The Burger Court Opinion Writing Database

Attorney General of New York v. Soto-Lopez

476 U.S. 898 (1986)

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

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

CHAMBERS OF
THE CHIEF JUSTICE

March 14, 1986

RE: No. 84-1803 - New York v. Soto-Lopez

Dear Bill,

Although I am with you on the result in this case, I cannot join your reasoning.

Unless my recollection and notes are faulty the vote in this case was to decide on the equal protection grounds in Zobel v. Williams, 457 U.S. 55 (1982), and Hooper v. Bernalillo County Assessor, ____ U.S. ____ (1985). In view of the fact that both Hooper and Zobel were decided on equal protection grounds, I see no need to base the decision in this case on a "right to migrate." Both Zobel and Hooper applied a rational basis test rather than the "intensified scrutiny" approach adopted by your opinion.

Applying equal protection analysis, I would hold that the distinction adopted by the State of New York in this case clearly lacks a rational basis and is, therefore, invalid. I expect to circulate a concurrence shortly.

Regards,

WEB

Justice Brennan
Copies to the Conference

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

From: The Chief Justice

MAR 27 1986

Circulated: _____

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1803

ATTORNEY GENERAL OF NEW YORK *v.* EDUARDO SOTO-LOPEZ, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[March ——, 1986]

CHIEF JUSTICE BURGER, concurring in the judgment.

In this case the Court of Appeals held that New York's civil service veterans' preference violated both equal protection and the right to travel, relying on *Zobel* v. *Williams*, 457 U. S. 55 (1982). Shortly after the Court of Appeals' decision was issued, we struck down New Mexico's property tax veterans' preference in *Hooper* v. *Bernalillo County Assessor*, —— U. S. —— (1985). Both *Zobel* and *Hooper* held that the classifications used by the States to award preferences to certain citizens failed to pass a rational basis test *under the Equal Protection Clause*. As a result, we had no occasion to reach the issues whether the classifications would survive heightened scrutiny or whether the right to travel was violated. See *Hooper*, —— U. S., at ——, and n. 6; *Zobel*, 457 U. S., at 60–61, and n. 6.

The classification held invalid on equal protection grounds in *Hooper* was remarkably similar to the one at issue here; *Hooper*, therefore would appear to be controlling. The Court's opinion, however, instead *begins* the analysis by addressing the "right to migrate." *Ante*, at ——. Moreover, heightened scrutiny is employed without first determining whether the challenged New York classification would survive even rational basis analysis, and the opinion suggests, without any citation of authority, that such "intensified scrutiny" is appro-

STYLISTIC CHANGES THROUGHOUT

1, 2, 4

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 1 198_

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1803

ATTORNEY GENERAL OF NEW YORK *v.* EDUARDO SOTO-LOPEZ, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[May ——, 1986]

CHIEF JUSTICE BURGER, concurring in the judgment.

In this case the Court of Appeals held that New York's civil service veterans' preference violated both equal protection and the right to travel, relying on *Zobel* v. *Williams*, 457 U. S. 55 (1982). Shortly after the Court of Appeals' decision was issued, we struck down New Mexico's property tax veterans' preference in *Hooper* v. *Bernalillo County Assessor*, —— U. S. —— (1985). Both *Zobel* and *Hooper* held that the classifications used by the States to award preferences to certain citizens failed to pass a rational basis test *under the Equal Protection Clause*. As a result, we had no occasion to reach the issues whether the classifications would survive heightened scrutiny or whether the right to travel was violated. See *Hooper*, *supra*, at ——, and n. 6; *Zobel*, *supra*, at 60–61, and n. 6.

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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 19 1986

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1803

ATTORNEY GENERAL OF NEW YORK, APPELLANT
v. EDUARDO SOTO-LOPEZ ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[June ——, 1986]

CHIEF JUSTICE BURGER, concurring in the judgment.

In this case the Court of Appeals held that New York's civil service veterans' preference violated both equal protection and the right to travel, relying on *Zobel* v. *Williams*, 457 U. S. 55 (1982). Shortly after the Court of Appeals' decision was issued, we struck down New Mexico's property tax veterans' preference in *Hooper* v. *Bernalillo County Assessor*, 472 U. S. —— (1985). Both *Zobel* and *Hooper* held that the classifications used by the States to award preferences to certain citizens failed to pass a rational basis test *under the Equal Protection Clause*. As a result, we had no occasion to reach the issues whether the classifications would survive heightened scrutiny or whether the right to travel was violated. See *Hooper*, *supra*, at ——, and n. 6; *Zobel*, *supra*, at 60–61, and n. 6.

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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

MAR 12 1986

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1803

ATTORNEY GENERAL OF NEW YORK *v.* EDUARDO SOTO-LOPEZ, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[March ——, 1986]

JUSTICE BRENNAN delivered the Opinion of the Court.

The question presented by this appeal is whether a preference in civil service employment opportunities offered by the State of New York solely to resident veterans who lived in the State at the time they entered military service violates the constitutional rights of resident veterans who lived outside the State when they entered military service.

I

The State of New York, through its Constitution, N. Y. Const. art. V, § 6 (1964), and its Civil Service Law, N. Y. Civ. Serv. Law § 85 (McKinney 1983 and Supp. 1984–85), grants a civil service employment preference, in the form of points added to examination scores, to New York residents who are honorably-discharged veterans of the United States armed forces, who served during time of war, and who were residents of New York when they entered military service.[1]

[1] N. Y. Const. art. V, § 6 (McKinney 1969) provides:

"Appointments and promotions in the civil service of the state and of all the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive; provided, however, that any member of the armed forces of the United States who served therein in time of war, who is a citizen and resident of this state and was a resident at the time of his entrance into the armed forces of the United States and was honorably discharged or released under honorable circum-

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

From: **Justice Brennan**

Circulated: _____

Recirculated: MAR 14 1986

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1803

ATTORNEY GENERAL OF NEW YORK *v.* EDUARDO SOTO-LOPEZ, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[March ——, 1986]

JUSTICE BRENNAN delivered the Opinion of the Court.

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I

The State of New York, through its Constitution, N. Y. Const., Art. V, §6, and its Civil Service Law, N. Y. Civ. Serv. Law §85 (McKinney 1983 and Supp. 1986), grants a civil service employment preference, in the form of points added to examination scores, to New York residents who are honorably-discharged veterans of the United States armed forces, who served during time of war, and who were residents of New York when they entered military service.[1]

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

5, 7-8

From: **Justice Brennan**

Circulated: APR 4 1986

Recirculated: _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1803

ATTORNEY GENERAL OF NEW YORK *v.* EDUARDO SOTO-LOPEZ, ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[April ——, 1986]

JUSTICE BRENNAN delivered the Opinion of the Court.

The question presented by this appeal is whether a preference in civil service employment opportunities offered by the State of New York solely to resident veterans who lived in the State at the time they entered military service violates the constitutional rights of resident veterans who lived outside the State when they entered military service.

I

The State of New York, through its Constitution, N. Y. Const., Art. V, §6, and its Civil Service Law, N. Y. Civ. Serv. Law §85 (McKinney 1983 and Supp. 1986), grants a civil service employment preference, in the form of points added to examination scores, to New York residents who are honorably-discharged veterans of the United States armed forces, who served during time of war, and who were residents of New York when they entered military service.[1]

[1] N. Y. Const., Art. V, §6, provides:

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

pp 5, 8

From: **Justice Brennan**

Circulated: MAY 12 1986

Recirculated: _____

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1803

ATTORNEY GENERAL OF NEW YORK, APPELLANT
v. EDUARDO SOTO-LOPEZ ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[May ——, 1986]

JUSTICE BRENNAN delivered the Opinion of the Court.

The question presented by this appeal is whether a preference in civil service employment opportunities offered by the State of New York solely to resident veterans who lived in the State at the time they entered military service violates the constitutional rights of resident veterans who lived outside the State when they entered military service.

I

The State of New York, through its Constitution, N. Y. Const., Art. V, § 6, and its Civil Service Law, N. Y. Civ. Serv. Law § 85 (McKinney 1983 and Supp. 1986), grants a civil service employment preference, in the form of points added to examination scores, to New York residents who are honorably-discharged veterans of the United States armed forces, who served during time of war, and who were residents of New York when they entered military service.[1]

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conf

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

June 16, 1986

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

MEMORANDUM TO THE CONFERENCE

Held for No. 84-1803, Attorney General of New York v. Soto-Lopez:

No. 85-873, Camacho v. Bunyan

In 1978, the Guam Legislature enacted a statute which granted additional years of credit toward retirement to Guam residents who, inter alia, have college degrees, who are employed by the government of Guam, and who were residents of Guam at the time they began their undergraduate studies. 4 Guam Code Ann. §8113.

Respondent, a high school teacher who moved to Guam in 1963 after finishing college, meets all of the statutory requirements for obtaining §8113 retirement credit except the prior residency requirement. Consequently, he was denied §8113 credit.

Respondent brought a §1983 suit against petitioners, members of the Board of Trustees for the Government of Guam Retirement Fund, alleging that the prior residency requirement violates the Equal Protection Clause. The District Court granted summary judgment in favor of petitioners, holding that the residency requirement was rationally related to the legitimate governmental purpose of expressing Guam's gratitude to residents who obtained college degrees and returned to Guam to work as public servants.

The Ninth Circuit reversed. As an initial matter, the Court of Appeals observed that respondent alleged neither that he was a member of a suspect class nor that one of his fundamental rights had been infringed; therefore the court tested the challenged provision of §8113 under the rational basis standard. Basing its holding principally on this Court's decisions in Zobel v. Williams, 457 U.S. 55 (1982), and Hooper v. Bernalillo County Assessor, ___ U.S. ___ (1985), as well as on the Second Circuit's opinion in Soto-Lopez v. New York City Civil Service Comm'n, 755 F.2d 266, the court concluded that the prior residency requirement is not rationally related to a legitimate government interest and thus violates the Equal Protection Clause.

Before this Court, petitioners basically repeat the arguments they made to the Ninth Circuit. They contend that §8113 is rationally related to at least three legitimate government interests. First, they argue that Guam seeks to encourage its residents to obtain college educations, to return to Guam, and to become public employees. Second, they assert that individuals who resided in Guam at the time they entered college are generally more familiar with local problems and are therefore more capable public employees than individuals who grew up elsewhere.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 17, 1986

84-1803 - Attorney General of New York v. Soto-Lopez

Dear Bill,

Since I am inclined to prefer the Chief's approach in this case, I shall await his writing before coming to rest.

Sincerely yours,

Justice Brennan

Copies to the Conference

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

From: **Justice White**

Circulated: JUN 6 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1803

ATTORNEY GENERAL OF NEW YORK, APPELLANT
v. EDUARDO SOTO-LOPEZ ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[June ——, 1986]

JUSTICE WHITE, concurring in the judgment.

I agree with JUSTICE O'CONNOR that the right to travel is not sufficiently implicated in this case to require heightened scrutiny. Hence, I differ with JUSTICE BRENNAN in this respect. But I agree with THE CHIEF JUSTICE that the New York statute at issue denies equal protection of the laws because the classification it employs is irrational. I therefore concur in the judgment.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 14, 1986

Re: No. 84-1803-Attorney General of New York v. Eduardo Soto-Lopez

Dear Bill:

Please join me.

Sincerely,

T.M.

Justice Brennan

cc: The Conference

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

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

June 11, 1986

Re: No. 84-1803, Attorney General of N.Y. v. Soto-Lopez

Dear Bill:

Please join me.

Sincerely,

Harry

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 17, 1986

84-1803 Attorney General v. Soto-Lopez

Dear Bill:

Please join me.

Sincerely,

L. Lewis

Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 19, 1986

Re: No. 84-1803 Attorney General of New York v. Soto-Lopez

Dear Sandra,

Please join me in your dissenting opinion in this case.

Sincerely,

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 14, 1986

Re: 84-1803 - Attorney General of New York
v. Soto-Lopez

Dear Bill:

I will await dissent in this case.

Respectfully,

John

Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 23, 1986

Re: 84-1803 - Attorney General of New York
v. Eduardo Soto-Lopez, et al.

Dear Sandra:

Please join me in your dissenting opinion.

Respectfully,

Justice O'Connor

Copies to the Conference

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

From: **Justice Stevens**

Circulated: MAY 27 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1803

ATTORNEY GENERAL OF NEW YORK, APPELLANT
v. EDUARDO SOTO-LOPEZ ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[May ——, 1986]

JUSTICE STEVENS, dissenting.

JUSTICE O'CONNOR has explained why the Court's decision is erroneous. I add these comments to explain why I do not feel constrained by the decision in *Hooper* v. *Bernallilo County*, 472 U. S. —— (1985), to join the Court's judgment.

A governmental decision to grant a special privilege to a minority group is less objectionable than a decision to impose a special burden on a minority.[1] In a democracy the majority will seldom treat itself unfairly. In equal protection analysis, it is therefore appropriate to give some attention to the relative dimensions of favored and disfavored classes.[2]

The New Mexico statute that the Court held invalid in *Hooper* gave a tax exemption to any Vietnam veteran who resided in New Mexico prior to May 1, 1976. The New York statute challenged in this case grants a preference only to those Vietnam veterans who were residents of the State when they joined the Armed Forces. The favored class in this case is therefore drawn more narrowly than the class that excluded Mr. Hooper. Despite the fact that the reason-

[1] Cf. *Wygant* v. *Jackson Board of Education*, —— U. S. —— (1986) (STEVENS, J., dissenting):

[2] See *Hooper* v. *Bernallilo County Assessor*, 472 U. S. ——, —— (slip op. 5–6) (STEVENS, J., dissenting); *Personnel Administrator of Massachusetts* v. *Feeney*, 442 U. S. 256, 281 (1979) (STEVENS, J., concurring). Cf. *Craig* v. *Boren*, 429 U. S. 190, 213–214 (1976) (STEVENS, J., concurring).

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

From: **Justice Stevens**

Circulated: _____

Recirculated: JUN 12 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1803

ATTORNEY GENERAL OF NEW YORK, APPELLANT
v. EDUARDO SOTO-LOPEZ ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[June ——, 1986]

JUSTICE STEVENS, dissenting.

JUSTICE O'CONNOR has explained why the Court's decision is erroneous. I add these comments to explain why I do not feel constrained by the decision in *Hooper* v. *Bernalillo County Assessor*, 472 U. S. —— (1985), to join the Court's judgment.

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The New Mexico statute that the Court held invalid in *Hooper* gave a tax exemption to any Vietnam veteran who resided in New Mexico prior to May 8, 1976. The New York statute challenged in this case grants a preference only to those Vietnam veterans who were residents of the State when they joined the Armed Forces. The favored class in this case is therefore drawn more narrowly than the class

[1] Cf. *Wygant* v. *Jackson Board of Education*, 476 U. S. —— (1986) (STEVENS, J., dissenting).

[2] See *Hooper* v. *Bernalillo County Assessor*, 472 U. S. at —— (slip op. 5-6) (STEVENS, J., dissenting); *Personnel Administrator of Massachusetts* v. *Feeney*, 442 U. S. 256, 281 (1979) (STEVENS, J., concurring). Cf. *Craig* v. *Boren*, 429 U. S. 190, 213-214 (1976) (STEVENS, J., concurring).

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 13, 1986

No. 84-1803 Attorney General of New York
v. Soto-Lopez

Dear Bill,

In due course, I will circulate a dissent in this case.

Sincerely,

Sandra

Justice Brennan

Copies to the Conference

From: **Justice O'Connor**

Circulated: MAY 14 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1803

ATTORNEY GENERAL OF NEW YORK, APPELLANT
v. EDUARDO SOTO-LOPEZ ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[May ——, 1986]

JUSTICE O'CONNOR, dissenting.

The Court today holds unconstitutional the preference in public employment opportunities New York offers to resident war-time veterans who resided in New York when they entered military service. Because I believe that New York's veterans' preference scheme is not constitutionally offensive under the Equal Protection Clause, does not penalize some free-floating "right to migrate," and does not violate the Privileges and Immunities Clause of Art. IV, § 2, of the Constitution, I dissent.

I

The Court's constitutional analysis runs generally as follows: because the classification imposed by New York's limited, one-time veterans' civil service preference "penalizes" appellees' constitutional "right to migrate," the preference program must be subjected to heightened scrutiny, which it does not survive because it is insufficiently narrowly tailored to serve its asserted purposes. On the strength of this reasoning, the Court concludes that the preference program violates both appellees' constitutional "right to migrate" and their right to equal protection of the law, see *ante*, at ——, although it does not make clear how much of its analysis is necessary or sufficient to find a violation of the "right to migrate" independently of an Equal Protection Clause violation.

p. 1

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

From: **Justice O'Connor**

Circulated: _____

Recirculated: 5/29/86

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1803

ATTORNEY GENERAL OF NEW YORK, APPELLANT
v. EDUARDO SOTO-LOPEZ ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[May ——, 1986]

JUSTICE O'CONNOR, with whom JUSTICE REHNQUIST joins, dissenting.

The Court today holds unconstitutional the preference in public employment opportunities New York offers to resident war-time veterans who resided in New York when they entered military service. Because I believe that New York's veterans' preference scheme is not constitutionally offensive under the Equal Protection Clause, does not penalize some free-floating "right to migrate," and does not violate the Privileges and Immunities Clause of Art. IV, §2, of the Constitution, I dissent.

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pp. 1

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

From: **Justice O'Connor**

Circulated: _____

Recirculated: MAY 28 1986

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1803

ATTORNEY GENERAL OF NEW YORK, APPELLANT
v. EDUARDO SOTO-LOPEZ ET AL.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[May ——, 1986]

JUSTICE O'CONNOR, with whom JUSTICE REHNQUIST and JUSTICE STEVENS join, dissenting.

The Court today holds unconstitutional the preference in public employment opportunities New York offers to resident war-time veterans who resided in New York when they entered military service. Because I believe that New York's veterans' preference scheme is not constitutionally offensive under the Equal Protection Clause, does not penalize some free-floating "right to migrate," and does not violate the Privileges and Immunities Clause of Art. IV, §2, of the Constitution, I dissent.

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