

The Burger Court Opinion Writing Database

Zobel v. Williams

457 U.S. 55 (1982)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: The Chief Justice

Circulated: DEC 4 1981

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1146

RONALD M. ZOBEL AND PATRICIA L. ZOBEL, APPELLANTS
v. THOMAS WILLIAMS, COMMISSIONER OF REVENUE, AND ALASKA

ON APPEAL FROM THE SUPREME COURT OF ALASKA

[December —, 1981]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

The question presented on this appeal is whether a statute under which a State distributes income derived from its natural resources to the adult citizens of the State in varying amounts based on the length of each citizen's residence violates the constitutional rights of newer state citizens. The Alaska Supreme Court sustained the constitutionality of the law. We noted probable jurisdiction and stayed the distribution of dividend funds, — U. S. — (1981). We reverse.

I

The 1967 discovery of large oil reserves on state-owned land in the Prudhoe Bay area of Alaska resulted in a windfall to the State. The dimensions of this fortuitous development are suggested in the comparison of the State's 1969 total budget of \$124 million with the \$3.7 billion in petroleum revenues the State received during the 1981 fiscal year from its oil bounty.¹ This income will continue, and most likely grow, at

¹Alaska Department of Revenue, *Revenue Sources FY 1981-1983* (1981). (Includes General Fund unrestricted petroleum revenues of \$3.3 billion and petroleum revenues directly deposited in the Permanent Fund in the amount of \$400 million. An additional \$900 million was transferred

✓
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 18, 1981

RE: No. 80-1146 - Zobel v. Williams

MEMORANDUM TO THE CONFERENCE:

The divergent views expressed in this case are not surprising in light of the diversity of positions at Conference and especially the uniqueness of the issues presented by the Alaska program. Plainly, both Equal Protection and the right to travel aspects of Shapiro and other cases bear to some extent on this case, but it fits neatly into neither category.

This case does not really present a typical "travel" issue since the Alaska plaintiffs are established residents, not travelers seeking immediate welfare or other benefits. Only in the sense that Shapiro, Memorial Hospital, and Sosna equated the right to travel with the application of Equal Protection to new residents do we have a right to travel case.

I can go the Equal Protection route but I sought instead a way to carry those strongly opposed to that rationale by using the equal footing analogy. It now appears that there is a greater likelihood of consensus on an Equal Protection basis than on the more novel rationale of my first draft, although I believe that my "equal footing" notion is conceptually quite similar to - a "first cousin" of -- Equal Protection. In due course I will therefore circulate a new draft following the Equal Protection rationale.

In this busy season I venture to suggest all of you await the new draft in which I will focus on Equal Protection while maintaining the interesting "equal footing" analogy.

Regards,



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

Personal

December 28, 1981

RE: Zobel v. Williams, No. 80-1146.

Dear Lewis:

Thank you for your personal memo of December 15.

I expected some "flak" on this case because there are several rationales for a common result. I have some problems with most of those rationales:

1. I do not see this case as really involving any literal "right to travel." The injured parties seeking relief are not travellers but established residents of Alaska.

2. No fundamental rights are involved in this case, in the Shapiro and Memorial Hospital sense. It is therefore hard to fit this case into the Equal Protection framework established by those cases.

3. I have long been skeptical of the balancing approach. It is too result oriented to suit me and it is a process more suited to legislatures than to the judiciary.

I see this case as a matter of treating all bona fide residents equally without regard to the date on which they acquired the status of resident or citizen. It was my effort to meet the views of some that we should avoid the Equal Protection approach that has encountered resistance. Realistically, "Equal Footing" and Equal Protection are not all that far apart.

As I re-examined the briefs over the past week, I was troubled by the dubious help we were given. This is a close and very important question deserving the level of advocacy

of an Erwin Griswold or Bernard Segal. I am considering moving for reargument and inviting competent amici to give us the kind of assistance this case deserves.

Would you go along with a motion for reargument?

Regards,

A handwritten signature in black ink, appearing to be the initials 'W.B.' with a stylized flourish at the end.

SUBSTANTIAL CHANGES THROUGHOUT

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

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SUPREME COURT U.S.
JUSTICE MARSHALL

'82 MAY -7 P12:43

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1146

RONALD M. ZOBEL AND PATRICIA L. ZOBEL, APPELLANTS
v. THOMAS WILLIAMS, COMMISSIONER OF REVENUE, AND ALASKA

ON APPEAL FROM THE SUPREME COURT OF ALASKA

[May —, 1982]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

The question presented on this appeal is whether a statutory scheme by which a State distributes income derived from its natural resources to the adult citizens of the State in varying amounts, based on the length of each citizen's residence, violates the equal protection rights of newer state citizens. The Alaska Supreme Court sustained the constitutionality of the statute. *Williams v. Zobel*, 619 P. 2d 448 (Alaska 1980). We noted probable jurisdiction and stayed the distribution of dividend funds, — U. S. — (1981). We reverse.

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The 1967 discovery of large oil reserves on state-owned land in the Prudhoe Bay area of Alaska resulted in a windfall to the State. The State, which had a total budget of \$124 million in 1969, before the oil revenues began to flow into the state coffers, received \$3.7 billion in petroleum revenues during the 1981 fiscal year.¹ This income will continue, and

¹Alaska Department of Revenue, *Revenue Sources FY 1981-1983* (1981). (Includes General Fund unrestricted petroleum revenues of \$3.3 billion and petroleum revenues directly deposited in the Permanent Fund in the amount of \$400 million. An additional \$900 million was transferred

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Changes pp 2-5, 9, 10

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated: _____

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1146

RONALD M. ZOBEL AND PATRICIA L. ZOBEL, APPELLANTS
v. THOMAS WILLIAMS, COMMISSIONER OF REVENUE, AND ALASKA

ON APPEAL FROM THE SUPREME COURT OF ALASKA

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¹Alaska Department of Revenue, *Revenue Sources FY 1981-1983* (1981). (Includes General Fund unrestricted petroleum revenues of \$3.3 billion and petroleum revenues directly deposited in the Permanent Fund in the amount of \$400 million. An additional \$900 million was transferred

STYLISTIC CHANGES ONLY

pp 3, 4, 6-10

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated: _____

Recirculated: MAY 2 1982

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1146

RONALD M. ZOBEL AND PATRICIA L. ZOBEL, APPELLANTS
v. THOMAS WILLIAMS, COMMISSIONER OF REVENUE, AND ALASKA

ON APPEAL FROM THE SUPREME COURT OF ALASKA

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¹Alaska Department of Revenue, *Revenue Sources FY 1981-1983* (1981). (Includes General Fund unrestricted petroleum revenues of \$3.3 billion and petroleum revenues directly deposited in the Permanent Fund in the amount of \$400 million. An additional \$900 million was transferred

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To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated: _____

Recirculated: JUN 2 1982

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1146

RONALD M. ZOBEL AND PATRICIA L. ZOBEL, APPELLANTS
v. THOMAS WILLIAMS, COMMISSIONER
OF REVENUE, AND ALASKA

ON APPEAL FROM THE SUPREME COURT OF ALASKA

[May —, 1982]

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P. 11

pl1 (for 14 deleted)

To: Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **The Chief Justice**

Circulated: _____

Recirculated: JUN 4 1982

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1146

RONALD M. ZOBEL AND PATRICIA L. ZOBEL, APPELLANTS
v. THOMAS WILLIAMS, COMMISSIONER
OF REVENUE, AND ALASKA

ON APPEAL FROM THE SUPREME COURT OF ALASKA

[June —, 1982]

CHIEF JUSTICE BURGER delivered the opinion of the Court.

The question presented on this appeal is whether a statutory scheme by which a State distributes income derived from its natural resources to the adult citizens of the State in varying amounts, based on the length of each citizen's residence, violates the equal protection rights of newer state citizens. The Alaska Supreme Court sustained the constitutionality of the statute. *Williams v. Zobel*, 619 P. 2d 448 (Alaska 1980). We noted probable jurisdiction and stayed the distribution of dividend funds, — U. S. — (1981). We reverse.

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¹Alaska Department of Revenue, *Revenue Sources FY 1981-1983* (1981). (Includes General Fund unrestricted petroleum revenues of \$3.3 billion and petroleum revenues directly deposited in the Permanent Fund in the amount of \$400 million. An additional \$900 million was transferred

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 15, 1981

RE: No. 80-1146 Zobel v. Alaska

Dear Chief:

This is of course a novel, complex and difficult case. But my notes of the conference discussion indicate votes to reverse based on the failure to meet the rationality standard of the Equal Protection Clause; although some of us also suggested that the first sentence of the Fourteenth Amendment equated residence and citizenship and left no room for tiers of citizens. I don't read your opinion as based on either ground and am sorry to say as presently written cannot join it.

Sincerely,



The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 21, 1981

RE: No. 80-1146 Zobel v. Commissioner of Revenue

Dear Chief:

I too shall await John's writing. I do not think I could join any opinion that rested in any wise on the equal footing analogy. Nor could I join an opinion that rested on the Privilege and Immunities Clause.

Sincerely,



The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 25, 1982

RE: No. 80-1146 Zobel v. Williams

Dear Harry:

Enclosed is my suggested concurrence. I'll await
your reaction before making a general circulation.

Sincerely,



Justice Blackmun

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 26, 1982

Zobel v. Williams No. 80-1146

Dear Harry,

Thank you so much for your note. I am happy to respond to your suggestions. With respect to your uneasiness with footnote 1, I suspect that it is rooted in the language of the first paragraph of the footnote. For me, the second paragraph presents the important point, and provides part of the predicate for joining the Court's opinion. Would it cure your unease if I dropped the first paragraph entirely, and modified the second so that it would read, as follows:

"What is notably at stake in this case, and what clearly must be taken into account in determining the constitutionality of this legislative scheme, is the national interest in a fluid system of interstate movement. It may be that national interests are not always easily translated into individual rights, but where the "right to travel" is involved, our cases leave no doubt that it will trigger intensified equal protection scrutiny. See, e. g., Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974); Dunn v. Blumstein, 405 U.S. 330 (1972); Shapiro v. Thompson, 394 U.S. 618 (1969). As the Court notes, the "right to travel" is implicated not only by "actual barriers to interstate movement," but by "state distinctions between newcomers and longer-term residents." Ante, at 4, n. 6.

If the footnote continues to cause you difficulty, I would be very willing to omit it entirely, so don't hesitate to say so.

With respect to your arithmetic observation concerning the comparison between 25 year-olds and 55 year-olds, you are of course quite right that in 1979 they would re-

Brennan

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ceive the same amount -- though beginning in 1985, the disparity in benefits between these two age groups would begin to show. I will make the change to 18.

Sincerely,

Justice Blackmun



To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1146

RONALD M. ZOBEL AND PATRICIA L. ZOBEL, APPELLANTS
v. THOMAS WILLIAMS, COMMISSIONER
OF REVENUE, AND ALASKA

APPEAL FROM THE SUPREME COURT OF ALASKA

[May —, 1982]

JUSTICE BRENNAN, concurring.

I join the opinion of the Court, and agree with its conclusion that the retrospective aspects of Alaska's dividend-distribution law are not rationally related to a legitimate state purpose. I write separately only to emphasize that the pervasive discrimination embodied in the Alaska distribution scheme gives rise to constitutional concerns of somewhat larger proportions than may be evident on a cursory reading of the Court's opinion. In my view, these concerns might well preclude even the prospective operation of Alaska's scheme.

I

I agree with JUSTICE O'CONNOR that these more fundamental defects in the Alaska dividend-distribution law are, in part, reflected in what has come to be called the "right to travel."¹ That right—or, more precisely, the federal inter-

¹What is notably at stake in this case, and what clearly must be taken into account in determining the constitutionality of this legislative scheme, is the *national* interest in a fluid system of interstate movement. It may be that national interests are not always easily translated into individual rights, but where the "right to travel" is involved, our cases leave no doubt that it will trigger intensified equal protection scrutiny. See, e. g., *Memorial Hospital v. Maricopa County*, 415 U. S. 250 (1974); *Dunn v. Blumstein*, 405 U. S. 330 (1972); *Shapiro v. Thompson*, 394 U. S. 618

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

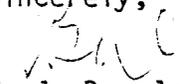
June 3, 1982.

No. 80-1146 -- Zobel v. Williams.

Dear Chief,

As I promised this morning, I have dropped my citation to Plyler v. Doe, which appeared at page 4, from my concurring opinion in this case. Under the circumstances, I assume that you will drop your reference to Plyler, which appears at page 11, footnote 14, of your most recent circulation.

Sincerely,


W. J. B., Jr.

The Chief Justice.
Copies to the Conference.

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 4, 5

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

Circulated: _____

Recirculated: JUN 4 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1146

RONALD M. ZOBEL AND PATRICIA L. ZOBEL, APPELLANTS
v. THOMAS WILLIAMS, COMMISSIONER OF REVENUE, AND ALASKA

APPEAL FROM THE SUPREME COURT OF ALASKA

[June —, 1982]

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To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: _____

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1146

RONALD M. ZOBEL AND PATRICIA L. ZOBEL, APPELLANTS
v. THOMAS WILLIAMS, COMMISSIONER
OF REVENUE, AND ALASKA

APPEAL FROM THE SUPREME COURT OF ALASKA

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

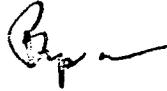
December 16, 1981

Re: 80-1146 - Zobel v. Williams

Dear Chief,

I shall await the dissent.

Sincerely yours,



The Chief Justice

Copies to the Conference

cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 10, 1982

Re: 80-1146 - Zobel v. CIR and Alaska

Dear Chief,

Please join me.

Sincerely yours,



The Chief Justice

Copies to the Conference

cpm

.35 5-10-82

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

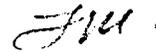
May 12, 1982

Re: No. 80-1146 - Zobel v. Williams

Dear Chief:

Please join me.

Sincerely,



T.M.

The Chief Justice

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 2, 1982

Re: No. 80-1146 - Zobel v. Williams

Dear Bill:

Please join me in your concurring opinion.

Sincerely,

J.M.

T.M.

Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 21, 1981

Re: No. 80-1146 - Zobel v. Commissioner of Revenue

Dear Chief:

I shall await John's writing. I could not join the Equal Footing analysis in your present draft or that to be "maintained" in your next one, as suggested in the last paragraph of your memorandum of December 18.

Sincerely,



The Chief Justice
cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 26, 1982

Dear Bill:

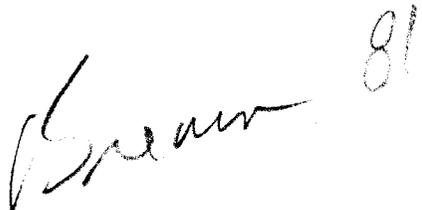
Re: No. 80-1146 - Zobel v. Williams

Your revision helps me, and I am glad to go along.

Sincerely,



Mr. Justice Brennan



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 31, 1981

Re: No. 80-1146 - Zobel v. Williams

Dear Bill:

Please join me in your separate concurring opinion.

Sincerely,



Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 31, 1982

Re: No. 80-1146 - Zobel v. Williams

Dear Chief:

By joining Bill Brennan's separate concurrence, I
also join your opinion.

Sincerely,



The Chief Justice

cc: The Conference

December 15, 1981

80-1146 Zobel v. Williams

Dear Chief:

Your opinion is receiving a good deal of "flak", and I don't intend to add to it by a general circulation. The following observations are submitted in the hope that they may be helpful, as it appears likely some modifications in your opinion will be necessary.

The difficulty is that this case is neither controlled by any prior precedent nor does it fit neatly into any prior analytical approach. Not surprisingly, therefore, the reasons advanced at Conference varied considerably among the seven Justices who voted to reverse.

There are six "right to travel" cases. Although this case is distinguishable from each of them, and in a sense is not a "right to travel" at all, our prior cases do afford the closest analogies - particularly when viewed as a hybrid type of "durational residency" case.

The first group of Shapiro, Dunn and Memorial Hospital involved a classification that penalized a new resident by denying for a period a "fundamental right" (to vote) or a necessity of life (welfare, medical treatment). These were analyzed consistently in terms of inquiring under "strict scrutiny" whether there was a compelling state interest.

The second group of cases, Vlandis, Sosna and Helms, were different in that no penalty was imposed upon the exercise of a fundamental right (e.g., university attendance, divorce). Thus, commencing with Sosna, we have

applied a "balancing" approach in which we weigh the competing interest of the state and individual.

As I stated at Conference, it seems to me that the latter type of analysis is appropriate in this case. There is no absolute burden on any fundamental right. Nor is there any inhibiting of the right to travel into Alaska. Arguably, older citizens may be inhibited against leaving the state and thereby losing the higher dividend. But, I would not say - as your present draft does - that the right to equal "dividends" is so fundamental that the discrimination is "warranted [only] by the highest and most pressing of state interests". P. 11. Rather, I believe there is a better chance of putting a Court together if you rely on the Sosna line and apply a balancing test, recognizing that the state interests may well be important but that the classification does not substantially serve its interests.

The statute lists three purposes: (i) to provide an equitable distribution of the earnings; (ii) to provide an incentive for everyone to remain in the state; and (iii) to encourage public interest in the fund. It is not at all clear that any of these interests or purposes is significantly furthered by the state's graduated dividend system.

The individual's interest is pecuniary. The cost of living in Alaska is notoriously high. As the dividends grow with the fund, they may become increasingly important to a family's budget. Putting it differently, the classification can be analogized to an inverse income tax based on residency. Although this affects a significant personal interest, it does not compare with one's right to welfare or medical care when needed or to the right to vote.

In weighing the competing interests, I view the case as quite close. On balance, however, I conclude that the rationality of Alaska's distribution scheme is dubious primarily because its relationship to the asserted state purposes seems so tenuous. In reality, the state simply elects to reward length of citizenship. No doubt this is politically popular, as the people who will benefit from this "windfall" are more numerous than those on the short end. But this is not a reason to sustain the classification.

* * *

It is evident, of course, that the foregoing is a rather simplistic outline of one way to write this opinion. I do think it is a sound approach and one that would not set a troublesome precedent. Also by omitting reference to "compelling state interest", "fundamental constitutional rights" and "equal footing", you may satisfy some of the complaining Brothers.

Sincerely,

The Chief Justice

lfp/ss

December 29, 1981

PERSONAL

80-1146 Zobel v. Williams

*9 recommended
E/P analysis
based on
right to travel
cases.*

Dear Chief:

This is in response to your letter of December 28.

I quite understand your sense of frustration. Neither the briefs nor oral argument provided much help, and the Justice's comments on your opinion afford inconclusive guidance. Nevertheless, I do not think it advisable to have this case reargued. We know that counsel of record cannot help us, and appointing distinguished amici might be difficult to justify. My own view is that the case is so unique that further briefing is not likely to be helpful.

It seems to me that your options are either to circulate a revised draft or reassign the case (either directly yourself or hand it to WJB).

I have reviewed my Conference notes that I now summarize. You stated that the "Fourteenth Amendment controls". WJB cited Shapiro as the closest case, and said "Alaska's scheme inhibits travel" both in and out of the state. Byron voted tentatively to affirm. Thurgood agreed with you, saying that citizens cannot be treated differently and that the Fourteenth Amendment controls. Harry said "Shapiro is the guide", and that this should be treated as a "durational residence case". I would analyze the case primarily within the "right to travel" decisions, relying primarily on Sosna and Vlandis. WHR would affirm. John talked essentially in equal protection terms, emphasizing that the "state interest is nonexistent as to the statute's retroactive feature", and that even as to "prospective operation", the classification is discriminatory. Sandra would rely on the Privileges and Immunities Clause, and does not think durational residence analysis is applicable.

Based on the foregoing, I believe you can put a Court together with an opinion written generally along the lines of my letter of December 15. The durational residency cases have applied equal protection analysis to classifications that discriminated on the basis of length of residence within a state. None of our prior cases "controls", and - as stated in my letter - they differ as to the level of scrutiny. You could write this case on a sort of middle level scrutiny analysis - as in Sosna - emphasizing - as John Stevens mentioned - that the asserted state interests simply do not justify the discrimination.

Good luck!

Sincerely,

The Chief Justice

LFP/ss

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 8, 1982

80-1146 Zobel v. Williams

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 1, 1982

80-1146 Zobel v. Williams

Dear Bill:

Please add my name to your concurring opinion.

Sincerely,



Justice Brennan

Copies to the Conference

LFP/vde

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 15, 1981

Re: No. 80-1146 Zobel v. Alaska

Dear Chief:

With the wide ranging discussion of sources of implicit and fundamental Constitutional rights which are nowhere mentioned in the Constitution which are contained in parts I and II of your proposed opinion in this case, you will soon have no one but yourself to blame for this Court's docket-congestion. In due course I will attempt a dissent.

Sincerely,

WR

The Chief Justice

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 19, 1982

Re: No. 80-1146 Zobel v. Alaska

Dear Chief:

I intend to circulate a dissent in this case, and will try to get it around in a few days.

Sincerely,



The Chief Justice

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: JUN 3 1982

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1146

RONALD M. ZOBEL AND PATRICIA L. ZOBEL, APPELLANTS
v. THOMAS WILLIAMS, COMMISSIONER OF REVENUE, AND ALASKA

ON APPEAL FROM THE SUPREME COURT OF ALASKA

[June —, 1982]

JUSTICE REHNQUIST, dissenting.

Alaska's dividend distribution scheme represents one State's effort to apportion unique economic benefits among its citizens. Although the wealth received from the oil deposits of Prudhoe Bay may be quite unlike the economic resources enjoyed by most States, Alaska's distribution of that wealth is in substance no different from any other State's allocation of economic benefits. The distribution scheme being in the nature of economic regulation, I am at a loss to see the rationality behind the Court's invalidation of it as a denial of equal protection. This Court has long held that state economic regulations are presumptively valid, and violate the Fourteenth Amendment only in the rarest of circumstances:

"When local economic regulation is challenged solely as violating the Equal Protection Clause, this Court consistently defers to legislative determinations as to the desirability of particular statutory discriminations. See, *e. g.*, *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U. S. 356 (1973). Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume the constitutionality of the statu-

P.4

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: _____

Recirculated: JUN 7 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1146

RONALD M. ZOBEL AND PATRICIA L. ZOBEL, APPELLANTS
v. THOMAS WILLIAMS, COMMISSIONER OF REVENUE, AND ALASKA

ON APPEAL FROM THE SUPREME COURT OF ALASKA

[June —, 1982]

JUSTICE REHNQUIST, dissenting.

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"When local economic regulation is challenged solely as violating the Equal Protection Clause, this Court consistently defers to legislative determinations as to the desirability of particular statutory discriminations. See, *e. g.*, *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U. S. 356 (1973). Unless a classification trammels fundamental personal rights or is drawn upon inherently suspect distinctions such as race, religion, or alienage, our decisions presume the constitutionality of the statu-

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

October 14, 1981

Re: 80-1146 - Zobel v. Williams

Dear Byron:

In connection with our discussion of the question whether the retroactive aspects of the Alaska distribution plan are severable from the prospective aspects, the answer may be provided by § 4 of the statute which appears at page 69a of the Jurisdictional Statement, and reads as follows:

"Sec. 4. If any provision enacted in sec. 2 of this Act is held to be invalid by the final judgment, decision or order of a court of competent jurisdiction, then that provision is nonseverable, and all provisions enacted in sec. 2 of this Act are invalid and of no force or effect."

I was not aware of this section at the time of the Conference.

Respectfully,



Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 15, 1981

Re: 80-1146 - Zobel v. United States

Dear Chief:

In my opinion the Equal Protection Clause of the Fourteenth Amendment provides a more pertinent rationale for your conclusion than does the equal footing doctrine. Moreover, I am not at all sure that Alaska's program impairs the right to travel. It surely does not discourage travel into Alaska, even though it may have some tendency to deter emigration. In all events, I believe I shall try to write out my own analysis of the case.

Respectfully,



The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 7, 1982

Re: 80-1146 - Zobel v. Williams

Dear Chief:

Please join me.

Respectfully,



The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 15, 1981

No. 80-1146 Zobel v. United States

Dear Chief,

As indicated when the referenced case was discussed, I believe the source of the right to travel which should be relied on in resolving the case is the Privileges and Immunities Clause of Article IV.

Accordingly, a separate concurring opinion is forwarded which sets forth my views.

Sincerely,



The Chief Justice

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

DEC 15 1981

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No. 80-1146, Zobel v. Williams

Justice O'Connor, concurring.

As the majority observes, Justices of this Court have suggested numerous textual sources for the constitutional right to travel or migrate interstate.¹ Finding none of these sources "entirely satisfactory," the majority eschews reliance upon any particular provision and concludes simply that the "right of interstate migration and travel

¹The Chief Justice proposes a new entrant in this "right to travel" sweepstakes. He analogizes the right of a citizen to establish residence in a new State on the same terms enjoyed by other residents of that State to the "equal footing doctrine," under which this Court has accorded new States entering the Union the same rights afforded older States. See generally Note, The Property Power, Federalism, and the Equal Footing Doctrine, 80 Colum. L. Rev. 817, 833-835 (1980). Since the majority does not explore the ramifications of this analogy, I resist its adoption.

Stylistic Changes Throughout

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

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1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1146

RONALD M. ZOBEL AND PATRICIA L. ZOBEL, APPELLANTS *v.* THOMAS WILLIAMS, COMMISSIONER OF REVENUE, AND ALASKA

APPEAL FROM THE SUPREME COURT OF ALASKA

[December —, 1981]

JUSTICE O'CONNOR, concurring in the judgment. |

As the majority observes, Justices of this Court have suggested numerous textual sources for the constitutional right to travel or migrate interstate.¹ Finding none of these sources "entirely satisfactory," the majority eschews reliance upon any particular provision and concludes simply that the "right of interstate migration and travel . . . [is] implicit in the system established by the Constitution and so basic as not to require specific mention." *Ante*, at 6, 7 n. 3. While I agree that the right to migrate is "basic," I am reluctant to stray so far from the Constitution's text to imply such a right. This Court should strive to rest constitutional doctrine on textual supports, not upon a nebulous conception of the Constitution's "system."

Alaska's scheme distinguishes between long-term residents and recent arrivals. It denies the non-Alaskan set-

¹THE CHIEF JUSTICE proposes a new entrant in this "right to travel" sweepstakes. He analogizes the right of a citizen to establish residence in a new State on the same terms enjoyed by other residents of that State to the "equal footing doctrine," under which this Court has accorded new States entering the Union the same rights afforded older States. See generally Note, *The Property Power, Federalism, and the Equal Footing Doctrine*, 80 Colum. L. Rev. 817, 833-835 (1980). Since the majority does not explore the ramifications of this analogy, I resist its adoption.

pp 1-9
Footnotes renumbered

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

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2d PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-1146

RONALD M. ZOBEL AND PATRICIA L. ZOBEL, APPELLANTS
v. THOMAS WILLIAMS, COMMISSIONER OF REVENUE, AND ALASKA

APPEAL FROM THE SUPREME COURT OF ALASKA

[May —, 1982]

JUSTICE O'CONNOR, concurring in the judgment.

The Court strikes Alaska's distribution scheme, purporting to rely solely upon the Equal Protection Clause of the Fourteenth Amendment. The phrase "right to travel" appears only fleetingly in the Court's analysis, dismissed with an observation that "right to travel analysis refers to little more than a particular application of equal protection analysis." *Ante*, at 5 n. 5. The Court's reluctance to rely explicitly on the right to travel is odd, because its ~~result~~ depends on the assumption that Alaska's desire to reward past contributions of its citizens is not a legitimate state purpose. Nothing in the Equal Protection Clause itself, however, declares this objective illegitimate. Instead, as a full reading of *Shapiro v. Thompson*, 394 U. S. 618 (1969), reveals, Alaska's purpose is illegitimate only because it abridges a constitutionally protected right to travel. *Id.*, at 629-631, 634, 638. I prefer to confront more directly both the constitutional defects in Alaska's scheme and the constitutional roots of this enigmatic right to travel.

holding

Alaska's distribution plan distinguishes between long-term residents and recent arrivals. Stripped to its essentials, the plan denies non-Alaskans settling in the State the same privileges afforded longer-term residents. The Privileges and Immunities Clause of Article IV, which guarantees "[t]he

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PP. 1-8, 10

Footnotes numbered

To: The Chief Justice
Justice Brennan
Justice White
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Justice Powell
Justice Rehnquist
Justice Stevens

From: Justice O'Connor

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SUPREME COURT OF THE UNITED STATES

No. 80-1146

RONALD M. ZOBEL AND PATRICIA L. ZOBEL, APPELLANTS
v. THOMAS WILLIAMS, COMMISSIONER
OF REVENUE, AND ALASKA

APPEAL FROM THE SUPREME COURT OF ALASKA

[May —, 1982]

JUSTICE O'CONNOR, concurring in the judgment.

The Court strikes Alaska's distribution scheme, purporting to rely solely upon the Equal Protection Clause of the Fourteenth Amendment. The phrase "right to travel" appears only fleetingly in the Court's analysis, dismissed with an observation that "right to travel analysis refers to little more than a particular application of equal protection analysis." *Ante*, at 5 n. 6. The Court's reluctance to rely explicitly on a right to travel is odd, because its holding depends on the assumption that Alaska's desire "to reward citizens for past contributions . . . is clearly not a legitimate state purpose." *Ante*, at 8. Nothing in the Equal Protection Clause itself, however, declares this objective illegitimate. Instead, as a full reading of *Shapiro v. Thompson*, 394 U. S. 618 (1969), and *Vlandis v. Kline*, 412 U. S. 441 (1973), reveals, the Court has rejected this objective only when its implementation would abridge an interest in interstate travel or migration.

I respectfully suggest, therefore, that the Court misdirects its criticism when it labels Alaska's objective "clearly" illegitimate. A desire to compensate citizens for their prior contributions is neither inherently invidious nor irrational.

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