Recent Development

Constitutional Law—EQUAL PROTECTION—Indiana guest statute, which denies recovery by a nonpaying guest against a negligent host, held not violative of the equal protection clause of the fourteenth amendment nor of the Indiana Constitution.—*Sidle v. Majors*, 341 N.E.2d 763 (Ind. 1976).

In *Sidle v. Majors*,[1] the constitutionality of the Indiana guest statute was challenged. The Indiana Supreme Court held that the Indiana guest statute,[2] which denies recovery by a nonpaying motor vehicle guest against a negligent host, does not contravene the provisions of the Indiana Constitution nor violate the equal protection clause of the fourteenth amendment to the United States Constitution.[3]

In *Sidle*, the plaintiff was injured in an automobile accident that occurred while the plaintiff was a guest passenger in an automobile operated by the defendant. The plaintiff filed suit in the United States District Court for the Southern District of Indiana, alleging negligence and wanton or willful misconduct.[4] The district court sustained the defendant's motion for summary judgment on the negligence count, relying on the guest statute. On appeal to the United States Court of Appeals for the Seventh Circuit, the plaintiff challenged the constitutionality of the Indiana guest statute, asserting that it violated the equal protection clause of the fourteenth amendment to the United States Constitution[5]

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[1]341 N.E.2d 763 (Ind. 1976).

[2]IND. CODE § 9-3-3-1 (Burns 1973).

[3]341 N.E.2d at 775.

[4]In the companion case to *Sidle*, Dempsey v. Leonherdt, 341 N.E.2d 763 (Ind. 1976), the plaintiff was injured under similar circumstances and filed suit in the Benton Circuit Court, alleging negligence and willful and wanton misconduct. In the *Dempsey* case, prior to trial, the trial court entered a ruling declaring the Indiana guest statute unconstitutional as violative of the equal protection clauses of the United States and Indiana Constitutions.

[5]U.S. CONST. amend. XIV, § 1 provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

and article 1, sections 12[6] and 23[7] of the Indiana Constitution. The Seventh Circuit certified to the Indiana Supreme Court the question of whether the Indiana guest statute contravened either article 1, section 12, or article 1, section 23 of the Indiana Constitution.[8] In the opinion written by Justice Prentice, the court held the Indiana guest statute constitutional.[9]

The guest statute provides that the operator of a motor vehicle shall not be liable for injury or death caused to a nonpaying guest passenger unless the injury or death was caused by the wanton or willful misconduct of the operator.[10] Two determinations are necessary in order to ascertain whether the guest statute will bar recovery. The first is whether the injured person falls within the definition of nonpaying guest. Monetary payment itself is not the determining factor. In *Liberty Mutual Insurance Co. v. Stitzle*,[11] the Indiana Supreme Court held that the intention of the parties should be considered in deciding whether a guest relationship existed. If the purpose of the trip was primarily social, the injured party was still a nonpaying guest even though the host had received some monetary benefit. If the trip was essentially for business purposes and the host received substantial benefit, the injured guest was a paying guest even though no payment in the strict sense had been made. In a group of cases related to whether a guest had made payment, the Indiana Court of Appeals has considered the "gas and oil" payment problem. In *Lawson v. Cole*[12] and *Kempin v. Mardis*,[13] the court held

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[6]IND. CONST. art. 1, § 12 provides:

> All courts shall be open; and every man, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial, speedily, and without delay.

[7]IND. CONST. art. 1, § 23 provides: "The General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities which, upon the same terms, shall not equally belong to all citizens."

[8]341 N.E.2d at 765-66.

[9]*Id.* at 775. After receiving the Indiana Supreme Court's opinion, the Seventh Circuit held the Indiana guest statute does not contravene the fourteenth amendment. —— F.2d —— (7th Cir. 1976).

[10]IND. CODE § 9-3-3-1 (Burns 1973) provides:

> The owner, operator, or person responsible for the operation of a motor vehicle shall not be liable for loss or damage arising from injuries to or death of a guest, while being transported without payment therefor, in or upon such motor vehicle, resulting from the operation thereof, unless such injuries or death are caused by the wanton or wilful misconduct of such operator, owner, or person responsible for the operation of such motor vehicle.

[11]220 Ind. 180, 41 N.E.2d 133 (1942).

[12]124 Ind. App. 89, 115 N.E.2d 134 (1953).

[13]123 Ind. App. 546, 111 N.E.2d 77 (1953).

that a passenger who paid for the host's gas and oil expenses could recover for ordinary negligence and was not barred by the guest statute. In a case where gas and oil expenses were *shared*, however, the court held that the passenger was a "guest" and had to prove the host's willful or wanton behavior to recover.[14] The court of appeals, in *Ott v. Perrin*,[15] held that a regular exchange of rides is not covered by the guest statute and an injured passenger could recover for ordinary negligence.

The second factor is a determination of the degree of misconduct involved. Ordinary negligence alone on the part of the host will bar the nonpaying passenger's recovery under the guest statute.[16] For the nonpaying guest to recover, willful or wanton conduct by the host is necessary. In order to be willful or wanton, the conduct must have been pursued with knowledge and indifference that an injury to the guest was probable.[17]

A guest statute was first enacted in Indiana in 1929 and was amended in 1937.[18] Prior to the enactment of a guest statute, Indiana case law held that a nonpaying passenger could recover from his host for ordinary negligence.[19] About half of the states enacted guest statutes similar to Indiana's between 1927 and 1939.[20] The early major challenge to the constitutionality of guest statutes occurred in *Silver v. Silver*,[21] in which the United States Supreme Court upheld the validity of the Connecticut guest statute. It should be noted that *Silver* concerned a challenge only to a distinction made between motorcars and other conveyances. During the years following the *Silver* decision, with the notable exception of Kentucky,[22] state courts generally upheld their guest statutes on the authority of *Silver*.[23] However, since 1973 at least seventeen cases challenging the constitutionality of guest statutes have been litigated in state courts of last resort. Eight jurisdictions have found their guest statutes violative of equal protection;[24] nine jurisdictions have upheld their guest stat-

[14]Albert McGann Sec. Co. v. Coen, 114 Ind. App. 60, 48 N.E.2d 58 (1943).

[15]116 Ind. App. 315, 63 N.E.2d 163 (1945).

[16]Blair v. May, 106 Ind. App. 599, 19 N.E.2d 490 (1939).

[17]Bedwell v. DeBolt, 221 Ind. 600, 50 N.E.2d 875 (1943); Brueckner v. Jones, 146 Ind. App. 314, 255 N.E.2d 535 (1970).

[18]Ch. 201, § 1 [1929] Ind. Acts 679, *as amended* ch. 259, § 1 [1937], 1229 (codified at IND. CODE § 9-3-3-1 (Burns 1973)).

[19]Munson v. Rupker, 96 Ind. App. 15, 148 N.E. 169 (1925).

[20]341 N.E.2d at 767.

[21]280 U.S. 117 (1929).

[22]Ludwig v. Johnson, 243 Ky. 539, 49 S.W.2d 350 (1932).

[23]341 N.E.2d at 768.

[24]Brown v. Merlo, 8 Cal. 3d 855, 506 P.2d 212, 106 Cal. Rptr. 388 (1973); Thompson v. Hagan, 96 Idaho 19, 523 P.2d 1365 (1974); Henry v. Bauder, 213 Kan. 751, 518 P.2d 362 (1974); Manistee Bank & Trust Co. v. McGowan, 394 Mich. 655, 232 N.W.2d 636 (1975); Laakonen v. Eighth Judicial Dist.

utes against an equal protection attack.[25] In *Sidle* Indiana became the tenth state since 1973 to uphold its guest statute.

The standard of review used by a court in handling a case involving a constitutional challenge is a significant factor in the outcome of the case. The equal protection clause of the fourteenth amendment[26] to the United States Constitution, and article 1, section 23[27] of the Indiana Constitution both prohibit the distribution of extraordinary burdens or benefits to any person or group within society. However, they do not remove from the legislature all power to classify.[28] Instead, the classifications created by the statutes must meet certain tests. When a suspect classification is made, or a fundamental right is at stake, a compelling state interest must be shown to justify the classification.[29] When these factors are not present, the standard is less clear. Some cases hold that legislation is valid upon a showing that the classification is not arbitrary or unreasonable.[30] Other and more recent cases require a "fair and substantial" relation be shown to exist between the classification and its purpose to withstand an equal protection challenge.[31]

In *Sidle*, the court was conservative in its selection of a standard of review. The plaintiff argued that the right to bring an action for common law negligence was "fundamental"; therefore, the burden of proof shifted to the defendant to show a compelling state interest upholding the statutory classification. The court rejected this contention,[32] relying on the statement from

Court, 538 P.2d 574 (Nev. 1975); McGeehan v. Bunch, 88 N.M. 308, 540 P.2d 238 (1975); Johnson v. Hassett, 217 N.W.2d 771 (N.D. 1974); Primes v. Tyler, 43 Ohio St. 2d 195, 331 N.E.2d 723 (1975).

[25]White v. Hughes, 519 S.W.2d 70 (Ark. 1975); Richardson v. Hansen, 527 P.2d 536 (Colo. 1974); Justice v. Gatchell, 325 A.2d 97 (Del. 1974); Keasling v. Thompson, 217 N.W.2d 687 (Iowa 1974); Botsch v. Reisdorff, 193 Neb. 165, 226 N.W.2d 86 (1975); Duerst v. Limbocker, 525 P.2d 99 (Ore. 1974); Behrns v. Burke, 229 N.W.2d 86 (S.D. 1975); Tisko v. Harrison, 500 S.W.2d 565 (Tex. Civ. App. 1973); Cannon v. Oviott, 520 P.2d 883 (Utah 1974).

[26]See note 5 *supra*.

[27]See note 7 *supra*.

[28]Dandridge v. Williams, 397 U.S. 471 (1970).

[29]San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1 (1973); Shapiro v. Thompson, 394 U.S. 618 (1969).

[30]Dandridge v. Williams, 397 U.S. 471 (1970); McGowan v. Maryland, 366 U.S. 420 (1961). *See also* Board of Comm'rs v. Plan Comm'n, 330 N.E.2d 92 (Ind. 1975); Chaffin v. Nicosia, 310 N.E.2d 867 (Ind. 1974).

[31]Johnson v. Robison, 415 U.S. 361 (1974); Reed v. Reed, 404 U.S. 71 (1971); F.S. Royster Guano Co. v. Virginia, 253 U.S. 412 (1920). *See also* Gunther, *The Supreme Court, 1971 Term—Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection*, 86 HARV. L. REV. 1 (1972).

[32]341 N.E.2d at 766.

San Antonio Independent School District v. Rodriguez[33] that fundamental rights are those which have their origin in the express terms of the Constitution or which are necessarily to be implied from those terms. Instead, in determining whether the classifications under the Indiana guest statute were constitutional, the court ostensibly applied a combination of the "reasonableness" and "fair and substantial" relationship tests.[34] Although the court stated that it was using both standards of review, a careful analysis of the opinion suggests that "reasonableness" was the standard actually used. When a court chooses between low scrutiny ("reasonableness") or high scrutiny ("compelling state interest"), with very few exceptions, this selection is determinative of the outcome of the case. A middle ground called the "fair and substantial" relationship test as enunciated in *Reed v. Reed*,[35] has been used by Indiana courts in *Haas v. South Bend Community School Corp.*[36] and in *Indiana High School Athletic Association v. Raike*.[37] In *Raike* the Indiana Court of Appeals adopted what is known as "sliding scale analysis." Under this method, a statute may be found invalid under the equal protection clause even though *some* reason may exist to justify the classification. As the right becomes more fundamental, or the class more suspect, greater reason must be given to justify the statutory classification. The standards set forth in *Reed, Haas,* and *Raike* represent a middle ground between the traditional high and low scrutiny standards. They permit a meaningful review of classifications under the equal protection clause without the often outcome-determinative choice between high and low scrutiny.

In order to determine a statute's constitutionality under the equal protection clause, the purpose of the statute must first be ascertained. Since the Indiana guest statute neither expressed a purpose in its text nor provided legislative history from which a

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[33]411 U.S. 1 (1973).

[34]341 N.E.2d at 767. The court emphasized that there is a presumption of constitutionality and the burden is upon the plaintiff to show the contrary.

[35]In *Reed,* Chief Justice Burger, speaking for a unanimous court, stated that the equal protection clause of the fourteenth amendment does deny the states the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to objectives of the statute. A classification

> [m]ust be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.

404 U.S. at 76, *quoting from* F.S. Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920).

[36]289 N.E.2d 495 (Ind. 1972).

[37]329 N.E.2d 66 (Ind. Ct. App. 1975).

purpose might be ascertained, the court determined the statutory purpose from a consideration of what the court perceived the logical effects of the statute might be.[38] The court perceived and considered three "purposes." The fostering of hospitality by insulating generous drivers from lawsuits initiated by ungrateful guests and the elimination of the possibility of collusive lawsuits, are traditionally attributed to guest statutes by courts in other jurisdictions.[39] The third purpose, protection against the "benevolent thumb syndrome," was one not suggested by any previous litigation but one which the Indiana court perceived as "a very likely legislative policy behind our guest statute . . . ."[40] The "benevolent thumb syndrome" is the purported belief that in automobile guest suits, the jurors will assume that the real defendant is an insurance company and thus the jurors will weigh their "benevolent thumb" along with the evidence of the defendant's guilt.[41] Since the relationship between the statutory classifications and the statutory purposes are crucial in a fourteenth amendment attack, it should be noted that the entity which established the purposes of the statute has substantial control over the statute's ultimate constitutionality. The legislature had not set forth the purposes of the Indiana guest statute examined in *Sidle*. The Indiana court borrowed two purposes traditionally used by courts in other jurisdictions and also created the "benevolent thumb syndrome" as a new judicial doctrine for Indiana.

Having identified and discussed the purpose of the statute, the court then had to decide if the classification of paying versus nonpaying guest bore the requisite relationship to those purposes. The first statutory purpose of fostering hospitality by protecting hosts from lawsuits by ungrateful guests can be more clearly analyzed by examining hospitality and ingratitude separately. The Indiana court justified the disparate treatment accorded paying versus nonpaying guests in the interest of promoting hospitality by analogy to an argument made in *Brown v. Merlo*.[42] In *Brown* the California Supreme Court acknowledged the reasonableness of requiring a higher standard of care for paying passengers than for nonpaying ones. The Indiana court retorted that there is no basic distinction between *raising* a standard of care for persons within a given class and *lowering* the standard for those not within that class.[43] The distinction

[38] 341 N.E.2d at 768.

[39] *Id.*

[40] *Id.* at 771.

[41] *Id.* at 772.

[42] 8 Cal. 3d 855, 506 P.2d 212, 106 Cal. Rptr. 388 (1973). This case, which held the California guest statute unconstitutional, began the recent series of cases in which guest statutes have been challenged in state courts.

[43] 341 N.E.2d at 769.

which the Indiana court did not appear to consider is that the lowered standard of the Indiana guest statute completely deprives the nonpaying passenger of his remedy for negligent injury. It should also be noted that the recent supreme court decisions overturning various tort immunity doctrines undermine the promotion of hospitality as a valid statutory purpose. In recent cases Indiana has abolished the doctrines of interspousal immunity,[44] charitable immunity,[45] and governmental immunity.[46] However, the court pointed out that these immunities were judicially created and, therefore, appropriately subject to judicial repeal. The immunity afforded by the guest statute to host drivers against negligence claims by nonpaying guests was created by the legislature and was arguably not within the court's province to abolish.[47]

The second part of the hospitality purpose is preventing ingratitude. The court justified the prevention of ingratitude as a legitimate statutory purpose on the basis of a sentimental discussion of the tolerance one bears toward the human frailties of one's family and friends.[48] A number of other cases, including *Brown* and *Primes v. Tyler*,[49] have noted that there is no affront to hospitality when one sues his host's insurer. Since the *Silver* decision, liability insurance coverage has expanded fourfold.[50] Indiana requires proof of financial responsibility in the amount of $15,000 per person, and $30,000 per accident, but only after the first accident.[51] The Indiana court rejected the argument that the widespread availability of liability insurance has reduced the possibility that a guest suit is based on ingratitude. The court noted that liability insurance is not a condition precedent to the operation of a motor vehicle in Indiana and that the guest's claim is not necessarily limited to the amount of the host's insurance.[52] Therefore, the guest statute is still a reasonable way to prevent ungrateful guests from bringing suit. Regardless of which side of the liability insurance argument a particular court accepts, the relevance of liability insurance availability to the con-

[44]Brooks v. Robinson, 259 Ind. 16, 284 N.E.2d 794 (1972).

[45]Harris v. Young Women's Christian Ass'n, 250 Ind. 491, 237 N.E.2d 242 (1968).

[46]Campbell v. State, 259 Ind. 55, 284 N.E.2d 733 (1972).

[47]341 N.E.2d at 770.

[48]*Id.* at 771.

[49]43 Ohio St. 2d 195, 331 N.E.2d 723 (1975).

[50]*Compare* Elsbree & Roberts, *Compulsory Insurance Against Motor Vehicle Accidents*, 76 U. PA. L. REV. 690 (1928), *with* U.S. DEP'T OF TRANSPORTATION, DRIVER BEHAVIOR AND ACCIDENT INVOLVEMENT: IMPLICATIONS FOR TORT LIABILITY (1970).

[51]IND. CODE § 9-2-1-15 (Burns 1973).

[52]341 N.E.2d at 769. The court also noted that the defendant faces the possibility of cancellation of his insurance or a substantial increase in his insurance premiums.

stitutionality of a guest statute should be questioned. The presence or absence of liability insurance in any specific tort case bears no relationship to the ultimate guilt or innocence of the defendant. Furthermore, the argument that a guest is really suing the host's insurer rather than the host himself is an invalid argument in that the majority of states have no "direct action statute" which legally permits a guest to directly sue the insurer.

The second purpose the Indiana court used in upholding the guest statute was the elimination of the possibility of collusive lawsuits. The court found that the guest statute was a reasonable way to prevent collusive lawsuits because the court perceived no reasonable alternative means of distinguishing bona fide damage claims from fraudulent ones, short of full-blown litigation.[53] The court acknowledged the problem of overinclusion in our guest statute—those with legitimate damage claims are barred from suit along with those having fraudulent claims—but justified the overinclusion because it held there were no alternatives short of litigation. A comparison with the reasoning of the Supreme Court of Ohio in *Primes v. Tyler*[54] is appropriate in analyzing the anticollusion purpose. Ohio's guest statute[55] is virtually identical to Indiana's. Of the many recent guest statute cases, *Primes* is the most independently reasoned. All of the other recent guest statute cases[56] were decided in terms of their compatibility with the *Brown* decision. Because of differences between Indiana law and California law, many of the *Brown* rationales were not applicable to *Sidle*.[57] In *Primes* the Supreme Court of Ohio held that the prevention of fraudulent claims was not "suitably furthered" by the guest statute nor by the differential treatment accorded to paying or nonpaying guests.[58] That court relied on the reasoning used in *Jimenez v. Weinberg*.[59] *Jimenez* involved a statutory disparity in eligibility between two classes of illegitimate children

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[53]341 N.E.2d at 771.

[54]43 Ohio St. 2d 195, 331 N.E.2d 723 (1975).

[55]OHIO REV. CODE ANN. § 4515.02 (Pages 1973), the Ohio guest statute, reads:

> The owner, operator, or person responsible for the operation of a motor vehicle shall not be liable for loss or damage arising from injuries to or death of a guest, resulting from the operation of said motor vehicle, while such guest is being transported without payment therefor in or upon said motor vehicle, unless such injuries or death are caused by the willful or wanton misconduct of such operator, owner, or person responsible for the operation of said motor vehicle.

[56]See notes 24 & 25 *supra*.

[57]341 N.E.2d at 769. The court noted that the California statute distinguishes between automobile guests and all other guests. The Indiana statute is applicable to motor vehicle guest passengers.

[58]331 N.E.2d at 727.

[59]417 U.S. 628 (1974).

who might apply for social security benefits. The alleged purpose of denying benefits to the statutorily excluded subclass of illegitimates was to prevent spurious claims.[60] The United States Supreme Court recognized that preventing spurious claims is a legitimate governmental interest, but found that conclusively denying benefits to one subclass was a denial of equal protection because the classification was not reasonably related to the prevention of spurious claims.[61] Persons in the statutorily benefited class could make fraudulent claims as easily as could persons in the statutorily excluded class. In *Primes* the Ohio court applied the *Jimenez* reasoning and found that the guest statute did not prevent fraudulent claims because nonpaying motor vehicle guests could easily avoid the guest statute's bar to recovery simply by presenting a collusive claim that he paid for the ride or that the driver was guilty of willful or wanton misconduct.

The Indiana Supreme Court itself made a most persuasive argument against the wholesale denial of a remedy to an entire class of negligently injured persons in *Brooks v. Robinson*.[62] In that case the court abolished interspousal immunity, an area in which collusion is even more plausible than in the guest-host situation. The court reasoned that the retention of the interspousal immunity doctrine would require "the blanket assumption that our court system is so ill-fitted to deal with such litigation that the only reasonable alternative to allowing husband-wife tort litigation is to summarily deny all relief to this class of litigants."[63] Absent the arbitrary bar of the guest statute, the plaintiff would still be subject to extensive pretrial discovery, cross-examination, the assumption of risk doctrine, and the contributory negligence doctrine. The host would be subject to cooperation clauses in his insurance policy and could possibly lose his driver's license as a result of the accident. Both guest and host would be subject to suit for defrauding the insurance company or for committing perjury.

The third purpose of the Indiana guest statute is the prevention of the "benevolent thumb syndrome." The Indiana court created this doctrine as an attempt to justify the guest statute and therefore prevent the escalation of liability insurance premiums which might occur if juries improperly relied upon their assumption that the host was insured. Since the presence or absence of liability insurance is legally irrelevant to the defendant's personal liability in a tort action, how can the protection of liability insurance rates be considered a valid purpose of the statute?

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[60] *Id.* at 634.

[61] *Id.* at 636-37.

[62] 259 Ind. 16, 284 N.E.2d 794 (1972).

[63] *Id.* at 21.

In *Sidle* the constitutionality of the Indiana guest statute was attacked as violating article 1, section 12 of the Indiana Constitution,[64] which provides that every person "shall have remedy by due course of law" in the courts of the state. The court upheld the guest statute's constitutionality under article 1, section 12.[65] The court distinguished the Indiana guest statute from guest statutes which had been declared unconstitutional in cases arising under Kentucky[66] and Oregon[67] constitutional provisions similar to article 1, section 12 of the Indiana Constitution. Oregon's statute precluded all actions for deaths and injuries sustained by guest passengers, and Kentucky's statute precluded all actions for guest passenger injuries and deaths, except those brought about by intentional acts, whereas Indiana's statute preserved the right to recover for deaths and injuries resulting from wanton or willful misconduct.[68]

The Indiana court dealt only briefly with "irrebuttable presumption," a doctrine which may be significant in future guest statute challenges in other jurisdictions. In *Primes* the Supreme Court of Ohio found that their guest statute violated the Ohio Constitution because the guest statute conclusively precluded a "remedy by due course of law" by imposing an "irrebuttable presumption" that a lawsuit filed by a nonpaying guest is collusive or ingratuitous when the presumption is not necessarily true.[69] The Ohio court relied on *Vlandis v. Kline*,[70] in which a Connecticut statute imposed against out-of-state college students an irrebuttable presumption of nonresidency for the duration of their college careers. Many students became Connecticut residents while students, but the statute prevented any change in nonresident status. The United States Supreme Court struck down as a denial of due process,[71] the presumption which the state claimed was necessary to prevent out-of-state students from asserting Connecticut residence merely to obtain lower tuition rates. A number of other Supreme Court cases have held irrebuttable presumptions to be a

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[64]See note 6 *supra*.

[65]341 N.E.2d at 775.

[66]Ludwig v. Johnson, 243 Ky. 533, 49 S.W.2d 347 (1932).

[67]Stewart v. Houk, 127 Ore. 589, 271 P. 998 (1928).

[68]341 N.E.2d at 773. The Indiana court relied on Gallegher v. Davis, 7 W.W. Harr. 380, 183 A. 620 (Del. Super. Ct. 1936), in which Delaware upheld a guest statute against a "due course of law" attack. The Delaware court noted that such constitutional provisions are to prevent unreasonable and arbitrary deprivation of rights, but that a guest statute having a "wilful or wanton" savings clause is not such a deprivation.

[69]331 N.E.2d at 728.

[70]412 U.S. 441 (1973).

[71]*Id.* at 451.

denial of due process of law.[72] One recent Supreme Court case, not considered by the Ohio Court in *Primes*, may modify the holdings in "irrebuttable presumption" cases. *Weinberger v. Salfi*[73] seems to exclude three types of legislation from the purview of the irrebuttable presumption doctrine: (1) social welfare legislation, (2) legislative efforts to regulate business, and (3) other areas requiring judicial involvement in the legislative function in a degree which the courts have resisted except in the most unusual situations. The guest statute is not social welfare legislation. It is not regulation of business. Nor does it seem to fall into the third category. That area seems to be directed at matters such as foreign and military affairs and political questions where the courts usually take a hands-off approach. Therefore, under the most recent authority, the Indiana guest statute appears to deny due process as well as denying equal protection of the laws to non-paying guests.

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[72]*See* Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632 (1974), in which the Court invalidated a rule of the Cleveland Board of Education which required pregnant teachers to stop teaching by the fifth month of pregnancy, regardless of actual physical condition. In Stanley v. Illinois, 405 U.S. 645 (1972), the Supreme Court concluded that an Illinois statute which presumed an unwed father to be unfit as a guardian of his children, and afforded no hearing at which this presumption could be challenged, denied the father due process of law.

[73]422 U.S. 749 (1975).

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