

Memorandum

WR - Residency Requirements


Subject H.R. 3507, Personal Responsibility and Work Opportunity Act of 1996 and Medicaid Restructuring Act of 1996	Date July 2, 1996
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To
 Andrew Fois
 Assistant Attorney General
 Office of Legislative Affairs

From
 Randolph Moss
 Deputy Assistant
 Attorney General
 Office of Legal Counsel

Attention: Greg Jones

You have asked us for our views as advisory unit on H.R. 3507, the Personal Responsibility and Work Opportunity Act of 1996 and Medicaid Restructuring Act of 1996. As explained in further detail below, we believe several of the provisions in this bill raise constitutional concerns.

Durational Residency Requirements

Section 103 of the bill amends Part A of title IV of the Social Security Act (42 U.S.C. § 601 et seq.) to create a new section 404(c), which would permit states to impose durational residency requirements for the receipt of welfare benefits. Specifically, § 404(c) would allow a state to provide families that have lived in the state for less than 12 months with the level of benefits, if any, that the families would have received in their prior states of residence. Similarly, section 2003 of the bill creates a new Title XV of the Social Security Act, which would allow states to impose durational residency requirements in their Medicaid programs: new § 1502(b)(4) permits a state to limit the duration and scope of Medicaid benefits for residents who have lived in the state less than 180 days to those benefits the residents would have received in their states of prior residence. See also new section 402(a)(1)(B)(i) (requiring state plans to indicate whether the state intends to treat new state residents differently from other state residents, and if so, how).

The Supreme Court has held that a state impermissibly burdens the right to interstate travel when it denies newcomers the "same right to vital government benefits and privileges . . . as are enjoyed by other residents." Memorial Hosp. v. Maricopa County, 415 U.S. 250, 261 (1974) (one-year residency requirement for free nonemergency medical care invalid as penalty on right to interstate travel); see also Shapiro v. Thompson, 394 U.S. 618 (1969) (invalidating one-year residency requirement for welfare benefits). This is true even where the state acts, as it would here, pursuant

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 administrative
 in hand*

to congressional authorization. See Shapiro, 394 U.S. at 641. In a related line of cases, the Supreme Court has used a different rationale to come to the same conclusion, holding that distinctions based on length of residence violate the Equal Protection Clause under rational basis review. See, e.g., Zobel v. Williams, 457 U.S. 55 (1982) (state lacks rational and permissible interest in granting incrementally higher oil revenue dividend payments to residents of longer duration).¹

This does apply. Cl: would cover of rational

Recent lower court cases have invalidated laws that, like those contemplated by the bill, limit new residents to the level of benefits they received in their prior states. See Mitchell v. Steffen, 504 N.W.2d 198 (Minn. 1993), cert. denied, 114 S. Ct. 902 (1994); Aumick v. Bane, 612 N.Y.S.2d 766 (1994); Green v. Anderson, 811 F. Supp. 516 (E.D. Cal. 1993), aff'd, 26 F.3d 95 (9th Cir. 1994), vacated on procedural grounds, 115 S. Ct. 1059 (1995). But see Jones v. Milwaukee County, 485 N.W.2d 21 (Wis. 1992). The argument that such laws might be described as "neutral" with respect to travel, insofar as they provide equivalent benefits to those available in the state of prior residence, was rejected by those courts. Mitchell, 504 N.W.2d at 201-202; Aumick, 612 N.Y.S.2d at 772-73; Green, 811 F. Supp. at 521. As noted in Green, 811 F. Supp. 521, because the cost of living differs between states, such laws might not always provide new residents with benefits equal to those previously received in any meaningful sense. More fundamentally, however, two-tiered benefits systems disadvantage new state residents relative to older state residents:

but might provide more

[U]nder the cases the relevant comparison is not between recent residents of the State of California and residents of other states. . . . It is because the measure treats recent residents of California different than other California residents, and involves the basic necessities of life, that it places a penalty on migration.

Makes no sense.

Id. Under existing case law, this is the dispositive comparison, because it reveals "discriminat[ion] only against those who have recently exercised the right to travel." See Zobel, 457 U.S. at 55 n.5; see also Memorial Hospital, 415 U.S. at 261 ("right of

This is only possible rationale

¹ The majority opinion in Zobel asserted that the right to travel was grounded in the Equal Protection Clause: "In reality, right to travel analysis refers to little more than a particular application of equal protection analysis. Right to travel cases have examined, in equal protection terms, state distinctions between newcomers and longer term residents." 457 U.S. at 60 n.6. In her concurring opinion, Justice O'Connor argued that the right predated the Constitution and was preserved by the Privileges and Immunities Clause of Article IV. Justice Brennan suggested the right might derive from the Commerce Clause or the Privileges and Immunities Clause of the Fourteenth Amendment.

interstate travel must be seen as insuring new residents the same right to vital government benefits and privileges in the state to which they migrate as are enjoyed by other residents").

Accordingly, under this line of authority, the durational residency requirement of H.R. 3507 can be sustained only if narrowly tailored to serve a compelling governmental interest, a burden that is extremely difficult to satisfy. See Shapiro, 394 U.S. at 627-638 (rejecting variety of budgetary and administrative interests as impermissible or non-compelling).

Denial of Food Stamp Benefits to Citizen Children of Unqualified Aliens

Section 1044 of the bill amends section 11 of the Food Stamp Act of 1977 to add a new subsection 11(e)(2)(B)(v), which would require states to ensure that all members of a household receiving food stamp assistance are either U.S. citizens or permanent resident aliens. Specifically, this provision would require anyone applying for food stamps, for herself or on behalf of a minor child, to certify that all members of the household are citizens or legal resident aliens. in practice, this provision would operate to deny the U.S.-born children of families with undocumented alien members certain food stamp benefits for which they might otherwise be eligible if their parents or siblings were not undocumented aliens.

Although Congress enjoys substantial authority to classify on the basis of alienage and, specifically, to limit the eligibility of aliens for benefits under federal programs, see Mathews v. Diaz, 426 U.S. 67 (1976), that authority ends once citizenship is attained. See Schneider v. Rusk, 377 U.S. 163, 166 (1964) (Congress' broad discretion to impose conditions precedent to entry and naturalization expires once an individual attains citizenship by naturalization: "The simple power of the national Legislature, is to prescribe a uniform rule of naturalization, and the exercise of this power exhausts it, so far as respects the individual." (citing Osborn v. Bank of United States, 22 U.S. (9 Wheat.) 738, 827 (1824))). The Constitution guarantees that every person born in the United States becomes a citizen of this country, regardless of his or her parentage. U.S. Const. amend. XIV, cl. 1; see also United States v. Wong Kim Ark, 169 U.S. 649, 693 (1898) (citizenship clause "affirms the ancient and fundamental rule of citizenship by birth within the territory"); Rogers v. Bellei, 401 U.S. 815, 829-30 (1971); 14 Op. Atty. Gen. 154, 155 (1872) ("As a general rule, a person born in this country, though of alien parents who have never been naturalized, is, under our law, deemed a citizen of the United States by reason of the place of his birth"). This precious right of citizenship, once acquired, cannot be "shifted, canceled, or diluted at the will of the Federal Government, the States, or any other governmental unit." Afroyim

Doesn't have anything to do with this classif

All true but irrelevant.

Then - are illegal aliens w/ kids
entitled to all govt benefits.
Impossible! a - Is this a benefit
that goes to indivs, house-
holds, something other?

v. Rusk, 387 U.S. 253, 262 (1967).

A classification such as the one in § 11(e)(2)(B)(v) effectively distinguishes among citizen children on the basis of an immutable trait -- their national ancestry. The Supreme Court made the suspect nature of such classifications clear in Oyama v. California, 332 U.S. 633 (1948), where it invalidated a state law restricting the ability of citizen children of alien parents to own land. Concluding that discrimination between citizens on the basis of their racial descent is justifiable under "only the most exceptional circumstances," 334 U.S. at 646, the Court applied a strict scrutiny standard of review to classifications based upon ancestry. See also Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 312 and n.4 (1976) (including ancestry as a suspect classification requiring strict scrutiny); Graham v. Richardson, 403 U.S. 365, 372 and n.5 (1971) (citing Oyama for proposition that classifications based on nationality are "inherently suspect and subject to close judicial scrutiny").

This was
a claim
- but kids
involved.

In the context of public assistance benefits, lower federal courts and state courts have applied strict scrutiny to reject legislative schemes which operate to deny benefits to the citizen children of ineligible aliens. See Fuentes v. White, 709 F. Supp. 1026, 1030 (D. Kan. 1989) (confirming that state policy of denying food stamps and medical benefits to citizen children of undocumented aliens violated the Equal Protection Clause); Intermountain Health Care, Inc. v. Board of Commissioners of Blaine County, 707 P.2d 1051, 1054 (Idaho 1985) (Donaldson, C.J., specially concurring) (same; denial of medical indigency benefits); Darces v. Woods, 679 P.2d 458 (Cal. 1984) (same; AFDC benefits); cf. Lewis v. Grinker, 965 F.2d 1206, 1217 (2d Cir. 1992) (noting that "serious equal protection questions" would be raised if federal statute were construed to deny automatic eligibility for Medicaid benefits to citizen children of illegal aliens). As the California Supreme Court pointed out in Darces, citizen children of undocumented aliens "constitute a discrete minority" and "are classified on the basis of an immutable trait -- they cannot forsake their birth into an undocumented family." 679 P.2d at 473. Citing a long line of Supreme Court cases, including Oyama, which impose strict scrutiny for classifications based upon national origin or ancestry, the California Court concluded that strict scrutiny was warranted. Id. Compare Lyng v. International Union, United Automobile, Aerospace, & Agricultural Implement Workers of America, 485 U.S. 360, 370 (provision denying food stamp benefits to households in which one member is on strike did not "affect with particularity any protected class," and was therefore reviewed, and upheld, under rational basis standard).

Are there
laws re
kids in
adults?
What's diff?
The claim?

Because the classification here operates to discriminate against citizen, rather than alien, children and does so on the basis of the national origin of their parents, we believe that it would be subject to strict scrutiny. It is highly unlikely that

This is not the S. De facto
discrim II almost never
enact under EP law.

the compelling interest requirement could be satisfied in this context, as no court faced with a similar classification has found any proposed state justification sufficient under this standard. See, e.g., Darces, 679 P.2d at 473-74; Fuentes, 709 F. Supp. at 1030.

Indeed, even under a more lenient standard, this classification would be unlikely to survive constitutional scrutiny. As the Supreme Court explained in Weber v. Aetna Casualty & Surety Co., 406 U.S. 164 (1972), where it invalidated a state statute that discriminated against illegitimate children, penalizing a child is an impermissible means of attempting to affect the parent's conduct:

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[I]mposing disabilities on the illegitimate child is contrary to the basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing. Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual -- as well as an unjust -- way of deterring the parent. Courts are powerless to prevent the social opprobrium suffered by these hapless children, but the Equal Protection Clause does enable us to strike down discriminatory laws relating to status of birth where -- as in this case -- the classification is justified by no legitimate state interest, compelling or otherwise.

Id. at 175-76. Cf. Plyler v. Doe, 457 U.S. 202 (1982) (invalidating state's denial of public education benefits to undocumented alien children under higher standard than ordinary rational review; Supreme Court acknowledged "special constitutional sensitivity" of case, due to the state's penalization of innocent minors and the importance of the public benefits in question). Similarly, citizen children living in homes with undocumented aliens are neither responsible for nor able to control the alien status of their parents or siblings. In light of the constitutional standards reviewed here, punishing the innocent citizen children or siblings of undocumented aliens seems an impermissible means to effectuate Congress's legitimate interest in deterring undocumented aliens from entering this country.

State Authority to Limit Eligibility of Noncitizens

Section 412 of the bill permits states to establish eligibility standards for certain categories of aliens seeking state welfare benefits. Section 422 of the bill authorizes states to apply so-called "income deeming" rules to restrict the eligibility of otherwise qualified aliens. Under such rules, the income of an alien's "sponsor" would be attributed to the alien for purposes of determining eligibility for state benefits.

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To the extent these provisions allow states to discriminate against aliens, they raise constitutional concerns. Although Congress enjoys broad authority to classify on the basis of alienage and to limit the eligibility of aliens for benefits under federal programs, Mathews v. Diaz, 426 U.S. 67 (1976), the states are constrained significantly by the Equal Protection Clause in their treatment of legal aliens. State denial of welfare benefits to legal aliens is subject to strict scrutiny, a standard that, as we have already noted, is exceedingly difficult to satisfy. Graham v. Richardson, 403 U.S. 365 (1971); cf. Nyquist v. Mauclet, 432 U.S. 1, 7 (1977) (state classification based upon alienage invalidated under strict scrutiny).

The question arises whether congressional authorization would be sufficient to immunize a state from such an equal protection challenge. Graham suggests that it would not; in Graham, the Supreme Court was faced with the argument that a state's durational residency requirement for aliens was in fact authorized by federal statute. The Court declined to read the statute in question "so as to authorize discriminatory treatment of aliens at the option of the States," in order to avoid the "serious constitutional questions" that would otherwise be presented:

Although the Federal Government admittedly has broad constitutional power to determine what aliens shall be admitted to the United States, the period they may remain, and the terms and conditions of their naturalization, Congress does not have the power to authorize the individual States to violate the Equal Protection Clause.

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403 U.S. at 382 (citing Shapiro v. Thompson, 394 U.S. 618, 641 (1969)).

The fact that Graham involved state restrictions on alien eligibility for federal welfare benefits rather than state welfare benefits does not, we believe, alter the Equal Protection analysis applicable to such restrictions. Graham made clear that strict scrutiny should be applied to such classifications because "[a]lliens as a class are a prime example of a 'discrete and insular' minority for whom such heightened judicial solicitude is appropriate." 403 U.S. at 372 (citing United States v. Carolene Products Co., 304 U.S. 144, 152-153, n.4 (1938)).