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Constitutional Law - Aliens

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CONSTITUTIONAL LAW—ALIENS—The United States Supreme Court has held that state welfare laws discriminating against aliens violate the equal protection clause of the fourteenth amendment, and encroach upon the exclusive federal control of immigration.


The Graham decision involved two cases originating in Arizona and Pennsylvania that were consolidated on appeal.¹ The Arizona statute required a welfare recipient either to be a United States citizen or to have resided in the United States for fifteen years.² The Pennsylvania statute denied state public assistance to all aliens.³ Both Arizona and Pennsylvania sought to justify their restrictions by asserting the state's "special public interest" of favoring its own citizens over aliens in the distribution of welfare benefits.⁴

Mr. Justice Blackmun, speaking for the Court, rejected this argument upon two grounds. The primary reason for holding these laws unconstitutional was that they were a form of invidious discrimination,⁵ and therefore, incompatible with the equal protection clause of the fourteenth amendment. The Court stated that classifications based on alienage are "inherently suspect" and hence subject to strict judicial scrutiny.⁶ Since the Court found that the state had no compelling governmental interest in passing such laws, it held that the statutes contravened the fourteenth amendment.⁷

As additional support for the decision, the Court found that the statutes violated the supremacy clause. Since the Constitution grants Congress power to "establish a uniform Rule of Naturalization,"⁸ and Congress has done so,⁹ any substantial state interference in immigration and naturalization proceedings is unconstitutional. The Court held that state alien residency requirements are tantamount to a state making an "assertion of a right, inconsistent with federal policy, to deny entrance and abode. Since such laws encroach upon exclusive federal power, they are constitutionally impermissible."¹⁰

². ARIZ. REV. STAT. ANN. § 46-233 (1962).
⁵. Id. at 376.
⁶. Id.
⁷. 403 U.S. at 376.
¹⁰. 403 U.S. at 380.
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Although *Graham* does not revolutionize the law regarding alien rights or welfare programs, the decision is significant; it curtails state power to regulate aliens, formerly justified as being part of a state's special public interest.\(^{11}\) The most notable part of the decision is that, for the first time, the Court has enunciated the doctrine that classifications based on alienage are inherently suspect and therefore subject to a strict equal protection test.\(^{12}\)

Two tests are applied to see if a classification violates the equal protection clause. The traditional test forbids classifications only if they have no rational basis and are purely arbitrary.\(^{13}\) The second and more stringent test requires the state to show that the classification is necessary because of a compelling state interest. Application of the compelling interest test is limited to two areas: 1) classifications affecting fundamental rights,\(^{14}\) and 2) classifications that are inherently suspect.\(^{15}\) Prior to *Graham*, the classifications held to be suspect were those based on race,\(^{16}\) nationality,\(^{17}\) or wealth.\(^{18}\) Statutes of this type are subject to rigid judicial scrutiny\(^{19}\) and the burden of proof is on the state to justify them.\(^{20}\) Suspect classifications can only be justified by demonstrating a compelling state interest,\(^{21}\) as opposed to the rational relationship standard under the traditional test.

It is submitted that the Supreme Court in *Graham* covertly injected another classification into the suspect area, *i.e.*, any classification based on alienage. Mr. Justice Blackmun said that: "[T]he Court's decisions have established that classifications based on alienage, like those based on nationality or race, are inherently suspect . . . ."\(^{22}\) An examination of prior case law does not substantiate this.

In an attempt to give credence to its position that alienage classi-

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12. 403 U.S. at 376.
13. *See Dandridge v. Williams*, 397 U.S. 471 (1970); *see also* 44 TUL. L. REV. 363, 365 (1970), where it is stated that under the traditional test a classification is not arbitrary if any state of facts reasonably can be conceived that would sustain it. Furthermore, a statute will not be found unconstitutional because of an illicit legislative motive, provided the classification is directly related to a legitimate governmental function. Under the traditional test the Court will not consider the wisdom or morality of an otherwise valid classification.
22. 403 U.S. at 372.
fications had previously been inherently suspect, the Court cited two cases. It relied on a footnote in *United States v. Carolene Products Company*,\(^{23}\) that speaks of legislation regarding a "discrete and insular" minority.\(^{24}\) The *Graham* Court stated that aliens are a prime example of such a minority, and therefore, such a classification is suspect and should be given "heightened judicial solicitude."\(^{25}\) The validity of such reasoning is questionable for two reasons: first, in 1938 the *Carolene* Court felt it unnecessary even to consider whether legislation restricting minorities should be given more searching judicial inquiry;\(^{26}\) and second, the "discrete and insular minorities" discussed in the footnote were religious, national, and racial minorities,\(^{27}\) not aliens.

The other case the Court relied on in finding classifications based on alienage inherently suspect was *Takahashi v. Fish & Game Commission*.\(^{28}\) In *Takahashi*, a California statute barring issuance of commercial fishing licenses to persons ineligible for citizenship was declared unconstitutional. The Court stated that: "[T]he power of a state to apply its laws exclusively to its alien inhabitants as a class is confined within narrow limits."\(^{29}\) The *Graham* Court used this quotation to convey the idea that *Takahashi* stood for a strict application of the equal protection clause. While it is true that both the above quotation and the *Takahashi* holding limited the ability of the state to legislate against aliens, they did so on the basis that the state had no special public interest for passing such a discriminattory law,\(^{30}\) and therefore, the classification was unconstitutional under the traditional test of equal protection. Nowhere in *Takahashi* did the Court state that alien classifications are inherently suspect or subject to a strict equal protection test.

The Court tortured prior case law in order to squeeze aliens into the inherently suspect area—forcing states to prove a compelling state interest for such laws. It is suggested that a much more logical argument for applying a strict equal protection test was possible: the statutes in question infringed upon a fundamental right, and therefore, violated the equal protection clause.

\(^{23}\) 304 U.S. 144 (1938).
\(^{24}\) Id. at 152-153, n. 4.
\(^{25}\) 403 U.S. at 372.
\(^{27}\) Id.
\(^{28}\) 334 U.S. 410 (1948).
\(^{29}\) Id. at 420.
\(^{30}\) Id.
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Precedent does exist for such a finding, especially in light of Shapiro v. Thompson. There the Court found unconstitutional, minimum state residence requirements for welfare recipients. The Court stated that such laws had the effect of preventing a welfare recipient from moving to a state with such a requirement. It applied a strict equal protection test because the residency requirement encroached upon a fundamental right, the right to travel. Similarly, when a state limits welfare benefits to United States citizens, it has the effect of preventing alien welfare recipients from moving to that state. So, by analogy, citizenship requirements should also violate the fundamental right of interstate movement.

The probable reason for the Court's hesitancy to make such a holding is that they have never stated that aliens have the same right to travel as citizens. However, in Shapiro, the Court did not ascribe the right to travel to any particular constitutional provision, but instead cited United States v. Guest, where it was held that:

The constitutional right to travel from one state to another occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized.

The right finds no explicit mention in the Constitution. The reason, it has been suggested, is that a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created. In any event, freedom to travel throughout the United States has long been recognized as a basic right under the Constitution.

Since the Court has not limited the source of the right to travel to one section of the Constitution, but has defined the right in such broad and strong terms, extension of this right to aliens could be easily justified. The use of such a rationale, which is a logical extension of Shapiro, would have negated the need for the Court to enlarge the inherently suspect area, and would have produced a more palatable decision.

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32. Id.
34. Id. at 758.