Supplementary Material

Chapter 11: The Contemporary Era—Democratic Rights/Citizenship

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

California in 1992 passed a law declaring that persons who had lived in California for less than twelve months could receive only the welfare benefits they would have received had they remained in their previous state of residence. Congress in 1996 passed a federal law that authorized states to enact such residency requirements when allocating welfare benefits. The next year, two anonymous residents filed a lawsuit against the director of California Department of Social Services (Rita Saenz was named director after the case was filed) claiming that the California limit on welfare payments violated the due process and citizenship clauses of the Fourteenth Amendment. The local district court declared the California law unconstitutional and that decision was sustained by the Court of Appeals for the Ninth Circuit. California appealed to the Supreme Court of the United States.

Saenz v. Roe *attracted the attention of numerous groups interested in welfare reform. The United States, many states, organizations of state officials, and conservative public interest groups urged the Supreme Court to sustain the California law. The brief from the Clinton administration declared,*

> *Federal authorization [of lower welfare payments to new residents] addresses at least two related concerns. First, Congress was concerned that the national welfare program itself might create real or perceived incentives to migrate between States. . . . Those variations could produce both new incentives to move and new problems of interstate coordination, to which Congress could reasonably respond with a specialized choice-of-law-type provision allowing destination States to apply the benefit rules of origin States during a limited transition period. Second, Congress was concerned that, without some permission to impose such a transitional limitation, States might engage in a "race to the bottom." . . . That concern, too, was potentially exacerbated by the 1996 reforms.*

Many liberal religious groups, anti-poverty organizations, the American Bar Association, prominent liberal scholars and social scientists filed amicus briefs urging the Court to strike down the California law. The brief for sixty-six organizations serving domestic violence survivors stated,

> *California's durational residency requirement for cash assistance harshly penalizes new state residents by denying them the very necessities of life: shelter, clothing, heat, food. The impact of welfare residency requirements is felt particularly keenly by women and children who migrate to another state to escape brutal, sometimes life-threatening domestic violence. This violence frequently escalates when the victim attempts to flee from her abuser, and can be so relentless that the victim must change her identity, move to another state, and abandon all ties to her former life. Welfare is a lifeline for these women and their children. Many have no other means of support and would otherwise be forced to choose between utter destitution and returning to their abusers.*

The Supreme Court by a 7–2 vote declared that California could not give lower welfare benefits to new state residents. Justice Stevens' majority opinion asserted that the state law violated the right of all persons to be an equal citizen upon establishing state residence. Justice Stevens distinguished between in-state college tuition, which he claims is constitutional, and discrimination in welfare benefits, which he claims is not. What reasons did he give for this distinction? Why did the dissent criticize the distinction? Who had the better of the argument? Justice Scalia silently joined the majority opinion. How do you explain his vote to declare the California law unconstitutional?

JUSTICE STEVENS delivered the opinion of the Court.

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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.

. . .

What is at issue in this case . . . 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; . . . ."

Despite fundamentally differing views concerning the coverage of the Privileges or Immunities Clause of the Fourteenth Amendment, most notably expressed in the majority and dissenting opinions in the *Slaughter-House Cases* (1873), it 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*, 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." . . . That newly arrived citizens "have two political capacities, one state and one federal," adds special force to their claim that they have the same rights as others who share their citizenship. 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. . . .

. . . [S]ince the right to travel embraces the citizen's right to be treated equally in her new State of residence, the discriminatory classification is itself a penalty. 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.

. . .

These classifications may not be justified by a purpose to deter welfare applicants from migrating to California for three reasons. First, although it is reasonable to assume that some persons may be motivated to move for the purpose of obtaining higher benefits, the empirical evidence reviewed by the District Judge, which takes into account the high cost of living in California, indicates that the number of such persons is quite small—surely not large enough to justify a burden on those who had no such motive. Second, California has represented to the Court that the legislation was not enacted for any such reason. Third, even if it were, as we squarely held in *Shapiro v. Thompson* (1969), such a purpose would be unequivocally impermissible.

Disavowing any desire to fence out the indigent, California has instead advanced an entirely fiscal justification for its multitiered scheme. The enforcement of § 11450.03 will save the State approximately $10.9 million a year. 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. An evenhanded, across-the-board reduction of about 72 cents per month for every beneficiary would produce the same result. But our negative answer to the question does not rest on the weakness of the State's purported fiscal justification. It rests on the fact that the Citizenship Clause of the Fourteenth Amendment expressly equates citizenship with residence: "That Clause does not provide for, and does not allow for, degrees of citizenship based on length of residence. It is equally clear that the Clause does not tolerate a hierarchy of 45 subclasses of similarly situated citizens based on the location of their prior residence. Thus § 11450.03 is doubly vulnerable: Neither the duration of respondents' California residence, nor the identity of their prior States of residence, has any relevance to their need for benefits. Nor do those factors bear any relationship to the State's interest in making an equitable allocation of the funds to be distributed among its needy citizens. . . .

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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 § 11450.03. 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. "Section 5 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'" *Mississippi University of Women v. Hogan* (1982).

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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."

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. . . .

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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."

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.

. . .

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. . . .

Thus, the Court has consistently recognized that while new citizens must have the same opportunity to enjoy the privileges of being a citizen of a State, the States retain the ability to use bona fide residence requirements to ferret out those who intend to take the privileges and run. . . . 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. . . . The Court has done the same in upholding a 1-year residence requirement for eligibility to obtain a divorce in state courts and in upholding political party registration restrictions that amounted to a durational residency requirement for voting in primary elections. . . .

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. The welfare payment here and in-state tuition rates are cash subsidies provided to a limited class of people, and California's standard of living and higher education system make both subsidies quite attractive. . . .

. . .

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. Welfare payments are a form of insurance, giving impoverished individuals and their families the means to meet the demands of daily life while they receive the necessary training, education, and time to look for a job. The cash itself will no doubt be spent in California, but the benefits from receiving this income and having the opportunity to become employed or employable will stick with the welfare recipients if they stay in California or go back to their true domicile. Similarly, tuition subsidies are "consumed" in-state but the recipient takes the benefits of a college education with him wherever he goes. . . . 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." . . .

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Congress' express approval . . . of durational residence requirements for welfare recipients like the one established by California only goes to show the reasonableness of a law like § 11450.03. The National Legislature, where people from Mississippi as well as California are represented, has recognized the need to protect state resources in a time of experimentation and welfare reform. As States like California revamp their total welfare packages, they should have the authority and flexibility to ensure that their new programs are not exploited. Congress has decided that it makes good welfare policy to give the States this power. California has reasonably exercised it through an objective, narrowly tailored residence requirement. I see nothing in the Constitution that should prevent the enforcement of that requirement.

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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Unlike the majority, I would look to history to ascertain the original meaning of the Clause. . . .

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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.

. . .

[The] repeated references to the [*Corfield v. Coryell* (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 benefits—appears contrary to the original understanding and is dubious at best.