Supplementary Material

Chapter 11: The Contemporary Era—Federalism

Saenz v. Roe, 526 U.S. 489 (1999)

In 1996, Congress eliminated a key federal welfare program, Aid to Families with Dependent Children (AFDC), and replaced it with the Temporary Assistance to Needy Families (TANF) program. Like AFDC, TANF was an intergovernmental partnership that relied on state governments to provide part of the funding and to establish important rules for its local implementation. California had long been relatively generous in how it operated AFDC, providing monthly benefits that were nearly twice as large as those offered in some neighboring states and among the largest in the nation. But California's state budget was coming under increasing pressure, and in 1992 the state legislature restricted full eligibility to the state-run welfare program to those who had been residents of the state for at least a year (welfare recipients who had been in the state for less than a year received only the amount that they would have received in their prior state of residence). The federal Secretary of Health and Human Services granted a waiver to California to allow this adjustment. When Congress created TANF with the passage of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), it specifically authorized states to adopt a twelve-month residency requirement before full benefits would kick in.

Shortly after California adopted its new rules in 1992, three residents sued in federal district court to block their implementation. The plaintiffs included two women from southern states, which offered welfare payments that were roughly a third of California's. The district court granted the injunction, concluding that the differential payments placed a "penalty" on interstate travel. The plaintiffs renewed their suit after the passage of PRWORA and challenged the federal statutory provision as well. The district court again granted an injunction. On appeal, the circuit court agreed. In a 7–2 ruling, the Supreme Court affirmed the lower courts, focusing on the constitutionality of the state statute.

Does the majority conclude that the residency rule infringes on the right to interstate travel or something else? Can states ever treat newly arrived individuals differently than long-time residents? Do individuals immediately become state citizens as soon as they arrive in the state? Is a federal concern that the pressures of interstate migration might encourage states to reduce welfare benefits for everyone a sufficient justification for allowing these sorts of residency requirements? Is there a constitutional problem with Oklahoma offering a smaller benefit than California in administering this federal program?

JUSTICE STEVENS delivered the opinion of the Court.

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The word "travel" is not found in the text of the Constitution. Yet the "constitutional right to travel from one State to another" is firmly embedded in our jurisprudence. Indeed, as Justice Stewart reminded us in *Shapiro v. Thompson* (1969), the right is so important that it is "assertable against private interference as well as governmental action . . . a virtually unconditional personal right, guaranteed by the Constitution to us all."

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In this case California argues that [the statute] was not enacted for the impermissible purpose of inhibiting migration by needy persons and that, unlike the legislation reviewed in Shapiro, it does not penalize the right to travel because new arrivals are not ineligible for benefits during their first year of residence. California submits that, instead of being subjected to the strictest scrutiny, the statute should be upheld if it is supported by a rational basis and that the State's legitimate interest in saving over $10 million a year satisfies that test. . . .

The "right to travel" discussed in our cases embraces at least three different components. It protects the right of a citizen of one State to enter and to leave another State, the right to be treated as a welcome visitor rather than an unfriendly alien when temporarily present in the second State, and, for those travelers who elect to become permanent residents, the right to be treated like other citizens of that State.

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The second component of the right to travel is, however, expressly protected by the text of the Constitution. The first sentence of Article IV, § 2, provides: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." Thus, by virtue of a person's state citizenship, a citizen of one State who travels in other States, intending to return home at the end of his journey, is entitled to enjoy the "Privileges and Immunities of Citizens in the several States" that he visits. . . . Those protections are not "absolute," but the Clause "does bar discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States." There may be a substantial reason for requiring the nonresident to pay more than the resident for a hunting license, or to enroll in the state university, see *Vlandis v. Kline* (1973), but our cases have not identified any acceptable reason for qualifying the protection afforded by the Clause for "the 'citizen of State A who ventures into State B' to settle there and establish a home." Permissible justifications for discrimination between residents and nonresidents are simply inapplicable to a nonresident's exercise of the right to move into another State and become a resident of that State.

What is at issue in this case, then, is this third aspect of the right to travel—the right of the newly arrived citizen to the same privileges and immunities enjoyed by other citizens of the same State. That right is protected not only by the new arrival's status as a state citizen, but also by her status as a citizen of the United States. That additional source of protection is plainly identified in the opening words of the Fourteenth Amendment: "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; . . . ."

. . . . [I]t has always been common ground that this Clause protects the third component of the right to travel. Writing for the majority in the *Slaughter-House Cases* (1873), Justice Miller explained that one of the privileges conferred by this Clause "is that a citizen of the United States can, of his own volition, become a citizen of any State of the Union by a bona fide residence therein, with the same rights as other citizens of that State." . . .

. . . . Neither mere rationality nor some intermediate standard of review should be used to judge the constitutionality of a state rule that discriminates against some of its citizens because they have been domiciled in the State for less than a year. . . .

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It is undisputed that respondents and the members of the class that they represent are citizens of California and that their need for welfare benefits is unrelated to the length of time that they have resided in California. We thus have no occasion to consider what weight might be given to a citizen's length of residence if the bona fides of her claim to state citizenship were questioned. Moreover, because whatever benefits they receive will be consumed while they remain in California, there is no danger that recognition of their claim will encourage citizens of other States to establish residency for just long enough to acquire some readily portable benefit, such as a divorce or a college education, that will be enjoyed after they return to their original domicile. . . .

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Disavowing any desire to fence out the indigent, California has instead advanced an entirely fiscal justification for its multitiered scheme. . . . The question is not whether such saving is a legitimate purpose but whether the State may accomplish that end by the discriminatory means it has chosen. . . . But our negative answer . . . rests on the fact that the Citizenship Clause of the Fourteenth Amendment expressly equates citizenship with residence. . . .

. . . . In short, the State's legitimate interest in saving money provides no justification for its decision to discriminate among equally eligible citizens.

The question that remains is whether congressional approval of durational residency requirements in the 1996 amendment to the Social Security Act somehow resuscitates the constitutionality [of the state statute]. That question is readily answered, for we have consistently held that Congress may not authorize the States to violate the Fourteenth Amendment. Moreover, the protection afforded to the citizen by the Citizenship Clause of that Amendment is a limitation on the powers of the National Government as well as the States.

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Section Five of the Fourteenth Amendment gives Congress broad power indeed to enforce the command of the amendment and "to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion. . . ." Congress' power under § 5, however, "is limited to adopting measures to enforce the guarantees of the Amendment; § 5 grants Congress no power to restrict, abrogate, or dilute these guarantees." Although we give deference to congressional decisions and classifications, neither Congress nor a State can validate a law that denies the rights guaranteed by the Fourteenth Amendment. . . .

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The Solicitor General also suggests that we should recognize the congressional concern addressed in the legislative history of [the federal statute] that the "States might engage in a 'race to the bottom' in setting the benefit levels in their TANF programs." . . . But speculation about such an unlikely eventuality provides no basis for upholding [the state statute].

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Citizens of the United States, whether rich or poor, have the right to choose to be citizens "of the State wherein they reside." The States, however, do not have any right to select their citizens. The Fourteenth Amendment, like the Constitution itself, was, as Justice Cardozo put it, "framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division."

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The judgment of the Court of Appeals is *affirmed*.

CHIEF JUSTICE REHNQUIST, with whom JUSTICE THOMAS joins, dissenting.

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Much of the Court's opinion is unremarkable and sound. The right to travel clearly embraces the right to go from one place to another, and prohibits States from impeding the free interstate passage of citizens. . . . Indeed, for most of this country's history, what the Court today calls the first "component" of the right to travel was the entirety of this right. . . .

I also have no difficulty with aligning the right to travel with the protections afforded by the Privileges and Immunities Clause of Article IV, § 2, to nonresidents who enter other States "intending to return home at the end of [their] journey." . . . Like the traditional right-to-travel guarantees discussed above, however, this Clause has no application here, because respondents expressed a desire to stay in California and become citizens of that State. Respondents therefore plainly fall outside the protections of Article IV, § 2.

Finally, I agree with the proposition that a "citizen of the United States can, of his own volition, become a citizen of any State of the Union by a bona fide residence therein, with the same rights as other citizens of that State."

But I cannot see how the right to become a citizen of another State is a necessary "component" of the right to travel, or why the Court tries to marry these separate and distinct rights. A person is no longer "traveling" in any sense of the word when he finishes his journey to a State which he plans to make his home. Indeed, under the Court's logic, the protections of the Privileges or Immunities Clause recognized in this case come into play only when an individual stops traveling with the intent to remain and become a citizen of a new State. The right to travel and the right to become a citizen are distinct, their relationship is not reciprocal, and one is not a "component" of the other. . . .

No doubt the Court has, in the past 30 years, essentially conflated the right to travel with the right to equal state citizenship in striking down durational residence requirements similar to the one challenged here. . . . These cases marked a sharp departure from the Court's prior right-to-travel cases because in none of them was travel itself prohibited. . . .

Instead, the Court in these cases held that restricting the provision of welfare benefits, votes, or certain medical benefits to new citizens for a limited time impermissibly "penalized" them under the Equal Protection Clause of the Fourteenth Amendment for having exercised their right to travel. . . .

The Court today tries to clear much of the underbrush created by these prior right-to-travel cases, abandoning its effort to define what residence requirements deprive individuals of "important rights and benefits" or "penalize" the right to travel. Under its new analytical framework, a State, outside certain ill-defined circumstances, cannot classify its citizens by the length of their residence in the State without offending the Privileges or Immunities Clause of the Fourteenth Amendment. . . . For all its misplaced efforts to fold the right to become a citizen into the right to travel, the Court has essentially returned to its original understanding of the right to travel.

In unearthing from its tomb the right to become a state citizen and to be treated equally in the new State of residence, however, the Court ignores a State's need to assure that only persons who establish a bona fide residence receive the benefits provided to current residents of the State. The *Slaughter-House* dicta at the core of the Court's analysis specifically conditions a United States citizen's right to "become a citizen of any state of the Union" and to enjoy the "same rights as other citizens of that State" on the establishment of a "bona fide residence therein." . . .

While the physical presence element of a bona fide residence is easy to police, the subjective intent element is not. It is simply unworkable and futile to require States to inquire into each new resident's subjective intent to remain. Hence, States employ objective criteria such as durational residence requirements to test a new resident's resolve to remain before these new citizens can enjoy certain in-state benefits. Recognizing the practical appeal of such criteria, this Court has repeatedly sanctioned the State's use of durational residence requirements before new residents receive in-state tuition rates at state universities. . . .

If States can require individuals to reside in-state for a year before exercising the right to educational benefits, the right to terminate a marriage, or the right to vote in primary elections that all other state citizens enjoy, then States may surely do the same for welfare benefits. Indeed, there is no material difference between a 1-year residence requirement applied to the level of welfare benefits given out by a State, and the same requirement applied to the level of tuition subsidies at a state university. . . .

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The Court tries to distinguish education and divorce benefits by contending that the welfare payment here will be consumed in California, while a college education or a divorce produces benefits that are "portable" and can be enjoyed after individuals return to their original domicile. But this "you can't take it with you" distinction is more apparent than real, and offers little guidance to lower courts who must apply this rationale in the future. . . . A welfare subsidy is . . . as much an investment in human capital as is a tuition subsidy, and their attendant benefits are just as "portable." More importantly, this foray into social economics demonstrates that the line drawn by the Court borders on the metaphysical, and requires lower courts to plumb the policies animating certain benefits like welfare to define their "essence" and hence their "portability." . . .

I therefore believe that the durational residence requirement challenged here is a permissible exercise of the State's power to "assure that services provided for its residents are enjoyed only by residents." . . .

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JUSTICE THOMAS, with whom the CHIEF JUSTICE joins, dissenting.

. . . . In my view, the majority attributes a meaning to the Privileges or Immunities Clause that likely was unintended when the Fourteenth Amendment was enacted and ratified.

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The colonists' repeated assertions that they maintained the rights, privileges and immunities of persons "born within the realm of England" and "natural born" persons suggests that, at the time of the founding, the terms "privileges" and "immunities" (and their counterparts) were understood to refer to those fundamental rights and liberties specifically enjoyed by English citizens, and more broadly, by all persons. . . .

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. . . . [The] repeated references [by the framers of the Fourteenth Amendment] to the *Corfield v. Coryell* (CCED, 1825) decision, combined with what appears to be the historical understanding of the Clause's operative terms, supports the inference that, at the time the Fourteenth Amendment was adopted, people understood that "privileges or immunities of citizens" were fundamental rights, rather than every public benefit established by positive law. Accordingly, the majority's conclusion—that a State violates the Privileges or Immunities Clause when it "discriminates" against citizens who have been domiciled in the State for less than a year in the distribution of welfare benefit appears contrary to the original understanding and is dubious at best.

. . . . Because I believe that the demise of the Privileges or Immunities Clause has contributed in no small part to the current disarray of our Fourteenth Amendment jurisprudence, I would be open to reevaluating its meaning in an appropriate case. Before invoking the Clause, however, we should endeavor to understand what the framers of the Fourteenth Amendment thought that it meant. We should also consider whether the Clause should displace, rather than augment, portions of our equal protection and substantive due process jurisprudence. The majority's failure to consider these important questions raises the specter that the Privileges or Immunities Clause will become yet another convenient tool for inventing new rights, limited solely by the "predilections of those who happen at the time to be Members of this Court."