 Vlandis v. Kline

Dear Potter:

I enclose herewith a "join" note with respect to your 5th draft, which I like.

Also enclosed is a suggested rider as a substitution for two or three sentences on page 11, if it appeals to you.

I have been a little concerned that the opinion might be read as favoring the type of solution put into effect by the Connecticut Attorney General. While I quite agree that it is a reasonable alternative, I rather suspect that it will be quite difficult - as a practical matter - to operate on the basis of a case-by-case determination of an issue as quixotic as domicile, especially when dealing with hundreds of new students each year. As a practical matter I believe that the states must have some reasonable durational residency, and your opinion is perfectly explicit on this point. The only purpose of the rider would be to emphasize that what the Connecticut Attorney General has undertaken is only one of the types of procedures available to the states.

I am, of course, with you whether this minor change is made or not.

Sincerely,

Mr. Justice Stewart

lfp/ss

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 27, 1973

No. 72-493 Vlandis v. Kline

Dear Potter:

Please join me in your 5th draft of an opinion for the Court in the above case.

I find your due process analysis persuasive and quite adequate. For me, at least, it also presents fewer analytical difficulties than the combination of reliance upon both equal protection and due process.

Sincerely,

Lewis

Mr. Justice Stewart

cc: The Conference

lfp/ss

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 3, 1973

Re: No. 72-493 - Vlandis v. Kline

Dear Potter:

I anticipate preparing and circulating a dissent from your opinion in this case.

Sincerely,

WHR

Mr. Justice Stewart

Copies to the Conference

No. 72-493

JOHN W. VLANDIS, DIRECTOR OF ADMISSIONS,
THE UNIVERSITY OF CONNECTICUT, Appellant

v.

MARGARET MARSH KLINE AND PATRICIA CATAPANO

Appeal from U. S. District Court, District of Connecticut

MR. JUSTICE REHNQUIST, dissenting.

The Court's opinion relegates to the limbo of unconstitutionality a Connecticut law which requires higher tuition from those who come from out of State to attend its State universities than from those who come from within the State. The opinion accomplishes this result by a highly theoretical analysis that relies heavily on notions of substantive due process that have been authoritatively repudiated by subsequent decisions of the Court. 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 which are not available to private institutions, they may find it relatively

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell

2nd DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

No. 72-493

Circulated: _____

Recirculated: 6/4/73

John W. Vlandis, Director of Admissions, the University of Connecticut, Appellant, *v.* Margaret Marsh Kline and Patricia Catapano.	On Appeal from the United States District Court for the District of Connecticut.

[June —, 1973]

MR. JUSTICE REHNQUIST, with whom MR. JUSTICE DOUGLAS joins, dissenting.

The Court's opinion relegates to the limbo of unconstitutionality a Connecticut law that requires higher tuition from those who come from out of State to attend its state universities than from those who come from within the State. The opinion accomplishes this result by a highly theoretical analysis that relies heavily on notions of substantive due process that have been authoritatively repudiated by subsequent decisions of the Court. 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 more easy 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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72–493

John W. Vlandis, Director of Admissions, the University of Connecticut, Appellant, *v.* Margaret Marsh Kline and Patricia Catapano.	On Appeal from the United States District Court for the District of Connecticut.

[June —, 1973]

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

The Court's opinion relegates to the limbo of unconstitutionality a Connecticut law that requires higher tuition from those who come from out of State to attend its state universities than from those who come from within the State. The opinion accomplishes this result by a highly theoretical analysis that relies heavily on notions of substantive due process that have been authoritatively repudiated by subsequent decisions of the Court. 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 more easy 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

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 6, 1973

Re: No. 72-493 - Vlandis v. Kline

Dear Chief:

Please join me in your dissent in this case.

Sincerely,

The Chief Justice

Copies to the Conference