10-1980

United States Railroad Retirement Board v. Fritz

Lewis F. Powell Jr.

Note

A 3 J/Ct invalidated a provision of Railroad Retirement Act of '74.

PRELIMINARY MEMORANDUM

February 15, 1980 Conference
List 1, Sheet 1

No. 79-870-ADX

Appeal from ~~Cert.~~ to U.S.D.C., S.D. Ind. (Holder, J.)

UNITED STATES RAILROAD RETIREMENT BOARD

v.

FRITZ

Federal/Civil

Timely

1. SUMMARY. The SG appeals from a DC decision holding that a classification in the Railroad Retirement Act of 1974, which defines which employees are entitled to retain their double-dipping rights, is so arbitrary and capricious that it violates due process.

Congress' scheme was not very rational, but I think it was rational. I would be inclined to note — DOS

RESPONSE
ADD NOTHING -
DOS

2. FACTS. Prior to 1975, an individual who worked for 10 years in the railroad industry, and who had been employed outside the railroad industry for a sufficient period to qualify for Social Security benefits could receive benefits under both Acts, which totalled more than the benefits received by employees under either Act who worked the same length of time, but did not split the time between railroad and nonrailroad work. Congress decided to eliminate this double-dipping. This goal was accomplished by the Railroad Retirement Act of 1974, 45 U.S.C. § 231 et seq. However, Congress decided that the expectations of some employees under the old scheme should not be frustrated. Thus, the elimination of those benefits was to be accomplished gradually. Individuals who were retired and receiving benefits by the effective date of the Act, Jan. 1, 1975, continued to be eligible for 100% of their benefits under the old scheme, as did employees with 25-years of railroad service and permanently insured by Social Security, but not yet retired. Those still working, but not permanently insured under Social Security on Jan. 1, 1975 were denied all dual benefits. Employees not yet retired who had more than ten, but less than 25 years of service in the railroad industry, and thus were permanently insured under the Railroad Retirement Act and who also were permanently insured under Social Security, were divided into two groups. Those who were then currently affiliated with the Railroad industry, i.e., who had worked in the industry at least one day in 1974 or who had worked in the industry in 12 of the preceding 30 calendar months, were entitled to the

1974 received a windfall benefit in a substantially lower amount. The DC estimated that members of appee's class lost approximately $88 per month as a result of the classification. Petn 25a.

3. PROCEEDINGS BELOW. Appee, an employee with more than 10 and less than 25 years of service in the railroad industry, who was permanently insured under Social Security in 1974, who retired after Dec. 31, 1974, was substituted as plaintiff in a suit to compel appt to treat employees with no current connection with the railroad industry like employees with the same record of service currently with the industry, and a class of former railroad workers in appee's situation was certified. The DC found the distinction based on current connection with the railroad industry arbitrary and not rationally related to the purposes of the statute. The DC found that the purposes of the 1974 Act were to place the Railroad Retirement Fund on a sound actuarial basis and to protect completely the rights of those persons entitled before Dec. 31, 1974, to receive their full benefits under both Acts. Looking to the legislative history, the DC rejected the government's suggestion that Congress' purpose was to favor "career" railroad employees over others. Congress treated employees with 25 years of service as "career" employees. Under the "current affiliation" requirement, an employee with 20 years of service who left the industry prior to 1974 would be ineligible, while a current railroad employee with only 11 years of service would be eligible. The DC also found the

arbitrariness of the classification heightened by the fact that during critical negotiations over the bill which became the 1974 Act, the labor union deserted appee's class in order to obtain an increase in benefits for persons who were still union members. The DC also found that Congress was unaware that it had created this distinction which harmed appee's class, and that it was Congress' purpose to protect appee's class.

4. CONTENTIONS. The SG argues that the classification is not arbitrary. His first argument is that since Congress could have eliminated the dual benefit altogether, e.g, Fleming v. Nestor, 363 U.S. 603, 610-11, it was free to choose this "reasonable middle ground." His second argument, with which there is no dispute, is that no suspect classification is involved.

The SG next attacks the DC's reasoning. First, it was not Congress' purpose to protect all "vested" benefits, as the face of the statute demonstrates. Although the body which was formulated to advise Congress on this matter, the Commission on Railroad Retirement, recommended that all "vested" benefits be protected, the Joint Labor-Management Negotiation Committee suggested a "refinement," which was adopted by Congress. Further, Congress must be assumed to have been aware of what it enacted.

The SG also argues that the fact that union negotiators may have failed fairly to represent the interests of appee's class is irrelevant to the constitutional inquiry. Next, the SG criticizes the DC for commenting that there were other ways to correct the fiscal problems of the railroad retirement system.

Finally, the SG appears to assert what he believes to be a rational basis for the classification: "Congress presumably shared the view of the Joint Committee that individuals who left the industry had a diminished equitable claim to 'windfall' benefits . . . ." Brief for U.S. at 23.

Appee argues that the only distinction at issue concerns the timing of employees' railroad service and that this distinction is irrational. Appee emphasizes that employees with more total service in the industry may be deprived solely because they left the industry prior to 1974. The current-affiliation test does not measure industry loyalty (even if such a factor were rational) because most members of appee's class were forced out of railroading by declines in the industry. Appee also emphasizes that Congress did not understand what it was doing, that Congress was misled by labor leaders, and that labor leaders "sacrificed" appee's class. Appee contends that the divestiture of appee's class can be directly traced to an increase in benefits to three groups of present beneficiaries.

The Railway Labor Conference and the Railway Labor Executives' Association have filed amicus briefs in support of the jurisdictional statement.

5. DISCUSSION. There is an initial problem as to whether a three-judge court should have been convened. The original complaint was filed before repeal of the three-judge court provision. However, the complaint was amended after the effective date of the repeal. The DC ruled that the amended complaint did not relate back to the original filing for

purposes of the three-judge court provision. The SG agrees. The SG notes that relation back is relevant here only for purposes of the 3-judge court provision, which is to be strictly construed. Appt was named only in the amended complaint, and the original named plaintiffs did not have standing because they were not yet eligible to receive benefits. Apparently appee does not contend that a 3-judge court should have been convened. I see no reason for the Court to remand this case for consideration by a 3-judge court.

The SG's criticisms of the DC's opinion are legitimate for the most part. It is difficult to conclude that Congress did not intend to divest appee's class when the legislation enacted by Congress did so. If Congress really did not intend the result seemingly accomplished by the face of the statute, perhaps the court should have merely construed the statute rather than reaching the constitutional question. Whether there were other methods to protect the fiscal integrity of the fund seems irrelevant to me. The most effective method would have been to eliminate the double benefit entirely for the group of employees with appees' length of service in the industry. The fiscal effect would have beenthe same if Congress had divided the benefit given to those employees with a "current affiliation" between the two groups of competing employees. Although the overall purpose of the 1974 Act was to ensure the fiscal integrity of the fund, I do not think that purpose is relevant to the classification drawn here.

The SG's attack on the DC still does not provide a rational reason for the classification. I find the "comparative equities" justification, which is the only one offered, very weak. I also think that it is legitimate for the court scrutinizing a statute to examine the process which led to its enactment and that the fact that labor negotiators sacrificed appees is of some relevance. However, under rational basis scrutiny, not much of a justification is required. My inclination is that the DC was correct, but a substantial enough question is presented that this case probably should be noted.

There is a response and two amicus briefs.

1-15-79 Hair Op in petn

Argued ....., 19... *Assigned* ....., 19... No. 79-870

Submitted ....., 19... *Announced* ....., 19...

U.S. RR RETIREMENT BD.

vs.

FRITZ

Also motion to affirm.

Noted

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	JURISDICTIONAL STATEMENT POST	JURISDICTIONAL STATEMENT DIS	JURISDICTIONAL STATEMENT AFF	MERITS REV	MERITS AFF	MOTION G	MOTION D	ABSENT	NOT VOTING
Burger, Ch. J.			Summary Rev.										
Brennan, J.				✓									
Stewart, J.				✓	& consider Summ. Rev								
White, J.				✓									
Marshall, J.				✓									
Blackmun, J.				✓									
Powell, J.				✓									
Rehnquist, J.				✓									
Stevens, J.				✓	or Rev Summarily								

GRANT
Marsel

April 25, 1980 Conference
List 3, Sheet 3

No. 79-870

U. S. RAILROAD RETIREMENT BD.

v.

FRITZ

Motion of SG to Dispense with Printing the Appendix

SD Ind.

The SG, on behalf of the parties, moves to dispense with the appendix since all relevant materials already appear in the appendices to the jurisdictional statement.

The request appears appropriate.

4/24/80 Marsel

PJC

I would grant - Jon

Argued ....., 19... *Assigned* ....., 19... No. 79-870

Submitted ....., 19... *Announced* ....., 19...

U. S. RAILROAD RETIREMENT BOARD

vs.

FRITZ

Motion of petitioner to dispense with printing the appendix.

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.													
Brennan, J.													
Stewart, J.													
White, J.													
Marshall, J.													
Blackmun, J.													
Powell, J.													
Rehnquist, J.													
Stevens, J.													

Greg Kimler classification is rationally related to purpose of '74 amendment, and would reverse.

GM 10/5/80

BENCH MEMORANDUM See excellent "road map" of classification - p 14

To: Mr. Justice Powell October 5, 1980

From: Greg Morgan

No. 79-870: United States Railroad Retirement Board v. Fritz
(Direct appeal from D.C.)

Question Presented

In this class action, appellee Fritz challenges the constitutionality of the Railroad Retirement Act of 1974, 45 U.S.C. § 231b(h). The question is whether § 3(h) of the Act, which defines the class of individuals who shall receive a "windfall" retirement benefit representing payment from both the Railroad Retirement Account and the Social Security Trust Fund, violates the Due Process Clause of the Fifth Amendment.

Background

(1) The Railroad Retirement System Before 1975.

Retirement benefits for railroad employees are paid from the Railroad Retirement Account, not from the Social

Security Trust Fund which pays retirement benefits to employees in other industries. Before the Railroad Retirement Act of 1974 took effect on January 1, 1975, individuals who had worked in both the railroad industry and another industry were eligible for retirement benefits under both the railroad retirement system and the social security system. Upon retirement, those workers received a "dual" benefit. In 1970, Congress realized that the financial mechanics of paying such dual benefits was draining the Railroad Retirement Account. (I will not rehearse the financial mechanics because they are described sufficiently in the briefs and are relatively comprehensible.) Therefore, Congress created the Commission on Railroad Retirement to study the actuarial soundness of the railroad retirement system.

(2) The Passage of the Act

In a report submitted to Congress in 1972, the Commission recommended that the payment of dual benefits be eliminated. The Commission recognized, however, that some railroad employees had retired or made retirement plans upon the expectation of receiving dual benefits. Therefore, the Commission recommended that a grandfather clause provide for the payment of dual benefits to all individuals who had qualified for them already.

After receiving the Commission's recommendations, Congress asked representatives of railroad labor and management to study the recommendations, to negotiate, and to prepare a

bill to restructure the railroad retirement system. These representatives formed the Joint Labor-Management Railroad Retirement Negotiating Committee. The Committee proposed a bill with a narrower grandfather clause than that suggested by the Commission. In short, the Committee's proposal eliminated the dual benefit for some employees who otherwise would have received it upon retirement. Congress passed the Act after legislative hearings at which Committee members testified about the proposal and specifically about the grandfather clause.

(3) The Railroad Retirement Act of 1974

The Act divides railroad retirement benefits into two components. One component, called the "social security" component, corresponds to the total benefit that an employee would receive if all of his railroad service had been covered by the Social Security Act. The second component, called the "staff" component, is a supplemental benefit for service in the railroad industry. The social security component is computed on the basis of an employee's combined railroad and nonrailroad service. However, if the employee is also eligible to receive benefits under the Social Security Act (because he has worked outside the railroad industry long enough to be permanently insured under that Act), then the social security component of his railroad retirement benefit is reduced by the amount he is paid directly from the Social Security Trust Fund for nonrailroad service. This reduction eliminates dual benefits,

with the exception of the grandfather clause described below.

The Act's grandfather clause, § 3(h), provides a third component, called the "windfall" component, which effectively preserves the dual benefit for some employees. But only employees with the several qualifications described below receive the windfall component.

First, only employees who have fully qualified for benefits under both the railroad retirement system and the social security system as of January 1, 1975, can receive the windfall component if they also satisfy other requirements. Thus, employees who have not completed 10 years of railroad service by that date cannot qualify for the windfall component by completing 10 years of service after that date, even if they satisfied the other requirements.

Second, only employees who have qualified under both systems as of January 1, 1975, and have retired and are receiving dual benefits as of that date, qualify for the windfall component without satisfying any other requirements.

Third, employees who have qualified under both systems but who have not retired as of January 1, 1975, and therefore are not receiving dual benefits as of that date, qualify for the windfall component only if they satisfy one of three additional requirements as well:

One, those employees must have a "current connection" with the railroad as of December 31, 1974, or the

later date on which they retire--that is, they must have worked for the railroad for 12 of the 30 months preceeding December 31, 1974, or the later date on which they retire.

Or two, those employees must have worked for the railroad in 1974.

Or three, those employees must have completed 25 years of railroad service as of December 31, 1974.

Thus, employees who have qualified under both systems but who have not retired as of January 1, 1975, and therefore are not receiving dual benefits as of that date, and additionally do not have a current connection with the railroad as of December 31, 1974 or the later date on which they retire, did not work for the railroad in 1974, and have not completed 25 years of service as of December 31, 1974, do not receive the windfall component. (For graphic summary, see last page.)

Put less diagramatically, an individual with more than 10 years service in the railroad and sufficient nonrailroad work to qualify for social security benefits continues to receive a dual benefit if he was retired and receiving a dual benefit as of December 31, 1974. Also, an individual who has completed 10 years of railroad service and sufficient nonrailroad service to qualify for social security benefits, but who was not retired as of December 31, 1974, receives the windfall component if he has a current connection with the railroad as of December 31, 1974 or the later date of his retirement, or if he worked for the

railroad in 1974, or if he had 25 years of railroad service by December 31, 1974. But an unretired individual who worked in the railroad for less than 25 years, and who neither worked for the railroad in 1974 nor had a current connection with the railroad as of December 31, 1974, or his date of retirement, does not receive the windfall component even though he has completed more than 10 years of railroad service and sufficient nonrailroad service to qualify for social security benefits.

Put in an example, an individual with 11 years of railroad work and sufficient work outside the railroad to qualify for social security benefits qualifies for the windfall component by working for the railroad in 1974, or by having a current connection with the railroad as of December 31, 1974, or his later retirement date. But an individual with 24 years of railroad service and sufficient nonrailroad service to qualify for social security benefits does not receive the windfall component if he is unretired as of January 1, 1975, did not work for the railroad in 1974, and did not have a current connection with the railroad as of December 31, 1974, or his later retirement date.

This fellow is out in the cold

(4) This Litigation

Appellee Fritz represents a class of individuals who do not qualify for the windfall component. The class consists of individuals who retired after January 1, 1975, who worked for the railroad for more than 10 years but less than 25, who left

The "class"

the railroad industry for other employment before 1974, and who did not return to the railroad industry and establish a "current connection" with it before retiring. Because they do not satisfy any one of the three requirements above, they do not receive the windfall component even though they performed sufficient nonrailroad service to become qualified for benefits under both systems by December 31, 1974.

On cross motions for summary judgment, the District Court for the Southern District of Indiana (Holder, J.) held that the Act creates an irrational and therefore unconstitutional distinction between classes of annuitants. The court ordered that members of appellee's class be paid the windfall component. The court placed great emphasis on its finding that the principal purposes of the Act were to make the railroad retirement system actuarially sound and to protect completely the dual benefits that railroad employees had already earned. In the court's view, the Act's scheme for determining which railroad workers would receive the windfall component failed to serve either of those purposes. The scheme was found not to serve the purpose of making the railroad retirement system actuarially sound because the financial need to deprive some workers of the windfall component arose only because the Committee agreed to increase other workers' benefit. And, obviously, the scheme did not serve the purpose of completely protecting dual benefits earned by all railroad workers. The

court also found that the labor representatives on the Committee had breached a "duty of fair representation" that they owed to appellee and his class. They did so, the court found, by increasing future benefits for persons still in the railroad industry at the expense of those, such as appellee, who had left the industry, and by failing to notify individuals such as appellee of the proposed change in benefits. Finally, the court found that Congress did not know of the adverse effect of the scheme upon workers such as appellee because of misleading testimony by Committee members.

This direct appeal comes to the Court under 28 U.S.C. § 1252.

Discussion

(1) The Statutory Scheme

(a) The Board's Arguments

Preliminarily, the Board notes that railroad retirement annuities are not contractual, and that "Congress may alter, and even eliminate, them at any time." Hisquierdo v. Hisquierdo, 439 U.S. 572, 575 (1979). Thus, the Board argues, the line which Congress drew to distinguish workers who would receive the windfall component from workers who would not is not unconstitutional merely because the Court would draw the line differently. Mathews v. Diaz, 426 U.S. 67, 82-84 (1976).

In defense of the line which Congress drew, the Board

contends that the statutory scheme is rationally related to the achievement of three legislative purposes:

One, the scheme acknowledges the relative equities of the possible recipients of the windfall component. In the Board's view, Congress concluded that retired workers already receiving dual benefits in 1974 and other present and former employees who had 25 years of service in the industry, or had worked in the industry in 1974, or had a current connection with the industry at the end of 1974, or when they retired, had a somewhat stronger equitable interest in receiving the windfall than did workers, such as appellee and his class, who had left the industry prior to 1974 and never returned to it before retiring.

Two, the scheme acknowledges career railroad employees. Awarding the windfall component to employees with 25 years of railroad service obviously acknowledges career railroad service. The Board contends that the "current connection" test for workers with less than 25 years service also acknowledges career service because Congress has traditionally used that test to ensure some measure of career status as a prerequisite to receiving benefits under the railroad retirement system. In short, Congress could reasonably determine that workers currently connected with the railroad in 1974 when the Act was considered and passed, and workers who left the railroad before 1974 but re-established a current connection with the railroad

before their retirement, were more likely to be career employees than those who left the industry before 1974 and never returned before retirement.

Three, the scheme avoids substantial drain on the Railroad Retirement Account. The Board contends that Congress could legitimately decide that the need to avoid financial drain, while preserving the most equitable expectations, required that some less equitable expectations not be recognized.

(b) Appellee's Arguments

Appellee contends that the legislative purposes of the Act are not those which the Board suggests, that the statutory scheme fails to serve the true legislative purposes, and that the scheme even fails to serve the purposes suggested by the Board.

First, appellee contends that the true legislative purposes were to make the railroad retirement system actuarially sound and to protect completely the dual benefits of workers who had earned them. Obviously, the scheme fails to protect all the dual benefits that had been earned before 1975. Appellee contends that the scheme is not rationally related to the purpose of making the railroad retirement system actuarially sound because the need to eliminate some dual benefits--that is, appellee's and his class's--arose only when the Committee agreed to increase the benefits of individuals working in or currently

connected to the railroad in 1974. Had the Committee not so agreed, appellee contends, then the railroad retirement system could have been made actuarially sound even while protecting appellee's dual benefit.

Second, appellee contends that the scheme does not serve the purposes suggested by the Board. The scheme does not acknowledge career service rationally because it measures when an individual worked for the railroad, not the length of service. Thus, as in the example on page 6, an individual who worked for the railroad for only 11 years receives the windfall component if one of those years was 1974, but an individual who worked for the railroad for 24 years does not receive the windfall component if neither 1974 nor the year preceding his retirement was one of those years. Examples such as this also support appellee's contention that the scheme does not acknowledge relative equities in a rational way.

(c) Analysis

Without having plumbed the depths of the legislative history which both the Board and appellee cite exhaustively, I am inclined to conclude that the statutory scheme is rationally related to the legislative purpose. To be sure, the case can be made that appellee has not asked merely that the Court substitute its judgment for Congress', for appellee has "advanc[ed] principled reasoning that will at once invalidate [the line Congress drew] and yet tolerate a different line

separating some [railroad workers] from others." Mathews v. Diaz, 426 U.S. at 82. The principled reasoning is that length of service, not occasion of service, reflects career railroad employment and acknowledges the relative equities among potential recipients of the windfall component. But appellee has not shown persuasively that Congress could not have conditioned eligibility for the windfall component upon the character of the worker's ties to the railroad as well as upon his ties' duration. See id. at 82-83 ("In short, it is unquestionably reasonable for Congress to make an alien's eligibility [for welfare benefits] depend on both the character and the duration of his residence.") Congress clearly wanted to grant the windfall component only to workers who had substantially served the railroad. Thus, Congress required 10 years of service as a threshold requirement. At the other extreme, Congress presumed that workers who served the railroad for 25 years were career railroad employees. For those in the middle ground, Congress chose to rely upon criteria other than years of service to discern which employees were more like 25-year employees and which were more like 10-year employees. The requirements of a current connection or of work in 1974 are not irrational criteria; arguably, they are less arbitrary than a flat number-of-years requirement.

Appellee's contention that Congress wanted to "protect completely" all earned dual benefits is not persuasive either.

The simple and sufficient answer is that the Commission, not Congress, proposed complete protection. Congress, by passing the Act, must be presumed to have rejected the Commission's proposal.

(2) The Committee's Alleged Misconduct

The District Court found that the labor representatives of the Committee sacrificed the benefits of workers who had left the railroad in favor of increased benefits for workers who were still connected with the railroad, and that Committee members concealed this sacrifice from Congress. I am inclined to dismiss these findings, and the contentions appellee makes from them, as irrelevant. Assuming that the labor representatives sacrificed the benefits of appellee and his class, it is not clear that that action was beyond the representatives' authority, for Congress specifically asked labor and management "to negotiate" in preparing a bill to restructure the railroad retirement system. Even assuming that the sacrifice was beyond the Committee's authority, Congress can be presumed to have understood and ratified the sacrifice unless the evidence shows clearly that the Committee hoodwinked Congress. I find appellee's evidence significantly less than convincing.

I recommend reversing the judgment of the District Court.

SECTION 3(h) of the RAILROAD RETIREMENT ACT OF 1974

Individual	Requirements for Windfall Component
Retired & receiving dual benefit as of 1/1/75	qualify for benefits under both systems as of 1/1/75, WITHOUT MORE
Unretired as of 1/1/75	qualify for benefits under both systems as of 1/1/75 AND: (1) work for railroad in 1974 OR (2) have current connection as of 12/31/74 or later retirement date OR (3) have completed 25 years railroad service as of 12/31/74

79-870 U.S. v. RAILROAD RETIREMENT v. FRITZ Argued 10/6/80

On direct appeal from a DC that invalidated classification as to double benefits - established by Amend. of '74.

Knebler (SG)

No vesting under RR Retirement Act. Benefits are non-contractual & may be changed or withdrawn. Unlike earned S/S Benefits.

§ 3(h) in at issue.

Two categories were given grandfather status as to dual benefits:

I Those retired workers qualified for benefits & then receiving dual benefits.
(no issue in this case as to these).

II Workers not retired at end of '74, but who were qualified for both benefits, but only if they also:

(1) were affiliated with RR at end of '74, Or

(2) were affiliated when they retired - even tho retirement occurs after 12/31/74, Or

(3) completed 25 yrs of RR employment by time they retired.

Byrom (appellee)

Congress re-enacted 1974 Act after veto by Ford – overwhelming.

Argues that RR benefits, ~~are~~ when earned, are vested. (SG takes contrary ~~to~~ position). Employee did pay ~~to~~ RR benefits tax – just as S/S.

Kneedler

See p 12 of Committee Report

Congress knew what it was doing.

Reverse 8-1

79-870 U.S. Railroad Retirement v. Fritz Conf. 10/8/80

The Chief Justice Reverse

Benefits are not contractual. No vested rights
Typical line drawing by Congress.
No suspect class.

Mr. Justice Brennan Affirm

Congress has customarily left decisions
of this kind to collective bargaining,
deferring usually to the Union.
This is an example of gross discrimination.
The persons discriminated vs were no
longer active in Union

Mr. Justice Stewart Reverse

Agrees with C.J.

Mr. Justice White Reverse

Close, but there is enough "rationality" here

Mr. Justice Marshall Reverse

Unattractive, & should untie remedy.

Mr. Justice Blackmun Reverse

No thing to 3 Judge Ct issue
No fundamental right
Purpose is fiscal.
Congress can remedy, but
Excluded group here
has no political clout.

Mr. Justice Powell Reverse

Altho rather arbitrary line drawing, I can't say classification is irrational. There is an area in which courts should rarely reject Congressional judg.

Mr. Justice Rehnquist Reverse

Mr. Justice Stevens Reverse

Unfair perhaps, but no vested rights. There was rational basis

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: NOV 7 1980

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

See my letter to WHR of 11/10/80

No. 79-870

United States Railroad Retirement Board, Appellant, *v.* Gerhard H. Fritz	On Appeal from the United States District Court for the Southern District of Indiana.

[November —, 1980]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

I'll join Judgment

The United States District Court for the Southern District of Indiana held unconstitutional a section of the Railroad Retirement Act of 1974, 45 U. S. C. § 231 *et seq.*, and the United States Railroad Retirement Board has appealed to this Court pursuant to 28 U. S. C. § 1252.

The 1974 Act fundamentally restructured the railroad retirement system. The Act's predecessor statute, adopted in 1937, provided a system of retirement and disability benefits for persons who pursued careers in the railroad industry. Under that statute, a person who split employment between railroad and nonrailroad service, and thus qualified for both railroad retirement benefits and social security benefits, 42 U. S. C. § 401 *et seq.*, could receive[1] retirement benefits under both systems and an accompanying "windfall" benefit.[2]

[1] Under the old Act, as under the new, an employee who worked 10 years in the railroad business qualified for railroad retirement benefits. If the employee also worked outside the railroad industry for a sufficient enough time to qualify for social security benefits, he qualified for dual benefits. Due to the formula under which those benefits were computed, however, persons who split their employment between railroad and nonrailroad employment received dual benefits in excess of the amount they would have received had they not split their employment. For

The legislative history of the 1974 Act shows that the payment of windfall benefits threatened the railroad retirement system with bankruptcy by the year 1981.[2] Congress therefore determined to place the system on a "sound financial basis" by eliminating future accruals of the windfall benefits.[3] Congress also enacted various transitional provisions,

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example, if 10 years of either railroad or nonrailroad employment would produce a monthly benefit of $300, an additional 10 years of the same employment at the same level of creditable compensation would not double that benefit, but would increase it by some lesser amount to say $500. If that 20 years of service had been divided equally between railroad and nonrailroad employment, however, the social security benefit would be $300 and the railroad retirement benefit would also be $300, for a total benefit of $600. The $100 difference in the example constitutes the "windfall" benefit. See generally, S. Rep. No. 93–1163, 93d Cong., 2d Sess., 2–3 (1974); H. R. Rep. No. 93–1345, 93d Cong., 2d Sess., 2–3 (1974).

[2] The relevant Committee Reports stated "Resolution of the so called 'dual benefit' problem is central both to insuring the fiscal soundness of the railroad retirement system and to establishing equitable retirement benefits for all railroad employees." S. Rep. No. 93–1163, *supra*, at 11; H. R. Rep. No. 93–1345, *supra*, at 11. The reason for the problem was that a financial interchange agreement entered into in 1951 between the social security and railroad systems caused the entire cost of the windfall benefits to be borne by the railroad system, not the social security system. The annual drain on the railroad system amounted to approximately $450 million per year, and if it were not for "the problem of dual beneficiaries, the railroad retirement system would be almost completely solvent." *Id.*, at 8.

[3] S. Rep. No. 93–1163, *supra*, at 1; H. R. Rep. No. 93–1345, *supra*, at 1. Congress eliminated future accruals of windfall benefits by establishing a two-tier system for benefits. The first tier is measured by what the social security system would pay on the basis of combined railroad and nonrailroad service, while the second tier is based on railroad service alone. However, both tiers are part of the railroad retirement system, rather than the first tier being placed directly under social security, and the benefits actually paid by social security on the basis of nonrailroad employment are deducted so as to eliminate the windfall benefit.

The Railroad Retirement Act of 1974 had its origins in 1970 when Congress created the Commission of Railroad Retirement to study the

including a grandfather provision, § 231 (h),[4] which expressly preserved windfall benefits for some classes of employees.

In restructuring the Railroad Retirement Act in 1974,

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actuarial soundness of the railroad retirement system. The Commission submitted its report in 1972 and identified "dual benefits and their attendant windfalls" as one of the principle causes of the financial difficulties of the railroad retirement system. It also found that windfall benefits were inequitable, favoring those employees who split their employment over those employees who spent their entire career in the railroad industry. Report of the Commission on Railroad Retirement, The Railroad Retirement system; Its Coming Crisis, H. Doc. 92-350 (1972). It therefore recommended that future accruals of windfall benefits be eliminated by the establishment of a two-tier system, somewhat similar to the type of system eventually adopted by Congress. It also recommended that "legally vested rights of railroad workers" be preserved. An employee who was fully insured under both the railroad and social security systems as of the changeover date (*i. e.*, by having at least 10 years of railroad employment and requisite length of social security employment) was deemed to have "legally vested rights."

Following receipt of the Commission's report, Congress requested members of management, labor, and retirees to form a Joint Labor Management Railroad Retirement Negotiating Committee (hereinafter known as the Joint Committee) and submit a report, "taking into account" the recommendations of the Commission. The Joint Committee outlined its proposals in the form of a letter to Congress. 120 Cong. Rec. 18391-18392 (April 10, 1974). Although it agreed with the Commission that future accruals of windfall benefits be eliminated, it differed as to the protection to be afforded those already statutorily entitled to benefits and recommended the transitional provisions that were eventually adopted by Congress. A bill enacting those principles was drafted and submitted to Congress, where the relevant committees held lengthy hearings and submitted detailed reports. See S. Rep. No. 93-1163, *supra;* H. R. Rep. No. 93-1345, *supra.*

[4] Section 3 (h) of the Railroad Retirement Act of 1974, 45 U. S. C. 231b (h), provides, in pertinent part:

"(1) The amount of the annuity . . . of an individual who (A) will have (i) rendered service as an employee to an employer, or as an employee representative, during the calender year 1974, or (ii) had a current connection with the railroad industry on December 31, 1974, or at the time his annuity under section 2 (a)(1) of this Act began to accrue, or (iii) completed twenty-five years of service prior to January 1, 1975,

Congress divided employees into various groups. *First*, those employees who lacked the requisite 10 years of railroad employment to qualify for railroad retirement benefits as of January 1, 1975, the changeover date, would have their retirement benefits computed under the new system and would not receive any windfall benefit. *Second*, those individuals already retired and already receiving dual benefits as of the changeover date, would have their benefits computed under the old system and would continue to receive a windfall benefit.[5] *Third*, those employees who had qualified for both railroad and social security benefits as of the changeover date, but who had not yet retired as of that date (and thus were not yet receiving dual benefits), were entitled to windfall benefits if they had (1) performed some railroad service in 1974 or (2) had a "current connection" with the railroad

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or (ii) completed twenty-five years of service prior to January 1, 1975, and (B) will have (i) completed ten years of service prior to January 1, 1975, and (ii) been permanently insured under the Society Security Act on December 31, 1974, shall be increased by an amount equal to [the amount of windfall dual benefit he would have received prior to January 1, 1975] . . .

"(2) The amount of the annuity . . . of an individual who (A) will not have met the conditions set forth in subclause (i), (ii), or (iii) of clause (A) of subdivision (1) of this subsection, but (B) will have (i) completed ten years of service prior to January 1, 1975, and (ii) been permanently insured under the Social Security Act as of December 31 of the calendar year prior to 1975 in which he last rendered service as an employee to an employer, or as an employee representative, shall be increased by an amount equal to the amount . . . [of windfall benefit calculated at time he left the railroad service]. . . ."

The relevant Committee Reports stated that the most "difficult problem" was the "manner in which dual benefits should be phased out on an equitable basis." S. Rep. No. 93–1163, *supra*, at 11; H. R. Rep. No. 93–1345, *supra*, at 11.

[5] 88 Stat. 1353, see note following 45 U. S. C. § 231. The transition provisions in Title II of the bill are not included in the U. S. Code. The windfall amount for retired employees is preserved by §§ 204 (a)(3) and (4) of the Act.

industry as of December 31, 1946,[6] or (3) completed 25 years of railroad service as of December 31, 1974. 45 U. S. C. § 231b (h)(1). *Fourth*, those employees who had qualified for railroad benefits as of the changeover date, but lacked a current connection with the railroad industry in 1974 and lacked 25 years of railroad employment, could obtain a lesser amount of windfall benefit if they had qualified for social security benefits as of the year (prior to 1975) they left railroad employment. 45 U. S. C. § 231b (h)(2).[7]

Thus, an individual who, as of the changeover date, was unretired and had 11 years of railroad employment and sufficient nonrailroad employment to qualify for social security benefits is eligible for the full windfall amount if he worked for the railroad in 1974 or had a current connection with the railroad as of December 31, 1974, or his later retirement date. But an unretired individual with 24 years of railroad service and sufficient nonrailroad service to qualify for social security benefits does not receive a windfall amount if he did not work for the railroad in 1974 and did not have a current connection with the railroad as of December 31, 1974 or his later retirement date. And an employee who left the railroad industry for other employment before 1974, and who was neither permanently insured under the Social Security Act at that time nor returned to the railroad industry to re-establish a "current

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[6] The term "current connection" is defined in 45 U. S. C. § 231 (o) to mean, in general, employment in the railroad industry in 12 of the preceding 30 calender months.

[7] The amount of the "windfall component" is greater under subsection (1) than under subsection (2) of 45 U. S. C. § 231b (h). The former consists of benefits computed on the basis of social security service through December 31, 1974, while the latter is computed on the basis of social security service only through the years in which the individual left the railroad industry. The difference corresponds to the different dates by which the retired employee must have been permanently insured under the Social Security Act in order to be eligible for any windfall benefit.

connection" with it before retiring, will not receive any windfall benefit, even if he subsequently qualified for social security benefits. It was with these complicated comparisons with which Congress wrestled in 1974.

Appellees filed this class action in the United States District Court for the Southern District of Indiana, seeking a declaratory judgment that 45 U. S. C. § 231b (h) is unconstitutional under the Due Process Clause of the Fifth Amendment because it irrationally distinguishes between classes of annuitants.[8] The District Court eventually certified a class of all persons eligible to retire between January 1, 1975 and January 31, 1977, who were permanently insured under the Social Security Act as of December 31, 1974, but who were not eligible to receive any "windfall component" because they had left the railroad industry before 1974, had no "current connection" with it at the end of 1974, and had less than 25 years of railroad service.[9] Appellees contended below that it was irrational for Congress to have drawn a distinction between employees who had more than 10 years but less than 25 years of railroad employment simply on the basis of whether they had a "current connection" with the railroad industry as of the changeover date or as of the date of retirement.

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[8] Although "the Fifth Amendment contains no equal protection clause, it does forbid discrimination that is 'so unjustifiable as to be violative of due process.'" *Schneider* v. *Rusk*, 377 U. S. 163, 168 (1964). Thus, if a federal statute is valid under the Equal Protection Clause, it is perforce valid under the Due Process Clause. *Richardson* v. *Belcher*, 404 U. S. 78, 81 (1971).

[9] It is somewhat unclear precisely who is and is not within the class certified by the District Court. By its terms, the class certified by the District Court would appear to include those employees who qualified for reduced windfall benefits under § 231b (h) (2) by reason of their qualifying for social security benefits as of the year they left the railroad industry. It appears, however, that the District Court intended to include in the class only those who, like appellee Fritz, are precluded from any windfall benefit.

The District Court agreed with appellees that a differentiation based solely on whether an employee was "active" in the railroad business as of 1974 was not "rationally related" to the congressional purposes of insuring the solvency of the railroad retirement system and protecting vested benefits. We disagree and reverse.

The only issue presented by this case is the appropriate standard of judicial review to be applied when social and economic legislation enacted by Congress is challenged as being violative of the Fifth Amendment to the United States Constitution. There is no claim here that Congress has taken property in violation of the Fifth Amendment, since railroad benefits, like social security benefits, are not contractual and may be altered or even eliminated at any time. *Hisquierdo* v. *Hisquierdo*, 439 U. S. 572, 575 (1979); *Flemming* v. *Nestor*, 363 U. S. 603, 608–611 (1960). And because the distinctions drawn in § 231b (h) do not burden fundamental constitutional rights or create "suspect" classifications, such as race or national origin, we may put cases involving judicial review of such claims to one side. *San Antonio Independent School District* v. *Rodriguez*, 411 U. S. 1 (1973); *Vance* v. *Bradley*, 440 U. S. 93 (1979).

Despite the narrowness of the issue, this Court has not been altogether consistent in its pronouncement in this area. As long ago as *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 78–79 (1911), the Court stated that appropriate standard to be:

> "1. The equal protection doctrine clause of the Fourteenth Amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary. 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with

> mathematical nicety, or because in practice it results in some inequality. 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed. 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary."

By contrast, during an era when the Court was giving a broad reading to both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment to invalidate social and economic legislation in a way which has since been largely abandoned, this Court stated the test more loosely, over the dissents of Justices Brandeis and Holmes. It held that a classification to be valid under the Equal Protection Clause "must rest upon some ground of differences having a fair and substantial relation to the object of the legislation. . . ." *Royster Guano Co.* v. *Virginia*, 253 U. S. 412, 415 (1920).

In more recent years, however, we have returned to the standard announced in *Lindsley* and have consistently deferred to legislative determinations as to the desirability of statutory differentiations. *E. g., New Orleans* v. *Dukes*, 427 U. S. 297, 303 (1975); *Vance* v. *Bradley*, 440 U. S. 93, 97 (1979). In *Flemming* v. *Nestor*, 363 U. S. 603, 611 (1960), for example, the Court upheld the constitutionality of a social security eligibility provision, stating that:

> "it is not within our authority to determine whether the Congressional judgment expressed in that section is sound or equitable, or whether it comports well or ill with purposes of the Act. 'Whether wisdom or unwisdom resides in the scheme of benefits set forth in [the Social Security Act], it is not for us to say. The answer to such inquires must come from Congress, not the courts. Our concern here, as often, is with power, not with wis-

dom.' *Helvering* v. *Davis*, [303 U. S. 619, 640]. Particularly when we deal with a withholding of a noncontractual benefit under a social welfare security program such as this, we must recognize that the Due Process Clause can be thought to interpose a bar only if the statute manifests a patently arbitrary classification, utterly lacking in rational justification."

In *Dandridge* v. *Williams*, 397 U. S. 471, 485–486 (1970), the Court rejected a claim that Maryland welfare legislation violated the Equal Protection Clause of the Fourteenth Amendment. It said:

"In the area of economic and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its law are imperfect. If the classification has some 'reasonable basis', it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' *Lindsley* v. *Natural Carbonic Gas Co.*, 220 U. S. 61, 78. 'The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific.' *Metropolis Theatre Co.* v. *City of Chicago*, 228 U. S. 61, 68–70. . . .

"[The rational basis standard] is true to the principle that the Fourteenth Amendment gives the federal courts no power to impose upon the States their views of what constitutes wise economic or social policy."

Where the legislative purpose of the enactment may be extremely obscure, it may be appropriate to search for some unannounced but underlying "purpose of the statute," and determine whether the "fit" between that purpose and the legislature's chosen means of accomplishing that purpose is rational. Here, however, given that the legislative purpose of the statute is readily apparent from the language itself, no such undertaking is required. As this Court has stated, the

appropriate place to look for legislative purpose is the statute itself. *Califano* v. *Boles*, 443 U. S. 282, 294 (1979).

Applying these principles to this case, the plain language of § 231b (h) indicates that Congress intended that certain classes of railroad employees continue to receive full windfall benefits. Because Congress could have eliminated windfall benefits altogether for classes of employees, it is not constitutionally impermissible for Congress to have drawn lines between groups of employees for the purpose of phasing out those benefits. *New Orleans* v. *Dukes*, 427 U. S., at 305.

The only remaining inqury is whether Congress achieved its purpose in a patently arbitrary or irrational way. The classification here is not arbitrary, says appellant, because it is an attempt to protect the relative equities of employees and to provide benefits to career railroad employees. Congress fully protected, for example, the expectations of those employees who had already retired and those unretired employees who had 25 years of railroad employment. Conversely, Congress denied all windfall benefits to those employees who lacked 10 years of railroad employment. Congress additionally provided windfall benefits, in lesser amount, to those employees who had 10 years railroad employment if they had qualified for social security benefits at the time they had left railroad employment, even though they lacked a current connection with the industry in 1974.

Thus, the only eligible former railroad employees denied all windfall benefits are those, like appellees, who had no statutory entitlement to dual benefits at the time they left the railroad industry, but thereafter became eligible for dual benefits when they subsequently qualified for social security benefits. Congress could properly conclude that persons who had actually acquired statutory entitlement to windfall benefits while still employed in the railroad industry had a greater equitable claim to those benefits than the members of appellees' class who were no longer in railroad employment when

they became eligible for dual benefits. Furthermore, the "current connection" test in not a patently arbitrary means for determining which employees are "career railroaders," particularly since the test has been used by Congress elsewhere as an eligibility requirement for retirement benefits.[19] Congress could assume that those who had a current connection with the railroad industry when the Act was passed in 1974, or who returned to the industry before their retirement, were more likely than those who had left the industry prior to 1974 and who never returned, to be among the class of persons who pursue careers in the railroad industry, the class for whom the Railroad Retirement Act was designed. *Hisquierdo* v. *Hisquierdo*, 439 U. S. 572, 573 (1979).

Where, as here, there are plausible reasons for Congress' action, our inquiry is at an end. It is, of course, "constitutionally irrelevant whether this reasoning in fact underlay the legislative decision," *Fleming* v. *Nestor*, 363 U. S., at 612, because this Court has never insisted that a legislative body articulate its reasons for enacting a statute. This is particularly true where the legislature must necessarily engage in a process of line drawing. The "task of classifying persons for . . . benefits . . . inevitably requires that some persons who have an almost equally strong claim to favorite treatment be placed on different sides of the line," *Mathews* v. *Diaz*,

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[19] The "current connection" test has been used since 1946 as an eligibility requirement for both occupational disability and survivor annuities, 45 U. S. C. §§ 231a (a)(1)(iv), 231a (d)(1) (ch. 709, §§ 203, 205, 213, 60 Stat. 726–735), and it has been used since 1966 in determining eligibility for a supplemental annuity. 45 U. S. C. 231a (b)(1). (Pub. L. 89–699, § 1, 80 Stat. 1073.)

Appellees contend that the current connection test is impermissible because it draws a distinction not on the duration of employment but rather on the time of employment. But this Court has clearly held that Congress may condition eligibility for benefits such as these on the character as well as the duration of an employee's ties to an industry. *Matthews* v. *Diaz*, 426 U. S. 67, 74, n. 4 (1970).

426 U. S. 67, 83–84 (1970), and the fact the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration.

Finally, we disagree with the District Court's conclusion that Congress was unaware of what it accomplished or that it was misled by the groups that appeared before it. If this test were applied literally to every member of any legislature that ever voted on a law, there would be very few laws which would survive it. The language of the statute is clear, and we have historically assumed that Congress intended what it enacted. To be sure, appellees lost a political battle in which they had a strong interest, but this is neither the first nor the last time that such a result will occur in the legislative forum. What we have said is enough to dispose of the claims that Congress not only failed to accept appellees argument as to restructuring *in toto*, but that such failure denied them equal protection of the laws guaranteed by the Fifth Amendment.[11]

For the foregoing reasons, the judgment of the District Court is

Reversed.

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[11] As we have recently stated, "The Constitution presumes that, absent some reason to infer antipathy, even improvident decision will eventually be rectified by the democratic processes and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted." *Vance* v. *Bradley*, 440 U. S. 93, 97 (1979).

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 10, 1980

RE: No. 79-870 Railroad Retirement Board v. Fritz

Dear Bill:

I will be circulating a separate opinion, probably a dissent, in the above in due course.

Sincerely,

Bill

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 10, 1980

Re: No. 79-870 - United States Railroad Retirement Board v. Fritz

Dear Bill:

Please join me.

Sincerely,

HAB.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 10, 1980

RE: No. 79-870, United States Railroad Retirement Board v. Fritz

Dear Bill,

I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 10, 1980

79-870 U.S. Railroad Retirement Board v. Fritz

Dear Bill:

I regret to say that your draft opinion's discussion of equal protection analysis may make it difficult for me to join the opinion in its present form.

On page 7, the draft reads:

> "The only issue presented by this case is the appropriate standard of judicial review to be applied when social and economic legislation enacted by Congress is challenged as being violative of the Fifth Amendment. . ."

I had not understood that this question actually is presented. The parties do not question the standard of judicial review. Rather, I understand from the briefs that they agree that the appropriate standard is the rational basis test, and the issue - as I perceive it - is whether the statutory scheme meets that test. I agree that it does.

But your framing of "the only issue presented" and your reliance on the language in Lindsley to the effect that "if any state of facts reasonably can be conceived that would sustain [the legislation]", and your further statement that after departing from the Lindsley test we more recently have returned to it, gives me a problem in view of what I have previously written.

I am reminded of my effort in Murgia to formulate a rational basis standard to which we all could subscribe. After getting caught in a "cross-fire", I finally said very little beyond the bare statement that the state's classification "rationally furthered the purpose identified by the state". Subsequently, in Maher v. Roe, again avoiding any attempt to "restate" the law of Equal

Protection, I merely said that the rational basis test "requires that the distinction drawn . . . be rationally related to a constitutionally permissible purpose."

I have never been happy with the "any conceivable basis" test applied in Lindsley and McGowan v. Maryland. Guessing what legislators "conceivably" might have intended does not appeal to me as any standard at all. In a number of cases that I wrote somewhat earlier (Weber, James v. Strange and Frontiero), I stated my view that "this Court requires, as a minimum, that a statutory classification bear a rational relationship to a legitimate state purpose."

Your opinion does end up stating that a Court must determine whether the "fit" between the legislative purpose and its means of accomplishing that purpose is "rational". But in the same sentence, you also state:

> "Where the legislative purpose of the enactment may be extremely obscure, it may be appropriate to search for some unannounced, but underlying 'purpose of the statute' . . .".

It may be that a majority of the Court will agree with what you have written. In that event, I will join the judgment and probably write separately. I do think, however, that the portions of your opinion mentioned above are unnecessary, and that the question as stated by you presents an issue not before us.

Where social and economic legislation are concerned, my own disposition is to be tolerant of a legislative classification. But in view of what I have written, often joined by a majority of the Court, I would be uncomfortable with the portions of your opinion I have identified.

Sincerely,

Lewis

Mr. Justice Rehnquist

cc: The Conference

lfp/ss

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 12, 1980

Re: 79-870 - Railroad Retirement Board v. Fritz

Dear Bill:

Before receiving Lewis' letter, I had sketched out the attached draft of an opinion concurring in the judgment. As you will note, I also had concluded that your opinion was somewhat misleading because there had been no argument addressed to the way in which the standard of review should be formulated.

In all events, this is just a preliminary draft which I probably will withdraw if you are able to accommodate Lewis, or if he writes a more thorough concurrence.

Respectfully,

Mr. Justice Rehnquist

Copies to the Conference

FIRST DRAFT

79-870 - Railroad Retirement Board v. Fritz

MR. JUSTICE STEVENS, concurring in the judgment.

Unlike the Court, I do not believe that the outcome in this case depends on the phrasing of the standard for deciding whether the statutory classification has a "reasonable basis". See ante, at 7, 9.[1] Rather, the decisive questions are (1) whether Congress can rationally reduce the vested benefits of some

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[1] Neither the District Court nor the appellees even cited Royster Guano v. Virginia, 253 U.S. 412; nor did they disagree about the phrasing of the appropriate standard of review. The court's discussion of what it describes as "the only issue presented by this case," ante, at 7, is therefore the purest form of dictum. The basis for the District Court's decision is summarized in Conclusions of Law 19-20, reading as follows:

> "19. The classification created by the Railroad Retirement Act of 1974 as defined in Conclusion 2 above is not rationally related to either the purpose of making the Railroad Retirement Fund actuarially sound or the purpose of protecting completely those persons who were entitled to receive both Social Security and Railroad Retirement Act benefits under previous law.
>
> "20. The classification as defined in Conclusion 2 above is unconstitutional under the equal protection component of the due process clause of the Fifth Amendment of the United States Constitution. Such classification is arbitrary, capricious and irrational and denies Plaintiff Class equal protection under the law." Juris. Statement 30a-31a.

employees in order to improve the solvency of the entire program while it simultaneously increases the benefits of others; and (2) whether, in deciding which vested benefits to reduce, it may favor annuitants whose railroad service was more recent than that of disfavored annuitants who had an equal or greater quantum of employment.

The first question should be answered affirmatively because the congressional purpose to eliminate the windfall benefits is unquestionably legitimate, and steps to accomplish that goal remain reasonable notwithstanding the need to make an overall adjustment in the level of remaining benefits in response to inflation in the economy.

An affirmative answer to the second question is also reasonable. Because some hardship--in the sense that legitimate expectations are frustrated--will inevitably result from the reduction in vested benefits, it was surely reasonable for Congress to decide not to eliminate all vested windfall benefits. Having made that decision, any distinction within the class of vested beneficiaries would necessarily involve a difference of degree rather than a difference in entitlement. Since retirement plans frequently provide greater benefits for recent retirees than for those who retired years ago--and thus give a greater reward for recent service than for past service of equal duration--the basis for the statutory discrimination is supported by precedent. In my judgment that is a "reasonable basis" as

that term is used in Linsley, ante, at 8 and Dandridge, ante, at 9, as well as a "ground of difference having a fair and substantial relation to the object of the legislation", as those words are used in Royster Guano, ante, at 8.

I, therefore, concur in the judgment.

November 10, 1980

79-870 U.S. Railroad Retirement Board v. Fritz

Dear Bill:

I regret to say that your draft opinion's discussion of equal protection analysis may make it difficult for me to join the opinion in its present form.

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Protection, I merely said that the rational basis test "requires that the distinction drawn . . . be rationally related to a constitutionally permissible purpose."

I have never been happy with the "any conceivable basis" test applied in Lindsley and McGowan v. Maryland. Guessing what legislators "conceivably" might have intended does not appeal to me as any standard at all. In a number of cases that I wrote somewhat earlier (Weber, James v. Strange and Frontiero), I stated my view that "this Court requires, as a minimum, that a statutory classification bear a rational relationship to a legitimate state purpose."

Your opinion does end up stating that a Court must determine whether the "fit" between the legislative purpose and its means of accomplishing that purpose is "rational". But in the same sentence, you also state:

> "Where the legislative purpose of the enactment may be extremely obscure, it may be appropriate to search for some unannounced, but underlying 'purpose of the statute' . . .".

It may be that a majority of the Court will agree with what you have written. In that event, I will join the judgment and probably write separately. I do think, however, that the portions of your opinion mentioned above are unnecessary, and that the question as stated by you presents an issue not before us.

Where social and economic legislation are concerned, my own disposition is to be tolerant of a legislative classification. But in view of what I have written, often joined by a majority of the Court, I would be uncomfortable with the portions of your opinion I have identified.

Sincerely,

Mr. Justice Rehnquist

cc: The Conference

lfp/ss

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 13, 1980

Re: No. 79-870 United States Railroad Retirement Board v. Fritz

Dear Lewis:

I have read your letter of November 10th, and spoken to you about it on the telephone. If all claims of constitutional invalidity under the Equal Protection Clause were to be decided by this Court, I would be able to write the opinion in this case with a statement of facts and a series of string citations to opinions from this Court, and probably get six or seven votes for the opinion without any trouble. For me there are two difficulties with this approach to writing the opinion: first, the string citations would necessarily include some statements that were not consistent with one another, and second, all challenges to state or federal legislation on equal protection grounds will not be decided by this Court. A district judge or a Court of Appeals may therefore pick and choose among the various "standards" or "tests", depending on whether it is desired to invalidate the statute or sustain it. Granted that it is very

difficult to define the "rational basis" standard, if we leave the case law the way it is now we will, in my opinion, be leaving in the hands of four or five hundred lower federal court judges an authority very much like a governor's veto: the statute is unwise, the legislative "purpose" could have been accomplished in a seemingly more fair way, ergo the statute a violates the equal protection guarantee. Since each of us was here during the agonizing debates over Murgia and Dukes during the October '75 Term, it may not be possible to get any agreement beyond merely saying that the standard in this case is that of a "rational basis". But I would like to make one more effort to indicate that it is a legal standard, and not simply a "chancellor's foot" veto; with that in mind, I suggest the following changes in my first draft which I am willing to make in response to your letter if Potter and Harry, who have already joined the draft, are agreeable to them.

Pages 1 through the first part of 7 would remain as they are.

On page 7, I would rephrase the paragraph beginning at the bottom of the page as follows:

Despite the narrowness of the issue, this Court in earlier cases has not been altogether consistent in its pronouncement in this area. In Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78-79 (1911), the Court said that "When the classification in

such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time that the law was enacted must be assumed." 220 U.S. 61, 78-79. On the other hand, only nine years later in Royster Guanno Co. v. Virginia, 253 U.S. 412, 415 (1920), the Court said that for a classification to be valid under the Equal Protection Clause it "must rest upon some ground of difference having a fair and substantial relation to the object of the legislation ...".

In more recent years, however, we have determined that in cases involving social and economic benefits, the Court has consistently refused to invalidate on equal protection grounds legislation which ~~they~~ simply deemed unwise or unartfully drawn.

Thus in Dandridge v. Williams, 397 U.S. 471, 485-486 (1970), the Court rejected a claim that Maryland welfare legislation violated the Equal Protection Clause of the Fourteenth Amendment. It said:

> "In the area of economic and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its law are imperfect. If the classification has some 'reasonable basis', it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78. 'The problems of government are

> practical ones and may justify, if they do not require, rough accommodations -- illogical, it may be, and unscientific.' Metropolis Theatre Co. v. City of Chicago, 228 U.S. 61, 68-70 ....
>
> "[The rational basis standard] is true to the principle that the Fourteenth Amendment gives the federal courts no power to impose upon the States their views of what constitutes wise economic or social policy."

Of like tenor are Vance v. Bradley, 440 U.S. 93, 97 (1979), and New Orelans v. Dukes, 427 U.S. 297, 303 (1975). Earlier, in Flemming v. Nestor, 363 U.S. 603, 611 (1960), the Court upheld the constitutionality of the social security eligibility provision, saying that :

> "It is not within our authority to determine whether the congressional judgment expressed in that Section is sound or equitable, or whether it comports well or ill with purposes of the Act. .... The answer to such inquiries must come from Congress, not the Courts. Our concern here, as often, is with power, not with wisdom."

And in a case not dissimilar from the present one, in that the state was forced to make a choice which would undoubtedly seem inequitable to some members of a class, we said:

> "Applying the traditional standard of review under [the Equal Protection Clause], we cannot say that Texas' decision to provide somewhat lower welfare benefits for AFDC recipients is invidious or irrational. Since budgetary constraints do not allow the payment of the full standard of need for all welfare recipients, the

> State may have concluded that the aged and infirm are the least able of the categorial grant recipients to bear the hardships of an inadequate standard of living. While different policy judgments are of course possible, it is not irrational for the State to believe that the young are more adaptable than the sick and elderly, especially because the latter have less hope of improving their situation in the years remaining to them. Whether or not one agrees with this state determination, there is nothing in the Constitution that forbids it." Jefferson v. Hackney, 406 U.S. 535, 549.

I would then propose to go over to page 10 of the present draft, and, omitting the first two lines on that page, keep pages 10, 11, and 12 as they are.

If this or something very much like it would be acceptable to you, and to Potter and Harry was well, I would be glad to redraft those parts of the opinion which I have discussed.

Sincerely,

Mr. Justice Powell

Copy to Mr. Justice Stewart
Copy to Mr. Justice Blackmun
Copy to Mr. Justice Stevens

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 13, 1980

Re: No. 79-870 Railroad Retirement Board v. Fritz

Dear John:

Before receiving your letter of November 12th, I had spoken to Lewis on the telephone and prepared the attached letter to him. While your letter of November 12th is technically correct when it says at footnote 1 that "Neither the district court nor the appellees even cited Royster Guano v. Virginia, 253 U.S. 412", they do cite Johnson v. Robison, 415 U.S. 361 (1974) which uses the Royster language. At any rate, I attach a copy of the letter which I have written to Lewis, and sent to Potter and Harry after they had joined my proposed opinion, so that you may see what the current state of the debate or exchange is.

Sincerely,

Mr. Justice Stevens

Copy to Mr. Justice Powell
Copy to Mr. Justice Stewart
Copy to Mr. Justice Blackmun

Supreme Court of the United States

Memorandum

....., 19.....

To Greg

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 13, 1980

Re: 79-870 - Railroad Retirement Board v. Fritz

Dear Bill:

Thank you for sharing your letter to Lewis with me. My disagreement with your draft in this case does not qualify in the slightest my great respect for your cooperative approach to the task of preparing Court opinions.

As I understand your proposed changes, however, you intend to retain the statement on page 7 that the "only issue presented by this case is the appropriate standard of judicial review . . . ." That sentence presents me with what is probably an insurmountable hurdle. The litigants did not present us with that issue but instead did raise other issues; therefore, as I presently view the case, I will not be able to join an opinion which either contains that statement or is organized as a response to a similar statement. In all events, I will await the outcome of your negotiations with Lewis before trying to put my separate concurrence in final form.

Respectfully,

Jhn

Mr. Justice Rehnquist

cc: Mr. Justice Stewart
Mr. Justice Blackmun
Mr. Justice Powell

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 13, 1980

Re: No. 79-870, U.S. Railroad Retirement Board v. Fritz

Dear Bill,

I have no objection whatever to changes in your opinion along the lines specified in your letter to Lewis of November 13.

Sincerely yours,

P.S.

Justice Rehnquist

Copies to the Conference

GM 11/14/80

To: Mr. Justice Powell

From: Greg Morgan

Re: Railroad Retirement Board v. Fritz: LETTER TO WHR

Having read your rough-draft letter to Mr. Justice Rehnquist, I offer the following thought: You are entirely correct, but you already have won most of the battle.

You are entirely correct that WHR has misstated the issue presented and that the discussion of Lindsley and Royster Guanno would be unnecessary if the issue were stated as briefed and argued. Of course, WHR misstated the issue because he wished to discuss those cases. However, WHR has conceded most of what you sought in your first letter to him by removing much of the troublesome language from that discussion. The trouble with what remains of that discussion is not that it approves a test with which you disagree (I argued this in my memo of 11/13), but merely that it is unnecessary. For that reason, I think that you could join the opinion as its stands revised.

Let me repeat my agreement with you, however, that WHR persists in misstating the issue and that the Lindsley and Royster discussion is unnecessary. If you decide to ask again for revision, I add one thought: WHR's concern is that lower courts today can "pick and choose" from the various "tests" in the Court's precedents. Wanting to convey the message that the Dandridge - Hackney line of cases contains the test by which

the Court stands today, WHR might do better, as your letter suggests, simply to emphasize that line rather than continue reiterating the obvious fact that there are inconsistent "tests" from which to choose. In short, not only does WHR not need to rehearse Lindsley and Royster to make his point, but he might be disserving his own purpose by airing yet again the available "tests."

In sum, I would join the revised opinion, especially because WHR has gone so far to accommodate your suggested revisions.

I have noted a few typographical mistakes and suggested a couple stylistic changes.

GM 11/13/80

To: Mr. Justice Powell

From: Greg Morgan

Re: Railroad Retirement Board v. Fritz

I have reviewed Mr. Justice Rehnquist's suggested revisions and conclude that they may ease your concerns somewhat but perhaps not completely. The revision removes (1) the statement that the Court in recent years has "returned to the standard announced in Lindsley" [pg 8. ¶ 2]; (2) much of the language quoted from Lindsley and Flemming to suggest the "any conceivable basis" standard [pg. 7-8, & pg. 9]; and (3) the statements about legislative "purpose" [pg. 9, ¶ 3]. These were statements which your letter of Nov. 10 suggested were troublesome to you.

The revision does not remove what I continue to find an inaccurate statement of the issue in the case [pg.7, ¶2], nor does it remove the language from Lindsley which can suggest the "any conceivable basis" test ("... if any state of facts reasonably can be conceived ..." [pg. 8]). Your Nov. 10 letter specifically objected to both of these statements.

The bottom line is this: The revised opinion quotes language from Lindsley suggesting the "any conceivable basis" test, but the opinion does not re-affirm that language or endorse it as the test which the Court is following in this case. Rather, the opinion relies on language from Dandridge

[pg.3-4 of WHR's letter] and unobjectionable language from Flemming [pg. 4 of letter; pg. 8 of first draft] to state the test which the Court relies on today. This being so, Mr. Justice Rehnquist's re-statement of equal-protection analysis is not inconsistent with your statements in previous cases.

November 17, 1980

79-870 U.S. Railroad Retirement Board v. Fritz

Dear Bill:

Thank you for your letter of November 13, proposing changes in the first draft of your opinion for the Court.

To a substantial degree, the suggested changes meet my concerns. I would hope, however, that you would state the issue as it is presented by the parties. See the Question as framed by appellee.

In view of the changes you have made that eliminate the language that presented the greatest difficulty for me, I will join your opinion to assure that you have a Court.

I do add this observation: Your concern is that lower courts today can "pick and choose" among the various "tests" found in Court's precedents. I would think the best way to convey your message to the contrary is to emphasize that certainly since Dandridge/Hackney the Court has adhered consistently, with respect to classifications involving social and economic benefits, to the straightforward rational basis test. Putting it differently, apart from being irrelevant as I view them, it seems to me that harking back to Lindsley (1911) and Royster (1920) could merely divert attention from the consistent way in which certainly a majority of the Court has applied the rational basis test to legislation of this kind. The decisions last Term in Harris v. McRae, and Zbaraz are recent examples, although the vote in those cases for understandable reasons was close.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 17, 1980

Re: No. 79-870 - United States Railroad Retirement Board v. Fritz

Dear Bill:

No word has been forthcoming as yet from the Chief, Byron or Thurgood. Thus, at the moment, your ability to command a Court depends on accommodation with Lewis and John.

For what it may be worth, I have no objections to the changes you describe in your letter of November 13 to Lewis.

Sincerely,

HAB

Mr. Justice Rehnquist

cc: Mr. Justice Stewart
Mr. Justice Powell
Mr. Justice Stevens

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 17, 1980

Re: 79-870 - U. S. Railroad
Retirement Board v. Fritz

Dear Bill,

Please join me.

Sincerely yours,

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

November 17, 1980

Re: 79-870 - U.S. Railroad Retirement Board v. Fritz

Dear Bill:

I join.

Regards,

WEB

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 21, 1980

Re: 79-870, U.S. Railroad Retirement Board v. Fritz

Dear Bill:

The changes that you have made in order to accommodate Lewis prompted me to restudy the question whether I might join you. I recognize that at this stage you may well feel that you've invested enough time in trying to accommodate your colleagues, particularly since you probably have a Court. Nevertheless, I will identify the specific points that still trouble me. I will join your opinion if you would make the following changes.

Page 9: In the last line of the text substitute the words "provides the answer to" for the words "marks the beginning and end of".

Page 9: Omit footnote 10 entirely.

Page 11: Rewrite the last few lines of the text to read this way: "Where, as here, there are acceptable reasons for Congress' action, our inquiry is at an end. This Court has never insisted that the legislative body ... "

Page 12, line 5: Substitute "favored" for "favorite" and two lines later substitute the date 1976 for 1970.

Omit the second sentence in the full paragraph on page 12.

If I join you, I will of course withdraw my separate writing. However, I would thoroughly understand if you simply say you've made all the changes you intend to make.

Respectfully,

J.M.

Mr. Justice Rehnquist

cc: Mr. Justice Powell

November 21, 1980

79-870 U.S. Railroad Retirement Board v. Fritz

Dear Bill:

Please join me.

Sincerely,

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 24, 1980

Re: No. 79-870 U.S. Railroad Retirement Bd. v. Fritz

Dear John:

I appreciate your letter of November 21st, suggesting additional changes in the second draft of the opinion. I had the feeling that in revising that draft as I did in accordance with the discussions I had with Lewis, I went about as far as I cared to go in the matter. Since Lewis has now joined, and I seem to have a Court opinion, I am loath to try to make any additional changes that would embroil us still further in the Murgia and Dukes discussions of October Term, 1975. Therefore, I believe I will let the matter rest as is.

Sincerely,

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 4, 1980

Re: No. 79-870 - U.S. Railroad Retirement Board v. Fritz

Dear Bill:

Please join me.

Sincerely,

T.M.

Justice Brennan

cc: The Conference

THE C. J.	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.	J. P. S.
							10/11/80	
Join WHR 11/17/80	well dissent 11/10/80	Join WHR 11/10/80	Join WHR 11/17/80	dissents 11/10/80	Join WHR 11/10/80	Join WHR 11/21/80	1st draft 11/7/80	~~Concurring~~ typed draft
	typed draft 11/19/80			Join WJB 12/4/80			~~2nd draft~~ 2nd draft 11/21/80	Concurring opinion 11/25/80 1st
	2nd typed draft 11/24/80						3rd draft 12/5/80	printed draft 12/1/80
	3rd draft 11/26/80							
				870 79-~~870~~ U.S. Railroad		Retirement	v. Fritz	