Supplementary Material

Chapter 9: Liberalism Divided—Equality/Equality Under Law

U.S. Dept. of Agriculture v. Moreno, 413 U.S. 528 (1973)

Jacinta Moreno was a diabetic woman who lived with another woman and that woman's three children. In 1971, Congress passed a law denying food stamps to unrelated persons who were "living as one economic unit sharing common cooking facilities and for whom food is customarily purchased in common." Moreno, who was otherwise eligible for assistance, filed a lawsuit claimed that the law denied her equal protection rights under the Fourteenth Amendment. A federal district court agreed that the law was unconstitutional, the Department of Agriculture appealed to the Supreme Court of the United States.

Justice Brennan insists that the ban on food stamps to unrelated persons is not rationally related to a legitimate government purpose. What purposes did the government claim the law promoted? What purposes did Brennan claim were illegitimate? Why did he claim the law was an irrational means to other purposes? Is the dissent (and concurrence) correct in thinking that Brennan was, in fact, not applying traditional rational scrutiny? Did this case call for something more stringent than traditional rational scrutiny?

JUSTICE BRENNAN delivered the opinion of the Court.

Under traditional equal protection analysis, a legislative classification must be sustained if the classification itself is rationally related to a legitimate governmental interest. . . . The purposes of the Food Stamp Act were expressly set forth in the congressional "declaration of policy":

> It is hereby declared to be the policy of Congress . . . to safeguard the health and wellbeing of the Nation's population and raise levels of nutrition among low income households.

. . . The challenged statutory classification (households of related persons versus households containing one or more unrelated persons) is clearly irrelevant to the stated purposes of the Act. . . .

. . . The legislative history that does exist . . . indicates that that amendment was intended to prevent so-called "hippies" and "hippie communes" from participating in the food stamp program. . . . The challenged classification clearly cannot be sustained by reference to this congressional purpose. For if the constitutional conception of "equal protection of the laws" means anything, it must, at the very least, mean that a bare congressional desire to harm a politically unpopular group cannot constitute a *legitimate* governmental interest. . . .

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[I]n practical effect, the challenged classification simply does not operate so as rationally to further the prevention of fraud. As previously noted, [the statute] defines an eligible "household" as

> "a group of related individuals . . . [1] living as one economic unit [2] sharing common cooking facilities [and 3] for whom food is customarily purchased in common."

Thus, two *unrelated* persons living together and meeting all three of these conditions would constitute a single household ineligible for assistance. If financially feasible, however, these same two individuals can legally avoid the "unrelated person" exclusion simply by altering their living arrangements so as to eliminate any one of the three conditions. By so doing, they effectively create two separate "households," both of which are eligible for assistance. . . .

Thus, in practical operation, the 1971 amendment excludes from participation in the food stamp program, *not* those persons who are "likely to abuse the program" but, rather, *only* those persons who are so desperately in need of aid that they cannot even afford to alter their living arrangements so as to retain their eligibility. Traditional equal protection analysis does not require that every classification be drawn with precise "*mathematical nicety.*'" *. . . But the classification here in issue is not only "imprecise," it is wholly without any rational basis.*

JUSTICE DOUGLAS, concurring.

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The test of equal protection is whether the legislative line that is drawn bears "some rational relationship to a legitimate" governmental purpose. . . . The requirement of equal protection denies government

> "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 the objective of the enactment."

This case involves desperately poor people with acute problems who, though unrelated, come together for mutual help and assistance. The choice of one's associates for social, political, race, or religious purposes is basic in our constitutional scheme. . . .

I suppose no one would doubt that an association of people working in the poverty field would be entitled to the same constitutional protection as those working in the racial, banking, or agricultural field. I suppose poor people holding a meeting or convention would be under the same constitutional umbrella as others. The dimensions of the "unrelated" person problem under the Food Stamp Act are in that category. As the facts of this case show, the poor are congregating in households where they can better meet the adversities of poverty. This banding together is an expression of the right of freedom of association that is very deep in our traditions.

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Congress might choose to deal only with members of a family of one or two or three generations, treating it all as a unit. Congress, however, has not done that here. Concededly an individual living alone is not disqualified from the receipt of food stamp aid, even though there are other members of the family with whom he might theoretically live. Nor are common law couples disqualified: they, like individuals living alone, may qualify under the Act if they are poor—whether they have abandoned their wives and children and however anti-family their attitudes may be. In other words, the "unrelated" person provision was not aimed at the maintenance of normal family ties. It penalizes persons or families who have brought under their roof an "unrelated" needy person. It penalizes the poorest of the poor for doubling up against the adversities of poverty.

. . . I could not say that this "unrelated" person provision has no "rational" relation to control of fraud. We deal here, however, with the right of association, protected by the First Amendment. People who are desperately poor but unrelated come together and join hands with the aim better to combat the crises of poverty. The need of those living together better to meet those crises is denied, while the need of households made up of relatives that is no more acute is serviced. Problems of the fisc, as we stated in *Shapiro v. Thompson* (1969) . . . are legitimate concerns of government. But government "may not accomplish such a purpose by invidious distinctions between classes of its citizens."

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The right of association, the right to invite the stranger into one's home is too basic in our constitutional regime to deal with roughshod. If there are abuses inherent in that pattern of living against which the food stamp program should be protected, the Act must be "narrowly drawn." . . .

. . . Laws touching social and economic matters can pass muster under the Equal Protection Clause though they are imperfect, the test being whether the classification has some "reasonable basis." . . . *Dandridge v. Williams* (1970) held that "the Fourteenth Amendment gives the federal courts no power to impose upon the States their views of what constitutes wise economic or social policy." . . . But for the First Amendment aspect of the case, *Dandridge* would control here.

Dandridge, however, did not reach classifications touching on associational rights that lie in the penumbra of the First Amendment. Since the "unrelated" person provision is not directed to the maintenance of the family as a unit but treats impoverished households composed of relatives more favorably than impoverished households having a single unrelated person, it draws a line that can be sustained only on a showing of a "compelling" governmental interest.

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JUSTICE REHNQUIST, with whom THE CHIEF JUSTICE concurs, dissenting.

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The Court's opinion would make a very persuasive congressional committee report arguing against the adoption of the limitation in question. Undoubtedly, Congress attacked the problem with a rather blunt instrument, and, just as undoubtedly, persuasive arguments may be made that what we conceive to be its purpose will not be significantly advanced by the enactment of the limitation. But questions such as this are for Congress, rather than for this Court; our role is limited to the determination of whether there is any rational basis on which Congress could decide that public funds made available under the food stamp program should not go to a household containing an individual who is unrelated to any other member of the household.

I do not believe that asserted congressional concern with the fraudulent use of food stamps is, when interpreted in the light most favorable to sustaining the limitation, quite as irrational as the Court seems to believe. A basic unit which Congress has chosen for determination of availability for food stamps is the "household," a determination which is not criticized by the Court. By the limitation here challenged, it has singled out households which contain unrelated persons and made such households ineligible. I do not think it is unreasonable for Congress to conclude that the basic unit which it was willing to support with federal funding through food stamps is some variation on the family as we know it—a household consisting of related individuals. This unit provides a guarantee which is not provided by households containing unrelated individuals that the household exists for some purpose other than to collect federal food stamps.

Admittedly, as the Court points out, the limitation will make ineligible many households which have not been formed for the purpose of collecting federal food stamps, and will, at the same time, not wholly deny food stamps to those households which may have been formed in large part to take advantage of the program. But, as the Court concedes, "[t]raditional equal protection analysis does not require that every classification be drawn with precise mathematical nicety." . . .

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