AMERICAN CONSTITUTIONALISM

VOLUME I: STRUCTURES OF GOVERNMENT

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Supplementary Material

Chapter 9: Liberalism Divided – Federalism

**Shapiro v. Thompson, 394 U.S. 618** (1969)

*Aid to Families with Dependent Children (AFDC) was a federal welfare program administered through and partly funded by the states. The Connecticut Welfare Department, following state law, denied the application of Vivian Marie Thompson to benefits under AFDC on the grounds that she had not been a resident of the state for a year before filing the application. (Thompson and her infant son had recently moved from Massachusetts to live with her mother in Hartford, Connecticut, but moved into her own apartment soon after her arrival in Hartford). Such state waiting-periods were common, especially as more generous states hoped to avoid becoming “welfare magnets” for the indigent residing in less generous states and as states in general hoped to discourage the poor from migrating into them. A divided federal three-judge panel struck down the provision as a violation of the equal protection clause of the Fourteenth Amendment and a burden on an intrinsic right to travel. Companion cases from the District of Columbia and Pennsylvania raised the same issue and were heard at the same time. The case fragmented the liberals on the Warren Court, in part over the issue of how much deference should be shown to Congress’s policy choices and implicit constitutional judgments.*

*In* Shapiro*, at the tail end of the Warren era, the Court took a step toward creating a new right to welfare. The case was first argued in 1967, and the Court voted 6–3 to uphold the residency requirements. Chief Justice Warren’s would-be majority opinion, however, provoked strong dissenting opinions from Douglas and Fortas that persuaded Brennan to switch sides (Marshall was the third dissenter in the initial vote) and Stewart to waver. The case was scheduled for reargument, after which Warren was left in dissent. As the senior justice in the new majority, Douglas assigned the opinion to Brennan. Brennan was able to hold together his majority while suggesting that class, like race, was a category of special constitutional concern and that “the very means to subsist” was a fundamental right requiring judicial protection.*

*In* Shapiro*, the Court emphasized how the relations of federalism imposed limits on the burdens that states could impose on new residents and on those engaging in interstate travel. Residency requirements on welfare benefits ran afoul of a right to interstate travel. The majority and dissent differed, however, on whether such a right had implications for other issues. The Court avoided the question later in the term by dismissing a challenge to state residency requirements for voting as moot since by the time the case reached the Court the plaintiffs had satisfied the residency requirement in* Hall v. Beals *(1969). When might states be able to distinguish between well established and newly arrived residents? Are state policies preferring their own residents consistent with a federal union?*

JUSTICE BRENNAN, delivered the opinion of the Court.

. . . .

There is no dispute that the effect of the waiting-period requirement in each case is to create two classes of needy resident families indistinguishable from each other except that one is composed of residents who have resided a year or more, and the second of residents who have resided less than a year, in the jurisdiction. On the basis of this sole difference the first class is granted and the second class is denied welfare aid upon which may depend the ability of the families to obtain the very means to subsist—food, shelter, and other necessities of life. In each case, the District Court found that appellees met the test for residence in their jurisdictions, as well as all other eligibility requirements except the requirement of residence for a full year prior to their applications. On reargument, appellees’ central contention is that the statutory prohibition of benefits to residents of less than a year creates a classification which constitutes an invidious discrimination denying them equal protection of the laws.[[1]](#footnote-1) We agree. The interests which appellants assert are promoted by the classification either may not constitutionally be promoted by government or are not compelling governmental interests.

Primarily, appellants justify the waiting-period requirement as a protective device to preserve the fiscal integrity of state public assistance programs. It is asserted that people who require welfare assistance during their first year of residence in a State are likely to become continuing burdens on state welfare programs. Therefore, the argument runs, if such people can be deterred from entering the jurisdiction by denying them welfare benefits during the first year, state programs to assist long-time residents will not be impaired by a substantial influx of indigent newcomers.

There is weighty evidence that exclusion from the jurisdiction of the poor who need or may need relief was the specific objective of these provisions. In the Congress, sponsors of federal legislation to eliminate all residence requirements have been consistently opposed by representatives of state and local welfare agencies who have stressed the fears of the States that elimination of the requirements would result in a heavy influx of individuals into States providing the most generous benefits. . . . The sponsor of the Connecticut requirement said in its support: “I doubt that Connecticut can and should continue to allow unlimited migration into the state on the basis of offering instant money and permanent income to all who can make their way to the state regardless of their ability to contribute to the economy.” . . .

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This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement. That proposition was early stated by Chief Justice Taney in the Passenger Cases (1849):

For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States.

We have no occasion to ascribe the source of this right to travel interstate to a particular constitutional provision. It suffices that, as JUSTICE STEWART said for the Court in United States v. Guest (1966):

The constitutional right to travel from one State to another . . . occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized.

 . . .

Thus, the purpose of deterring the in-migration of indigents cannot serve as justification for the classification created by the one-year waiting period, since that purpose is constitutionally impermissible. If a law has “no other purpose . . . than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it [is] patently unconstitutional.” United States v. Jackson (1968).

 . . . [T]he class of barred newcomers is all-inclusive, lumping the great majority who come to the State for other purposes with those who come for the sole purpose of collecting higher benefits. In actual operation, therefore, the three statutes enact what in effect are nonrebuttable presumptions that every applicant for assistance in his first year of residence came to the jurisdiction solely to obtain higher benefits. Nothing whatever in any of these records supplies any basis in fact for such a presumption.

More fundamentally, a State may no more try to fence out those indigents who seek higher welfare benefits than it may try to fence out indigents generally. Implicit in any such distinction is the notion that indigents who enter a State with the hope of securing higher welfare benefits are somehow less deserving than indigents who do not take this consideration into account. But we do not perceive why a mother who is seeking to make a new life for herself and her children should be regarded as less deserving because she considers, among others factors, the level of a State’s public assistance. Surely such a mother is no less deserving than a mother who moves into a particular State in order to take advantage of its better educational facilities.

Appellants argue further that the challenged classification may be sustained as an attempt to distinguish between new and old residents on the basis of the contribution they have made to the community through the payment of taxes. We have difficulty seeing how long-term residents who qualify for welfare are making a greater present contribution to the State in taxes than indigent residents who have recently arrived. . . . Appellants’ reasoning would logically permit the State to bar new residents from schools, parks, and libraries or deprive them of police and fire protection. Indeed it would permit the State to apportion all benefits and services according to the past tax contributions of its citizens. The Equal Protection Clause prohibits such an apportionment of state services.

We recognize that a State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens. It could not, for example, reduce expenditures for education by barring indigent children from its schools. . . .

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 . . . The waiting-period provision denies welfare benefits to otherwise eligible applicants solely because they have recently moved into the jurisdiction. But in moving from State to State or to the District of Columbia appellees were exercising a constitutional right, and any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional. Cf. Skinner v. Oklahoma (1942); Korematsu v. United States (1944); Bates v. Little Rock (1960); Sherbert v. Verner (1963).

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We conclude therefore that appellants in these cases do not use and have no need to use the one-year requirement for the governmental purposes suggested. Thus, even under traditional equal protection tests a classification of welfare applicants according to whether they have lived in the State for one year would seem irrational and unconstitutional. But, of course, the traditional criteria do not apply in these cases. Since the classification here touches on the fundamental right of interstate movement, its constitutionality must be judged by the stricter standard of whether it promotes a compelling state interest. Under this standard, the waiting-period requirement clearly violates the Equal Protection Clause.[[2]](#footnote-2)

Connecticut and Pennsylvania argue, however, that the constitutional challenge to the waiting-period requirements must fail because Congress expressly approved the imposition of the requirement by the States as part of the jointly funded AFDC program.

Section 402 (b) of the Social Security Act of 1935, as amended, 42 U. S. C. § 602 (b), provides that:

The Secretary shall approve any [state assistance] plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes as a condition of eligibility for aid to families with dependent children, a residence requirement which denies aid with respect to any child residing in the State (1) who has resided in the State for one year immediately preceding the application for such aid, or (2) who was born within one year immediately preceding the application, if the parent or other relative with whom the child is living has resided in the State for one year immediately preceding the birth.

On its face, the statute does not approve, much less prescribe, a one-year requirement. . . . Rather than constituting an approval or a prescription of the requirement in state plans, the directive was the means chosen by Congress to deny federal funding to any State which persisted in stipulating excessive residence requirements as a condition of the payment of benefits. . . . Both the House and Senate Committee Reports expressly stated that the objective of § 402 (b) was to compel “liberality of residence requirement.” . . .

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 . . . [E]ven if it could be argued that the constitutionality of § 402 (b) is somehow at issue here, it follows from what we have said that the provision, insofar as it permits the one-year waiting-period requirement, would be unconstitutional. Congress may not authorize the States to violate the Equal Protection Clause . . . Katzenbach v. Morgan (1966).

The waiting-period requirement in the District of Columbia Code involved in No. 33 is also unconstitutional even though it was adopted by Congress as an exercise of federal power. In terms of federal power, the discrimination created by the one-year requirement violates the Due Process Clause of the Fifth Amendment. “While the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is “so unjustifiable as to be violative of due process.” Schneider v. Rusk (1964); Bolling v. Sharpe (1954).

Affirmed.

JUSTICE STEWART, concurring.

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The Court today does not “pick out particular human activities, characterize them as ‘fundamental,’ and give them added protection. . . . ” To the contrary, the Court simply recognizes, as it must, an established constitutional right, and gives to that right no less protection than the Constitution itself demands.

“The constitutional right to travel from one State to another . . . has been firmly established and repeatedly recognized.” United States v. Guest (1966). This constitutional right, which, of course, includes the right of “entering and abiding in any State in the Union,” Truax v. Raich (1915), is not a mere conditional liberty subject to regulation and control under conventional due process or equal protection standards. “The right to travel freely from State to State finds constitutional protection that is quite independent of the Fourteenth Amendment.” United States v. Guest. . . .

CHIEF JUSTICE WARREN, with whom JUSTICE BLACK joins, dissenting.

In my opinion the issue before us can be simply stated: May Congress, acting under one of its enumerated powers, impose minimal nationwide residence requirements or authorize the States to do so? Since I believe that Congress does have this power and has constitutionally exercised it in these cases, I must dissent.

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The Great Depression of the 1930’s exposed the inadequacies of state and local welfare programs and dramatized the need for federal participation in welfare assistance. . . . The primary purpose of the categorical assistance programs was to encourage the States to provide new and greatly enhanced welfare programs. See, e. g., S. Rep. No. 628, 74th Cong., 1st Sess., 5–6, 18–19 (1935); H. R. Rep. No. 615, 74th Cong., 1st Sess., 4 (1935). Federal aid would mean an immediate increase in the amount of benefits paid under state programs. But federal aid was to be conditioned upon certain requirements so that the States would remain the basic administrative units of the welfare system and would be unable to shift the welfare burden to local governmental units with inadequate financial resources. . . .

 . . . The congressional decision to allow the States to impose residence requirements and to enact such a requirement for the District was the subject of considerable discussion. Both those favoring lengthy residence requirements and those opposing all requirements pleaded their case during the congressional hearings on the Social Security Act. Faced with the competing claims of States which feared that abolition of residence requirements would result in an influx of persons seeking higher welfare payments and of organizations which stressed the unfairness of such requirements to transient workers forced by the economic dislocation of the depression to seek work far from their homes, Congress chose a middle course. . . .

 . . . Residence requirements have remained a part of this combined state-federal welfare program for 34 years. Congress has adhered to its original decision that residence requirements were necessary in the face of repeated attacks against these requirements. . . .

Congress, pursuant to its commerce power, has enacted a variety of restrictions upon interstate travel. It has taxed air and rail fares and the gasoline needed to power cars and trucks which move interstate. Many of the federal safety regulations of common carriers which cross state lines burden the right to travel. And Congress has prohibited by criminal statute interstate travel for certain purposes. Although these restrictions operate as a limitation upon free interstate movement of persons, their constitutionality appears well settled. As the Court observed in Zemel v. Rusk (1965), “the fact that a liberty cannot be inhibited without due process of law does not mean that it can under no circumstances be inhibited.”

 . . . As already noted, travel itself is not prohibited. Any burden inheres solely in the fact that a potential welfare recipient might take into consideration the loss of welfare benefits for a limited period of time if he changes his residence. Not only is this burden of uncertain degree, but appellees themselves assert there is evidence that few welfare recipients have in fact been deterred by residence requirements. . . .

 . . . One fact which does emerge with clarity from the legislative history is Congress’ belief that a program of cooperative federalism combining federal aid with enhanced state participation would result in an increase in the scope of welfare programs and level of benefits. . . . Our cases require only that Congress have a rational basis for finding that a chosen regulatory scheme is necessary to the furtherance of interstate commerce. See, e. g., Katzenbach v. McClung (1964); Wickard v. Filburn (1942). . . .

Appellees suggest, however, that Congress was not motivated by rational considerations. Residence requirements are imposed, they insist, for the illegitimate purpose of keeping poor people from migrating. Not only does the legislative history point to an opposite conclusion, but it also must be noted that “into the motives which induced members of Congress to [act] . . . this Court may not enquire.” Arizona v. California (1931). We do not attribute an impermissible purpose to Congress if the result would be to strike down an otherwise valid statute. . . . Since the congressional decision is rational and the restriction on travel insubstantial, I conclude that residence requirements can be imposed by Congress as an exercise of its power to control interstate commerce consistent with the constitutionally guaranteed right to travel.

 . . . Assuming that the constitutionality of § 402 (b) is properly treated by the Court, the cryptic footnote in Katzenbach v. Morgan, 384 U.S. 641, 651–652, n. 10 (1966), does not support its conclusion. Footnote 10 indicates that Congress is without power to undercut the equal-protection guarantee of racial equality in the guise of implementing the Fourteenth Amendment. I do not mean to suggest otherwise. However, I do not understand this footnote to operate as a limitation upon Congress’ power to further the flow of interstate commerce by reasonable residence requirements. Although the Court dismisses § 402 (b) with the remark that Congress cannot authorize the States to violate equal protection, I believe that the dispositive issue is whether under its commerce power Congress can impose residence requirements.

Nor can I understand the Court’s implication that other state residence requirements such as those employed in determining eligibility to vote do not present constitutional questions. . . . If a State would violate equal protection by denying welfare benefits to those who have recently moved interstate, then it would appear to follow that equal protection would also be denied by depriving those who have recently moved interstate of the fundamental right to vote. There is nothing in the opinion of the Court to explain this dichotomy. . . .

The era is long past when this Court under the rubric of due process has reviewed the wisdom of a congressional decision that interstate commerce will be fostered by the enactment of certain regulations. Speaking for the Court in Helvering v. Davis (1937), Justice Cardozo said of another section of the Social Security Act:

Whether wisdom or unwisdom resides in the scheme of benefits set forth . . . is not for us to say. The answer to such inquiries must come from Congress, not the courts. Our concern here, as often, is with power, not with wisdom.

I am convinced that Congress does have power to enact residence requirements of reasonable duration or to authorize the States to do so and that it has exercised this power.

The Court’s decision reveals only the top of the iceberg. Lurking beneath are the multitude of situations in which States have imposed residence requirements including eligibility to vote, to engage in certain professions or occupations or to attend a state-supported university. Although the Court takes pains to avoid acknowledging the ramifications of its decision, its implications cannot be ignored. I dissent.

JUSTICE HARLAN, dissenting.

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In upholding the equal protection argument, the Court has applied an equal protection doctrine of relatively recent vintage: the rule that statutory classifications which either are based upon certain “suspect” criteria or affect “fundamental rights” will be held to deny equal protection unless justified by a “compelling” governmental interest.

The “compelling interest” doctrine, which today is articulated more explicitly than ever before, constitutes an increasingly significant exception to the long-established rule that a statute does not deny equal protection if it is rationally related to a legitimate governmental objective. . . .

I think that this branch of the “compelling interest” doctrine is sound when applied to racial classifications, for historically the Equal Protection Clause was largely a product of the desire to eradicate legal distinctions founded upon race. However, I believe that the more recent extensions have been unwise. For the reasons stated in my dissenting opinion in Harper v. Virginia Bd. of Elections (1966), I do not consider wealth a “suspect” statutory criterion. And when, as in Williams v. Rhodes (1968), and the present case, a classification is based upon the exercise of rights guaranteed against state infringement by the Federal Constitution, then there is no need for any resort to the Equal Protection Clause; in such instances, this Court may properly and straightforwardly invalidate any undue burden upon those rights under the Fourteenth Amendment’s Due Process Clause.

The second branch of the “compelling interest” principle is even more troublesome. For it has been held that a statutory classification is subject to the “compelling interest” test if the result of the classification may be to affect a “fundamental right,” regardless of the basis of the classification. . . .

I think this branch of the “compelling interest” doctrine particularly unfortunate and unnecessary. It is unfortunate because it creates an exception which threatens to swallow the standard equal protection rule. Virtually every state statute affects important rights. This Court has repeatedly held, for example, that the traditional equal protection standard is applicable to statutory classifications affecting such fundamental matters as the right to pursue a particular occupation, the right to receive greater or smaller wages or to work more or less hours, and the right to inherit property. Rights such as these are in principle indistinguishable from those involved here, and to extend the “compelling interest” rule to all cases in which such rights are affected would go far toward making this Court a “super-legislature.” This branch of the doctrine is also unnecessary. When the right affected is one assured by the Federal Constitution, any infringement can be dealt with under the Due Process Clause. But when a statute affects only matters not mentioned in the Federal Constitution and is not arbitrary or irrational, I must reiterate that I know of nothing which entitles this Court to pick out particular human activities, characterize them as “fundamental,” and give them added protection under an unusually stringent equal protection test.

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 . . . In light of this undeniable relation of residence requirements to valid legislative aims, it cannot be said that the requirements are “arbitrary” or “lacking in rational justification.” Hence, I can find no objection to these residence requirements under the Equal Protection Clause of the Fourteenth Amendment or under the analogous standard embodied in the Due Process Clause of the Fifth Amendment.

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 . . . I do not minimize the importance of the right to travel interstate. However, the impact of residence conditions upon that right is indirect and apparently quite insubstantial. On the other hand, the governmental purposes served by the requirements are legitimate and real, and the residence requirements are clearly suited to their accomplishment. . . .

I conclude with the following observations. Today’s decision, it seems to me, reflects to an unusual degree the current notion that this Court possesses a peculiar wisdom all its own whose capacity to lead this Nation out of its present troubles is contained only by the limits of judicial ingenuity in contriving new constitutional principles to meet each problem as it arises. For anyone who, like myself, believes that it is an essential function of this Court to maintain the constitutional divisions between state and federal authority and among the three branches of the Federal Government, today’s decision is a step in the wrong direction. . . .

1. . This constitutional challenge cannot be answered by the argument that public assistance benefits are a “privilege” and not a “right.” See Sherbert v. Verner (1963). [↑](#footnote-ref-1)
2. . We imply no view of the validity of waiting-period or residence requirements determining eligibility to vote, eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and so forth. Such requirements may promote compelling state interests on the one hand, or, on the other, may not be penalties upon the exercise of the constitutional right of interstate travel. [↑](#footnote-ref-2)