Supplementary Material

Chapter 9: Liberalism Divided—Equality/Equality under Law

United States Railroad Retirement Bd. v. Fritz, 449 U.S. 166 (1980)

Gerhard Fritz worked more than ten years on the railroads before taking another job. While he was working on the railroads, federal law permitted railroad workers who had at least ten years of experience on the job to collect retirement benefits under railroad law for the years they worked on the railroads and social security benefits for the years they worked at other jobs. Partly because of congressional oversight, persons who worked on the railroads and on other jobs could collect higher benefits than persons who spent their working careers solely on the railroads. Congress, concerned with the financial stability of retirement programs, acted in 1974 to phrase out what was perceived to be a windfall benefit. The Railroad Retirement Act of 1974 achieved this goal in part by distinguishing between persons with more than ten but less than twenty-five years of experience on the railroads who, as of 1974, were then working but not working on the railroads. Persons who were working on the railroads were eligible for the dual benefits. Persons who left the railroads were not. Fritz and other workers who had left the railroad business then filed a class action suit against the Railroad Retirement Board, claiming that this distinction violated the equal protection clause of the Fourteenth Amendment. After the federal district court declared the offending sections of the Railroad Retirement Act unconstitutional, the Railroad Retirement Board appealed to the Supreme Court of the United States. The National Railroad Labor Conference and the Railway Labor Executives' Association (which helped draft the challenged law) filed amicus briefs urging the Supreme Court to sustain the Railroad Retirement Act. The brief for the National Railroad Labor Conference declared,

> *the distinctions made by the Congress in phasing out windfall dual benefits, rather than being irrational as concluded by the District Court, were based upon factors—long-term railroad service and a current connection with the railroad industry—that the Congress historically has considered to justify more favorable treatment under the railroad retirement system which primarily is intended to provide benefits for career railroad employees.*

Legal Services for the Elderly and a group of railroad workers filed amicus briefs urging the Court to sustain the lower court ruling. The brief for Legal Services stated,

> *[t[]he crucial factor seems to have been that members of the plaintiff class were in a position of even greater helplessness than other persons who had retired from the industry. Not only were they retired, so that their needs were of less concern to the union than those of the current workers, but also they had left the industry to work elsewhere.*

All three opinions in this case used some version of the rational basis test. To what extent did they apply the same standard differently? To what extent did Justices Rehnquist, Stevens, and Brennan apply different versions of the rational basis text? Which application do you believe correct? Notice that Justice Brennan insisted that Congress in 1974 was misled when the national legislature excluded Fritz and similarly situated workers from "windfall benefits." As a matter of fact, do you believe Congress was misled? As a matter of law, may the Supreme Court ever presume that Congress was misled?

JUSTICE REHNQUIST delivered the opinion of the Court.

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The initial issue presented by this case is the appropriate standard of judicial review to be applied when social and economic legislation enacted by Congress is challenged as being violative of the Fifth Amendment to the United States Constitution. . . .

In more recent years, . . . the Court, in cases involving social and economic benefits, has consistently refused to invalidate on equal protection grounds legislation which it simply deemed unwise or unartfully drawn.

Thus, in *Dandridge v. Williams* . . . (1970), the Court rejected a claim that Maryland welfare legislation violated the Equal Protection Clause of the Fourteenth Amendment. It said:

> In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because, in practice, it results in some inequality.

. . . Earlier, in *Flemming v. Nestor* (1960), . . . the Court upheld the constitutionality of a social security eligibility provision, saying:

> [I]t is not within our authority to determine whether the Congressional judgment expressed in that Section is sound or equitable, or whether it comports well or ill with purposes of the Act. . . . The answer to such inquiries must come from Congress, not the courts. Our concern here, as often, is with power, not with wisdom.

. . .

Applying those principles to this case, the plain language of [the statute] marks the beginning and end of our inquiry. . . . There, Congress determined that some of those who in the past received full windfall benefits would not continue to do so. Because Congress could have eliminated windfall benefits for all classes of employees, it is not constitutionally impermissible for Congress to have drawn lines between groups of employees for the purpose of phasing out those benefits. . . .

The only remaining question is whether Congress achieved its purpose in a patently arbitrary or irrational way. The classification here is not arbitrary, says appellant, because it is an attempt to protect the relative equities of employees and to provide benefits to career railroad employees. Congress fully protected, for example, the expectations of those employees who had already retired and those unretired employees who had 25 years of railroad employment. Conversely, Congress denied all windfall benefits to those employees who lacked 10 years of railroad employment. Congress additionally provided windfall benefits, in lesser amount, to those employees with 10 years' railroad employment who had qualified for social security benefits at the time they had left railroad employment, [p178] regardless of a current connection with the industry in 1974 or on their retirement date.

Thus, the only eligible former railroad employees denied full windfall benefits are those, like appellee, who had no statutory entitlement to dual benefits at the time they left the railroad industry, but thereafter became eligible for dual benefits when they subsequently qualified for social security benefits. Congress could properly conclude that persons who had actually acquired statutory entitlement to windfall benefits while still employed in the railroad industry had a greater equitable claim to those benefits than the members of appellee's class who were no longer in railroad employment when they became eligible for dual benefits. Furthermore, the "current connection" test is not a patently arbitrary means for determining which employees are "career railroaders," particularly since the test has been used by Congress elsewhere as an eligibility requirement for retirement benefits. Congress could assume that those who had a current connection with the railroad industry when the Act was passed in 1974, or who returned to the industry before their retirement, were more likely than those who had left the industry prior to 1974, and who never returned, to be among the class of persons who pursue careers in the railroad industry, the class for whom the Railroad Retirement Act was designed. . . .

Where, as here, there are plausible reasons for Congress' action, our inquiry is at an end. It is, of course, "constitutionally irrelevant whether this reasoning in fact underlay the legislative decision," . . . because this Court has never insisted that a legislative body articulate its reasons for enacting a statute. This is particularly true where the legislature must necessarily engage in a process of line-drawing. The task of classifying persons for . . . benefits . . . inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line, . . . and the fact the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration.

Finally, we disagree with the District Court's conclusion that Congress was unaware of what it accomplished, or that it was misled by the groups that appeared before it. If this test were applied literally to every member of any legislature that ever voted on a law, there would be very few laws which would survive it. The language of the statute is clear, and we have historically assumed that Congress intended what it enacted. To be sure, appellee lost a political battle in which he had a strong interest, but this is neither the first nor the last time that such a result will occur in the legislative forum. . . .

JUSTICE STEVENS, concurring in the judgment.

When Congress deprives a small class of persons of vested rights that are protected—and, indeed, even enhanced—for others who are in a similar though not identical position, I believe the Constitution requires something more than merely a "conceivable" or a "plausible" explanation for the unequal treatment.

I do not . . . share JUSTICE BRENNAN's conclusion that every statutory classification must further an objective that can be confidently identified as the "actual purpose" of the legislature. Actual purpose is sometimes unknown. Moreover, undue emphasis on actual motivation may result in identically worded statutes' being held valid in one State and invalid in a neighboring State. I therefore believe that we must discover a correlation between the classification and either the actual purpose of the statute or a legitimate purpose that we may reasonably presume to have motivated an impartial legislature. If the adverse impact on the disfavored class is an apparent aim of the legislature, its impartiality would be suspect. If, however, the adverse impact may reasonably be viewed as an acceptable cost of achieving a larger goal, an impartial lawmaker could rationally decide that that cost should be incurred.

In this case, we need not look beyond the actual purpose of the legislature. As is often true, this legislation is the product of multiple and somewhat inconsistent purposes that led to certain compromises. One purpose was to eliminate in the future the benefit that is described by the Court as a "windfall benefit" and by JUSTICE BRENNAN as an "earned dual benefit." That aim was incident to the broader objective of protecting the solvency of the entire railroad retirement program. Two purposes that conflicted somewhat with this broad objective were the purposes of preserving those benefits that had already vested and of increasing the level of payments to beneficiaries whose rights were not otherwise to be changed. As JUSTICE BRENNAN emphasizes, Congress originally intended to protect all vested benefits, but it ultimately sacrificed some benefits in the interest of achieving other objectives.

Given these conflicting purposes, I believe the decisive questions are (1) whether Congress can rationally reduce the vested benefits of some employees to improve the solvency of the entire program while simultaneously increasing the benefits of others; and (2) whether, in deciding which vested benefits to reduce, Congress may favor annuitants whose railroad service was more recent than that of disfavored annuitants who had an equal or greater quantum of employment.

My answer to both questions is in the affirmative. The congressional purpose to eliminate dual benefits is unquestionably legitimate; that legitimacy is not undermined by the adjustment in the level of remaining benefits in response to inflation in the economy. As for the second question, some hardship—in the form of frustrated long-term expectations—must inevitably result from any reduction in vested benefits. Arguably, therefore, Congress had a duty—and surely it had the right to decide—to eliminate no more vested benefits than necessary to achieve its fiscal purpose. Having made that decision, any distinction it chose within the class of vested beneficiaries would involve a difference of degree, rather

than a difference in entitlement. I am satisfied that a distinction based upon currency of railroad employment represents an impartial method of identifying that sort of difference. Because retirement plans frequently provide greater benefits for recent retirees than for those who retired years ago—and thus give a greater reward for recent service than for past service of equal duration—the basis for the statutory discrimination is supported by relevant precedent. It follows, in my judgment, that the timing of the employees' railroad service is a "reasonable basis" for the classification. . . .

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, dissenting.

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A legislative classification may be upheld only if it bears a rational relationship to a legitimate state purpose. . . . Perhaps the clearest statement of this Court's present approach to "rational basis" scrutiny may be found in *Johnson v. Robison* . . . (1974). . . . [E]ight Members of this Court agreed that

> . . . A classification "must 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."

. . .

[T]he rational basis standard "is not a toothless one," . . . and will not be satisfied by flimsy or implausible justifications for the legislative classification, proffered after the fact by Government attorneys. . . . When faced with a challenge to a legislative classification under the rational basis test, the court should ask, first, what the purposes of the statute are, and, second, whether the classification is rationally related to achievement of those purposes.

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[A] "principal purpose" of the Railroad Retirement Act of 1974 . . . was to preserve the vested earned benefits of retirees who had already qualified for them. The classification at issue here, which deprives some retirees of vested dual benefits that they had earned prior to 1974, directly conflicts with Congress' stated purpose. As such, the classification is not only rationally unrelated to the congressional purpose; it is inimical to it.

The Court today avoids the conclusion that [the statute] must be invalidated by deviating in three ways from traditional rational basis analysis. First, the Court adopts a tautological approach to statutory purpose, thereby avoiding the necessity for evaluating the relationship between the challenged classification and the legislative purpose. Second, it disregards the actual stated purpose of Congress in favor of a justification which was never suggested by any Representative or Senator, and which in fact conflicts with the stated congressional purpose. Third, it upholds the classification without any analysis of its rational relationship to the identified purpose.

The Court states that "the plain language . . . marks the beginning and end of our inquiry." . . . This statement is strange indeed, for the "plain language" of the statute can tell us only what the classification is; it can tell us nothing about the purpose of the classification, let alone the relationship between the classification and that purpose. Since § 231b(h) deprives the members of appellee class of their vested earned dual benefits, the Court apparently assumes that Congress must have *intended that result.* But by presuming purpose from result, the Court reduces analysis to tautology. It may always be said that Congress intended to do what it in fact did. If that were the extent of our analysis, we would find every statute, no matter how arbitrary or irrational, perfectly tailored to achieve its purpose. But equal protection scrutiny under the rational basis test requires the courts first to deduce the independent objectives of the statute, usually from statements of purpose and other evidence in the statute and legislative history, and second to analyze whether the challenged classification rationally furthers achievement of those objectives. The Court's tautological approach will not suffice.

. . . Over the past 10 years, this Court has frequently recognized that the actual purposes of Congress, rather than the *post hoc* justifications offered by Government attorneys, must be the primary basis for analysis under the rational basis test. . . .

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. . . The Court is unable to cite even one statement in the legislative history by a Representative or Senator that makes the equitable judgment it imputes to Congress. . . .

. . . In this instance, however, where complex legislation was drafted by outside parties and Congress relied on them to explain it, where the misstatements are frequent and unrebutted, and where no Member of Congress can be found to have stated the effect of the classification correctly, we are entitled to suspect that Congress may have been misled. As the District Court found:

> At no time during the hearings did Congress even give a hint that it understood that the bill by its language eliminated an earned benefit of plaintiff's class.

Therefore, I do not think that this classification was rationally related to an *actual* governmental purpose.

The third way in which the Court has deviated from the principles of rational basis scrutiny is its failure to analyze whether the challenged classification is genuinely related to the purpose identified by the Court. Having suggested that "equitable considerations" underlay the challenged classification—in direct contradiction to Congress' evaluation of those considerations, and in the face of evidence that the classification was the product of private negotiation by interested parties, inadequately examined and understood by Congress—the Court proceeds to accept that suggestion without further analysis.

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In my view, the following considerations are of greatest relevance to the equities of this case: (1) contribution to the system; (2) reasonable expectation and reliance; (3) need; and (4) character of service to the railroad industry. With respect to each of these considerations, I would conclude that the members of appellee class have as great an equitable claim to their earned dual benefits as do their more favored coworkers, who remain entitled to their earned dual benefits. . . .

Contribution to the system. The members of the appellee class worked in the railroad industry for more than 10 but fewer than 25 years, and also worked in nonrailroad jobs for the required number of years for vesting under Social Security—usually 40 quarters. During that time, they contributed to both the Railroad Retirement and Social Security systems, and met all requirements of the law for the vesting of benefits under those systems. In this respect, they are identical to their more favored coworkers, who contributed no more of their earnings to the systems than did appellee class. On the basis of contributions to the systems, therefore, there is no reason for this discrimination.

Reasonable expectation and reliance. Throughout their working lives, the members of appellee class were assured that they would receive retirement benefits in accordance with the terms of the law as it then stood. . . . No less than their more favored coworkers, they chose career paths and made calculations for their retirement based on these assurances. . . .

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Need. . . . The record provides no reason to suppose that members of the appellee class are any less likely to be in need than are their coworkers.

Character of service to the railroad industry. Members of the appellee class worked at least 10 years for the railroad industry by 1974, and many of them worked as long as 24 years. Their duration of railroad employment—surely the best measure of their service to the industry—was equal to that of their coworkers. . . .

Even if I were able to accept the notion that Congress considered it equitable to deprive a class of railroad retirees of a portion of their vested earned benefits because they no longer worked for the railroad, I would still consider the means adopted . . . irrational. Under this provision, a retiree is favored by retention of his full vested earned benefits if he had worked so much as one day for a railroad in 1974. This is a plainly capricious basis for distinguishing among retirees, every one of whom had worked in the industry for at least *10 years:* the fortuity of one day of employment in a particular year should not govern entitlement to benefits earned over a lifetime.

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Equal protection rationality analysis does not empower the courts to second-guess the wisdom of legislative classifications. . . . On the other hand, we are not powerless to probe beneath claims by Government attorneys concerning the means and ends of Congress. Otherwise, we would defer not to the

considered judgment of Congress, but to the arguments of litigators. The instant case serves as an example of the unfortunate consequence of such misplaced deference. Because the Court is willing to accept a tautological analysis of congressional purpose, an assertion of "equitable" considerations contrary to the expressed judgment of Congress, and a classification patently unrelated to achievement of the identified purpose, it succeeds in effectuating neither equity nor congressional intent.