AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 9: Liberalism Divided—Democratic Rights/Citizenship

Graham v. Richardson, 403 U.S. 365 (1971)

Carmen Richardson moved from Mexico to the United States in 1956. After lawfully residing in Arizona for thirteen years, she applied for state assistance to the disabled. Her application was turned down, solely because Arizona law declared that "[n]o person shall be entitled to general assistance who does not meet and maintain the following requirements: 1. Is a citizen of the United States, or has resided in the United States a total of fifteen years. . . ."

Richardson then sued John Graham, Arizona's Commission for the Department of Public Welfare, claiming that the citizenship and residency requirements violated the Fourteenth Amendment. The federal district court agreed with Richardson and Arizona appealed to the Supreme Court of the United States. The American Civil Liberties Union and Center on Social Welfare Policy and Law filed amicus briefs urging the Supreme Court to strike down the Arizona law. The brief for the ACLU asserted,

> *there is no basis whatsoever for the denial of benefits to indigent alien residents of a state except that of invidious discrimination. No real economies result to the state from such exclusion even if this were a constitutionally permissible justification. The need of the alien for the benefit is no less than that of the citizen, and he is not by virtue of his status, any less worthy a recipient. The welfare benefits are denied solely on the basis of his status, which is inherently suspect to begin with, and no reasonable basis, let alone compelling justification, can be shown for the discrimination. Therefore, it comes clearly within the scope of the Fourteenth Amendment's prohibition against the denial of equal protection of the laws.*

Graham *was the first in a series of cases in which the Supreme Court considered the constitutionality of state laws discriminating against aliens. Most of the laws concerned state employment. The justices during the 1970s concluded that states could not enact general bans on aliens in the civil service (*Sugarman v. Dougall *[1973]*), *that aliens had a right to become attorneys* (In re Griffiths *[1973]*) *or civil engineers* (Examining Bd. of Engineers, Architects and Surveyors v. Flores de Otero *[1976]), and that aliens had a right to be eligible for financial assistance for higher education* (Nyquist v. Mauclet *[1977]*). *In* Foley v. Connelie *(1978), however, a 5–4 judicial majority declared that states could prohibit aliens from becoming police officers. Chief Justice Burger's majority opinion asserted,*

> *a democratic society is ruled by its people. Thus, it is clear that a State may deny aliens the right to vote, or to run for elective office, for these lie at the heart of our political institutions. . . . Likewise, we have recognized that citizenship may be a relevant qualification for fulfilling those "important nonelective executive, legislative, and judicial positions," held by "officers who participate directly in the formulation, execution, or review of broad public policy." . . . This is not because our society seeks to reserve the better jobs to its members. Rather, it is because this country entrusts many of its most important policy responsibilities to these officers, the discretionary exercise of which can often more immediately affect the lives of citizens than even the ballot of a voter or the choice of a legislator. In sum, then, it represents the choice, and right, of the people to be governed by their citizen peers.*

Justice Marshall's dissent agreed with the broad principle, but disagreed with the application. He maintained,

> *Thus the phrase "execution of broad public policy" . . . cannot be read to mean simply the carrying out of government programs, but rather must be interpreted to include responsibility for actually setting government policy pursuant to a delegation of substantial authority from the legislature. The head of an executive agency for example, charged with promulgating complex regulations under a statute, executes broad public policy in a sense that file clerks in the agency clearly do not. In short, . . . those "elective or important nonelective" positions that involve broad policymaking responsibilities are the only state jobs from which aliens as a group may constitutionally be excluded. . . . In my view, the job of state trooper is not one of those positions.*

The next year, a similarly divided Court in Ambach v. Norwick *(1979) determined that public school teachers played the sort of government function that justified restriction to citizens.*

Justice Blackmun's opinion in Graham *quoted Justice Cardozo's assertion that government officials may normally use resources for "the advancement and profit of the members of the state." Does his opinion reject that assertion or merely indicate that welfare benefits are an exception to that general rule? Do you believe Cardozo correctly explained a fundamental constitutional distinction between citizens and aliens? Should constitutional decision makers be more concerned with whether the law in question is particularly associated with self-government, so that aliens have no constitutional right to vote, but should be allowed to be doctors? What is the proper distinction between alien and citizen? Was that line drawn correctly in* Graham*?*

JUSTICE BLACKMUN delivered the opinion of the Court.

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The Fourteenth Amendment provides, '(N)or 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.' It has long been settled, and it is not disputed here, that the term 'person' in this context encompasses lawfully admitted resident aliens as well as citizens of the United States and entitles both citizens and aliens to the equal protection of the laws of the State in which they reside. . . . Nor is it disputed that the Arizona and Pennsylvania statutes in question create two classes of needy persons, indistinguishable except with respect to whether they are or are not citizens of this country. . . .

Under traditional equal protection principles, a State retains broad discretion to classify as long as its classification has a reasonable basis. . . . But the Court's decisions have established that classifications based on alienage, like those based on nationality or race, are inherently suspect and subject to close judicial scrutiny. Aliens as a class are a prime example of a 'discrete and insular' minority . . . . for whom such heightened judicial solicitude is appropriate. . . .

Arizona and Pennsylvania seek to justify their restrictions on the eligibility of aliens for public assistance solely on the basis of a State's 'special public interest' in favoring its own citizens over aliens in the distribution of limited resources such as welfare benefits. It is true that this Court on occasion has upheld state statutes that treat citizens and noncitizens differently, the ground for distinction having been that such laws were necessary to protect special interests of the State or its citizens. . . . [I]n *Crane v. New York* . . . (1915), the Court uph[eld] a New York statute prohibiting the employment of aliens on public works projects. The New York court's opinion contained Justice Cardozo's well known observation:

> 'To disqualify aliens is discrimination indeed, but not arbitrary discrimination, for the principle of exclusion is the restriction of the resources of the state to the advancement and profit of the members of the state. Ungenerous and unwise such discrimination may be. It is not for that reason unlawful. . . . The state in determining what use shall be made of its own moneys, may legitimately consult the welfare of its own citizens, rather than that of aliens. Whatever is a privilege, rather than a right, may be made dependent upon

citizenship. In its war against poverty, the state is not required to dedicate its own resources to citizens and aliens alike.' . . .

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. . . Whatever may be the contemporary vitality of the special public-interest doctrine, . . . we conclude that a State's desire to preserve limited welfare benefits for its own citizens is inadequate to justify Pennsylvania's making noncitizens ineligible for public assistance, and Arizona's restricting benefits to citizens and longtime resident aliens. First, the special public interest doctrine was heavily grounded on the notion that '(w)hatever is a privilege, rather than a right, may be made dependent upon citizenship.' . . . But this Court now has rejected the concept that constitutional rights turn upon whether a governmental benefit is characterized as a 'right' or as a 'privilege.' . . . Second, as the Court recognized in *Shapiro v. Thompson* (1969):

> '(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. . . . The saving of welfare costs cannot justify an otherwise invidious classification.' . . .

Since an alien as well as a citizen is a 'person' for equal protection purposes, a concern for fiscal integrity is no more compelling a justification for the questioned classification in these cases than it was in *Shapiro*.

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We agree with the three-judge court in the Pennsylvania case that the 'justification of limiting expenses is particularly inappropriate and unreasonable when the discriminated class consists of aliens. Aliens like citizens pay taxes and may be called into the armed forces. Unlike the short-term residents in Shapiro, aliens may live within a state for many years, work in the state and contribute to the economic growth of the state.' . . . .There can be no 'special public interest' in tax revenues to which aliens have contributed on an equal basis with the residents of the State.

Accordingly, we hold that a state statute that denies welfare benefits to resident aliens and one that denies them to aliens who have not resided in the United States for a specified number of years violate the Equal Protection Clause.

An additional reason why the state statutes at issue in these cases do not withstand constitutional scrutiny emerges from the area of federal-state relations. The National Government has 'broad constitutional powers in determining what aliens shall be admitted to the United States, the period they may remain, regulation of their conduct before naturalization, and the terms and conditions of their naturalization.' . . . Pursuant to that power, Congress has provided, as part of a comprehensive plan for the regulation of immigration and naturalization, that '(a)liens who are paupers, professional beggars, or vagrants' or aliens who 'are likely at any time to become public charges' shall be excluded from admission into the United States . . . and that any alien lawfully admitted shall be deported who 'has within five years after entry become a public charge from causes not affirmatively shown to have arisen after entry. . . . But Congress has not seen fit to impose any burden or restriction on aliens who become indigent after their entry into the United States. Rather, it has broadly declared: 'All persons within the jurisdiction of the United States shall have the same right in every State and Territory * * * to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens. . . . The protection of this statute has been held to extend to aliens as well as to citizens. . . . Moreover, this Court has made it clear that, whatever may be the scope of the constitutional right of interstate travel, aliens lawfully within this country have a right to enter and abide in any State in the Union 'on an equality of legal privileges with all citizens under nondiscriminatory laws.' . . .

State laws that restrict the eligibility of aliens for welfare benefits merely because of their alienage conflict with these overriding national policies in an area constitutionally entrusted to the Federal Government. . . .

Congress has broadly declared as federal policy that lawfully admitted resident aliens who become public charges for causes arising after their entry are not subject to deportation, and that as long as they are here they are entitled to the full and equal benefit of all state laws for the security of persons and property. The state statutes at issue in the instant cases impose auxiliary burdens upon the entrance or residence of aliens who suffer the distress, after entry, of economic dependency on public assistance. . . . Since such laws encroach upon exclusive federal power, they are constitutionally impermissible.

JUSTICE HARLAN joins . . . in the judgment of the Court.