

Foley v. Connellie (1978)

435 U.S. 291

Edmund Foley, a lawfully admitted resident alien, applied for appointment as a New York state trooper, a position filled on the basis of competitive examinations. State authorities refused to allow Foley to take the examination, on the basis of a New York statute that provided that “no person shall be appointed to the New York state police force unless he shall be a citizen of the United States.” Foley thereupon brought a class-action suit in federal district court against the superintendent of the New York State Police, seeking a declaratory judgment that the statute in question violated the Equal Protection Clause of the Fourteenth Amendment. A three-judge district court held the statute to be constitutional, and Foley appealed.

Opinion of the Court: Burger, Stewart, White, Powell, Rehnquist.

Concurring opinion: Stewart.

Concurring in the judgment: Blackmun.

Dissenting opinions: Marshall, Brennan, Stevens; Stevens, Brennan.

THE CHIEF JUSTICE delivered the opinion of the Court.

Appellant claims that the relevant New York statute violates his rights under the Equal Protection Clause.

The decisions of this Court with regard to the rights of aliens living in our society have reflected fine, and often difficult, questions of values. As a Nation we exhibit extraordinary hospitality to those who come to our country, which is not surprising for we have often been described as “a nation of immigrants.” Indeed, aliens lawfully residing in this society have many rights which are accorded to noncitizens by few other countries. Our cases generally reflect a close scrutiny of restraints imposed by States on aliens. But we have never suggested that such legislation is inherently invalid, nor have we held that all limitations on aliens are suspect.... Rather, beginning with a case which involved the denial of welfare assistance essential to life itself, the Court has treated certain restrictions on aliens with “heightened judicial solicitude,” *Graham v. Richardson* (1971), a treatment deemed necessary since aliens—pending their eligibility for citizenship—have no direct voice in the political processes.

It would be inappropriate, however, to require every statutory exclusion of aliens to clear the high hurdle of “strict scrutiny,” because to do so would “obliterate all the distinctions between citizens and aliens and thus depreciate the historic values of citizenship.” ... The act of becoming a citizen is more than a ritual with no content beyond the fanfare of ceremony. A new citizen has become a member of a Nation, part of a people distinct from others.... The individual, at that point, belongs to the polity and is entitled to participate in the processes of democratic decision making. Accordingly, we have recognized “a State’s historical power to exclude aliens from participation in its democratic political institutions” ... as part of the sovereign’s obligation “to preserve the basic conception of a political community.” ...

The practical consequence of this theory is that “our scrutiny will not be so demanding where we deal with matters firmly within a State’s constitutional prerogatives.” ... The State need only justify its classification by a showing of some rational relationship between the interest sought to

be protected and the limiting classification. This is not intended to denigrate the valuable contribution of aliens who benefit from our traditional hospitality. It is no more than recognition of the fact that a democratic society is ruled by its people. Thus, it is clear that a State may deny aliens the right to vote, or to run for elective office, for these lie at the heart of our political institutions.... Similar considerations support a legislative determination to exclude aliens from jury service.... Likewise, we have recognized that citizenship may be a relevant qualification for fulfilling those “important nonelective executive, legislative, and judicial positions,” held by “officers who participate directly in the formulation, execution, or review of broad public policy.” ... This is not because our society seeks to reserve the better jobs to its members. Rather, it is because this country entrusts many of its most important policy responsibilities to these officers, the discretionary exercise of which can often more immediately affect the lives of citizens than even the ballot of a voter or the choice of a legislator. In sum, then, it represents the choice, and right, of the people to be governed by their citizen peers. To effectuate this result, we must necessarily examine each position in question to determine whether it involves discretionary decision making, or execution of policy, which substantially affects members of the political community.

The essence of our holdings to date is that although we extend to aliens the right to education and public welfare, along with the ability to earn a livelihood and engage in licensed professions, the right to govern is reserved to citizens....

A discussion of the police function is essentially a description of one of the basic functions of government, especially in a complex modern society where police presence is pervasive. The police function fulfills a most fundamental obligation of government to its constituency. Police officers in the ranks do not formulate policy, *per se*, but they are clothed with authority to exercise an almost infinite variety of discretionary powers. The execution of the broad powers vested in them affects members of the public significantly and often in the most sensitive areas of daily life....

Clearly, the exercise of police authority calls for a very high degree of judgment and discretion, the abuse or misuse of which can have serious impact on individuals.... A policeman vested with the plenary discretionary powers we have described is not to be equated with a private person engaged in routine public employment or other “common occupations of the community” who exercises no broad power over people generally. Indeed, the rationale for the qualified immunity historically granted to the police rests on the difficult and delicate judgments these officers must often make....

In short, it would be as anomalous to conclude that citizens may be subjected to the broad discretionary powers of noncitizen police officers as it would be to say that judicial officers and jurors with power to judge citizens can be aliens. It is not surprising, therefore, that most States expressly confine the employment of police officers to citizens, whom the State may reasonably presume to be more familiar with and sympathetic to American traditions. Police officers very clearly fall within the category of “important nonelective ... officers who participate directly in the ... *execution* ... of broad public policy.” ... In the enforcement and execution of the laws the police function is one where citizenship bears a rational relationship to the special demands of the particular position. A State may, therefore, consonant with the Constitution, confine the performance of this important public responsibility to citizens of the United States.

Accordingly, the judgment of the District Court is *Affirmed*.

MR. JUSTICE STEWART concurring.

The dissenting opinions convincingly demonstrate that it is difficult if not impossible to reconcile the Court's judgment in this case with the full sweep of the reasoning and authority of some of our past decisions. It is only because I have become increasingly doubtful about the validity of those decisions (in at least some of which I concurred) that I join the opinion of the Court in this case.

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN and MR. JUSTICE STEVENS join, dissenting....

Today the Court upholds a law excluding aliens from public employment as state troopers. It [argues] ... that aliens may be barred from holding "state elective or important nonelective executive, legislative, and judicial positions," because persons in these positions participate directly in the formulation, execution, or review of broad public policy." ... I do not agree with the Court that state troopers perform functions placing them within this "narro[w] ... exception" ... to our usual rule that discrimination against aliens is presumptively unconstitutional. Accordingly I dissent....

There is a vast difference between the formulation and execution of broad public policy and the application of that policy to specific factual settings. While the Court is correct that "the exercise of police authority calls for a very high degree of judgment and discretion," ... the judgments required are factual in nature; the policy judgments that govern an officer's conduct are contained in the Federal and State Constitutions, statutes, and regulations.... It is ... not a denigration of the important public role of the state trooper—who, as the Court notes, ... operates "in the most sensitive areas of daily life"—to find that his law enforcement responsibilities do not "make him a formulator of governmental policy." ... Since no other rational reason, let alone a compelling state interest, has been advanced in support of the statute here at issue, I would hold that the statute's exclusion of aliens from state trooper positions violates the Equal Protection Clause of the Fourteenth Amendment.

MR. JUSTICE STEVENS, with whom MR. JUSTICE BRENNAN joins, dissenting.

...What is the group characteristic that justifies the unfavorable treatment of an otherwise qualified individual simply because he is an alien?

No one suggests that aliens as a class lack the intelligence or the courage to serve the public as police officers. The disqualifying characteristic is apparently a foreign allegiance which raises a doubt concerning trustworthiness and loyalty so pervasive that a flat ban against the employment of any alien in any law enforcement position is thought to be justified. But if the integrity of all aliens is suspect, why may not a State deny aliens the right to practice law? Are untrustworthy or disloyal lawyers more tolerable than untrustworthy or disloyal policemen? Or is the legal profession better able to detect such characteristics on an individual basis than is the police department? Unless the Court repudiates its holding in *In re Griffiths* [1973], ... it must reject any conclusive presumption that aliens, as a class, are disloyal or untrustworthy.

... The Court ... should not uphold a statutory discrimination against aliens, as a class, without expressly identifying the group characteristic that justifies the discrimination. If the unarticulated characteristic is concern about possible disloyalty, it must equally disqualify aliens from the practice of law; yet the Court does not question the continuing vitality of its decision in

Griffiths. Or if that characteristic is the fact that aliens do not participate in our democratic decision making process, it is irrelevant to eligibility for this category of public service.

If there is no group characteristic that explains the discrimination, one can only conclude that it is without any justification that has not already been rejected by the Court.