No. 98-97

In the Supreme Court of the United States

OCTOBER TERM, 1998

ELOISE ANDERSON, DIRECTOR, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, ET AL., PETITIONERS

v.

BRENDA ROE AND ANNA DOE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS IN PART AND RESPONDENTS IN PART

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QUESTION PRESENTED

Section 404(c) of the Social Security Act, 42 U.S.C. 604(c) (Supp. II 1996), authorizes any State that receives a block grant under the federal program for Temporary Assistance for Needy Families (TANF) to "apply to a family the rules (including benefit amounts) of the [TANF] program * * * of another State if the family has moved to the State from the other State and has resided in the State for less than 12 months." Section 11450.03 of the California Welfare and Institutions Code (West Supp. 1998) provides, in turn, that cash benefits paid by the State to "families that have resided in [California] for less than 12 months shall * * * not * * * exceed the maximum aid payment that would have been received by that family from the state of prior residence." The question presented is:

Whether Section 11450.03, as authorized by Section 404(c), impermissibly burdens an aid recipient's federal constitutional right to establish residence and citizenship in a new State.

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INTEREST OF THE UNITED STATES

This case involves the constitutionality of a state statute of a type that Congress has specifically authorized States to enact in connection with their participation in the nationwide program of Temporary Assistance for Needy Families established and funded by Congress under the Social Security Act, 42 U.S.C. 601 *et seq.* (Supp. II 1996). The United States has a substantial interest in the proper analysis of the constitutional validity of such state laws.

STATEMENT

1. California has for many years participated in a variety of cooperative federal-state welfare programs that provide, among other benefits, cash grants to eligible families. Until 1996, such grants were provided primarily through the Aid to Families with Dependent Children (AFDC) program, under which the federal government provided States with funds for distribution, in combination with state funds, under state plans that were required to comply with detailed federal requirements and to

be approved by the Secretary of Health and Human Services. See 42 U.S.C. 601, 602(a)-(b), 603(a) (1994).

In 1996, as part of a comprehensive revision of various federally sponsored welfare programs, Congress replaced AFDC with a new program known as Temporary Assistance for Needy Families (TANF). Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104-193, Tit. I, 110 Stat. 2110, enacting provisions codified at 42 U.S.C. 601 *et seq.* (Supp. II 1996).[1] Designed to "increase the flexibility of States in operating" programs to assist needy families while encouraging self-reliance and family stability, see 42 U.S.C. 601(a), the TANF program eliminates any individual entitlement to benefits (§ 601(b)), sets out certain common goals and general requirements (§§ 602, 607-608), and provides for block grants (§ 603) that participating States may generally use "in any manner that is reasonably calculated to accomplish the purpose[s] of" the federal program (§ 604(a)(1)). Thus, for example, a participating State is not required to provide any particular level of cash benefits (or, indeed, to provide cash benefits at all). Each State instead has broad discretion to use its TANF grant to provide whatever mix of cash payments, child care, job training, or other benefits it believes will most effectively advance the statutory goals of promoting the care of children in their own homes; encouraging parental self-sufficiency through job preparation, work, and marriage; reducing out-of-wedlock pregnancies; and encouraging the formation and maintenance of two-parent families. See 42 U.S.C. 601(a), 604.

Although most aspects of particular TANF-funded programs are left to the discretion of participating States, federal law imposes some specific requirements and condi-

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[1] Unless otherwise noted, references to Title 42 of the United States Code are to the 1996 Supplement, reflecting the amendments made by PRWORA.

tions. With some exceptions, for example, States must require recipients to engage in "work activities" (including educational or job training programs) once the State determines they are "ready to engage in work," but no later than 24 months after they begin receiving benefits. See 42 U.S.C. 602(a)(1)(A)(ii)-(iii), 607(d). If a recipient fails to comply with applicable work requirements, his or her family's benefits may be reduced or terminated. See 42 U.S.C. 607(e), 608(b)(3). A State may also lose some of its federal grant if the percentage of adult welfare recipients engaged in work activities falls below minimum percentages. See 42 U.S.C. 607(a), 609(a)(3). In addition, a given family generally may receive federally funded assistance for no more than five years, whether in one State or in several. See 42 U.S.C. 608(a)(7). The level of the federal block grants provided to participating States is largely fixed through fiscal year 2002. See 42 U.S.C. 603(a).

Federal law also contains a number of specific authorizations relating to state use of TANF funds. In particular, as relevant here, the 1996 Act contains a specialized choice-of-law provision under which "[a] State operating a [TANF] program * * * may apply to a family the rules (including benefit amounts) of the [TANF] program * * * of another State if the family has moved to the State from the other State and has resided in the State for less than 12 months." 42 U.S.C. 604(c). The plan a State submits to the Secretary must "indicate whether the State intends to treat families moving into the State from another State differently than other families under the program, and if so, how the State intends to treat such families under the program." 42 U.S.C. 602(a)(1)(B)(i). So long as the Secretary finds that a submitted plan "includes" all of the elements specified by the 1996 Act, however, the TANF program, unlike AFDC, does not require any further approval by the Secretary before a State becomes eligible for a TANF grant. Compare 42

U.S.C. 602(a), 603(a)(1)(A) (Supp. II 1996) with 42 U.S.C. 602(b), 603(a) (1994).

2. In 1992, four years before Congress created the TANF program, California sought to undertake an experiment in welfare reform that would have included both a work incentive program (combining decreased cash aid with an increase in the amount of income that a recipient could earn without losing benefits) and a residency-based limitation, under which an otherwise eligible family could receive, for its first 12 months of residency in California, no more cash aid than the maximum that would have been paid by the AFDC program of the State where the family previously resided. See *Beno* v. *Shalala*, 30 F.3d 1057, 1060-1061 (9th Cir. 1994).[2] Because both aspects of the experiment would have violated requirements of the AFDC program, the State sought and received from the Secretary a waiver of inconsistent federal law and rules. See *id.* at 1061-1062; Pet. App. 46-48; see also 45 C.F.R. 233.40(a)(residency requirements), 233.20(a)(2)(iii) (uniform application throughout State).

A federal district court enjoined implementation of the State's residency limitation pending resolution of a suit brought by three individuals who sought AFDC benefits within 12 months of having established California residency, and who claimed that limitation of their benefits on that basis violated their rights to equal protection and to free interstate migration. *Green* v. *Anderson*, 811 F. Supp. 516 (E.D. Cal. 1993). Relying on this Court's decisions in *Shapiro* v. *Thompson*, 394 U.S. 618 (1969), *Memorial Hospital* v. *Maricopa County*, 415 U.S. 250 (1974), and other cases,

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[2] Section 11450.03 of the California Welfare and Institutions Code (West Supp. 1998) provides that otherwise eligible "families that have resided in this state for less than 12 months shall be paid an amount calculated in accordance with" the State's ordinary benefit formula, "not to exceed the maximum aid payment that would have been received by that family from the state of prior residence."

the district court held that California's residency limitation "must be invalid" because it "place[d] a penalty on the decision of new residents to migrate to the State and be treated on an equal basis with existing residents." 811 F. Supp. at 521. The court concluded that the State could advance no "compelling" governmental purpose for the limitation, that a purpose "to deter settlement into the state of persons who need welfare and seek a higher benefit" would be constitutionally impermissible, and that "[s]tripped of the unconstitutional purpose of deterring migration, the measure lack[ed] a rational design." *Id.* at 521-523.

The court of appeals affirmed the preliminary injunction in *Green* "for the reasons stated in the district court's order." *Green* v. *Anderson*, 26 F.3d 95, 96 (9th Cir. 1994). This Court granted certiorari, but it ultimately concluded that the case had become moot because of the intervening invalidation, on other grounds, of the Secretary's waiver of federal requirements on which California's ability to enforce its residency limitation depended under the AFDC program (and under California law). *Anderson* v. *Green*, 513 U.S. 557 (1995) (per curiam). The Court accordingly vacated the Ninth Circuit's judgment and ordered the case dismissed. *Id.* at 560.[3]

3. In August 1996, the President signed PRWORA. As discussed above, that Act replaces AFDC with TANF, and expressly authorizes any State that receives a TANF grant to apply to a family, during its first 12 months of residence in that State, the rules (including benefit amounts) of the TANF program of the family's prior State of residence. 42 U.S.C. 604(c); see also Pet. App. 16-17. That change removed any impediment under the Social Security Act to Cali-

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[3] The Secretary later granted a new waiver to permit California to proceed with other aspects of its welfare-reform experiment, but she declined to renew the waiver that would have permitted implementation of the residency limitation imposed by Section 11450.03. See Pet. App. 16, 49-52.

fornia's again seeking to implement Section 11450.03. The TANF plan that California submitted to the Secretary noted, in accordance with Section 602(a)(1)(B)(i), the State's intention to apply such a limit on cash benefits, and the State instructed its administrators to begin implementing Section 11450.03 on April 1, 1997. See Pet. App. 7 n.3.

Respondents represent a class of benefit applicants who would be affected by California's implementation of Section 11450.03. See Pet. App. 7 & n.4. Respondent Roe was a resident of Oklahoma until early 1997, when she and her husband moved to Long Beach, California. *Id.* at 19. When she applied for TANF benefits, she was informed that, until she had been a California resident for 12 months, she would be limited to the Oklahoma grant level of $307 per month instead of a full California grant of $565. *Ibid.* Respondent Doe was a resident of Washington, D.C., until she moved to Los Angeles, where she became eligible for cash assistance in April 1997, at the six-month point of her pregnancy. *Ibid.* Doe was advised that she would temporarily receive cash benefits at the District of Columbia level of $330 per month rather than at the otherwise applicable California level of $456. *Id.* at 19-20.

The district court entered a preliminary injunction barring implementation of Section 11450.03. Pet. App. 13-31; see *id.* at 7-8, 20. After concluding that implementation of Section 11450.03 would lead to "disparities, even significant disparities, among California [benefit] recipients as between newcomers and recipients who have resided in the state for one year" (*id.* at 25), the court largely "adopt[ed] its discussion in *Green* of the Supreme Court's right of migration and equal protection cases" that "set aside as unconstitutional distinctions drawn among residents of a state—all of whom are bona fide residents—based on the incipiency or duration of their residency" (*id.* at 27). The court rejected the State's argument that "so long as the benefit provided to new residents of California is the same as that provided to

residents of their former states, there is no penalty on migration and no violation of equal protection." *Id.* at 28; see *id.* at 28-30. And although it recognized that Congress now considered a temporary benefit limitation "appropriate," the court observed that, "[f]acing a similar congressional permission in *Shapiro*," this Court had "held that 'Congress may not authorize the States to violate the Equal Protection Clause.'" *Id.* at 30. The court accordingly concluded that Section 11450.03 "must be found unconstitutional." *Ibid.*

The court of appeals affirmed. Pet. App. 1-12. Noting that it would not decide the case on the merits in reviewing the grant of a preliminary injunction (see *id.* at 4, 12), the court held that its previous affirmance in *Green* nonetheless remained "persuasive authority" (*id.* at 9), and it agreed with the district court that the passage of PRWORA could "not affect the constitutional analysis" (*ibid.*). Concluding that the "apparent purpose" of the challenged provision was "to keep poor people out of the state," the court was "satisfied" that respondents had "demonstrated a probability of success on the merits." *Id.* at 10. Like the district court, the court of appeals rejected the State's argument that a court should compare "the 'position of newcomers before and after travel to California,'" and it held that a benefit reduction, "even * * * of a relatively small magnitude," would "impose irreparable harm on recipient families." *Id.* at 10-11. The court accordingly concluded that the district court "did not abuse its discretion in granting the preliminary injunction." *Id.* at 11. The court declined to render any more definitive ruling "before the district court has had a chance to address the underlying merits upon a fully developed record." *Id.* at 12.

SUMMARY OF ARGUMENT

In comprehensively reforming the Nation's welfare system in 1996, Congress authorized each State participating in the TANF program to "apply to a family [receiving benefits] the rules (including benefit amounts) * * * of another State

if the family has moved to the State from the other State and has resided in the State for less than 12 months." 42 U.S.C. 604(c). Section 11450.03 of the California Welfare and Institutions Code, challenged by respondents in this litigation, is a residency-based restriction of the type facially authorized by Section 604(c).

The legislative history of the 1996 Act reveals that the federal authorization addresses at least two related concerns. First, Congress was concerned that the national welfare program itself might create real or perceived incentives to migrate between States—a concern that would have been particularly acute in the context of the new, highly decentralized TANF program, which was expected to lead to many variations in the specific programs implemented in different States. Those variations could produce both new incentives to move and new problems of interstate coordination, to which Congress could reasonably respond with a specialized choice-of-law-type provision allowing destination States to apply the benefit rules of origin States during a limited transition period. Second, Congress was concerned that, without some permission to impose such a transitional limitation, States might engage in a "race to the bottom" in setting the benefit levels in their TANF programs. That concern, too, was potentially exacerbated by the 1996 reforms.

The courts below determined that California's Section 11450.03 would likely be held unconstitutional under this Court's decisions in *Shapiro* v. *Thompson*, 394 U.S. 618 (1969), and other cases involving challenges to state legislation based on the freedom of interstate migration guaranteed by the federal Constitution. We agree that there is sufficient doubt concerning the constitutionality of Section 11450.03 to sustain the district court's entry of a preliminary injunction in this case. That court erred, however, to the extent it concluded (Pet. App. 30), at the outset of the proceedings in this case, that the California law "must" be struck down, without taking full account of Congress's affir-

mative authorization of the imposition of some limitations of this type in the unique context of a nationwide but decentralized federal welfare program.

Some of this Court's cases have held that particular lines drawn by state legislatures on the basis of length of state residency bore no rational relationship to any legitimate state purpose. Here, however, the statute at issue is one of a type that Congress has authorized the States to enact in a limited context, and the national governmental purposes that support that authorization would also support state legislation that fairly implements it. Those purposes are plainly legitimate from a national perspective, and at least some temporary limitations on benefits payable to new residents would be calculated to advance them.

In other cases, including *Shapiro*, the Court has applied strict constitutional scrutiny in striking down state legislation that classified state citizens on the basis of length of residency. We in no way question *Shapiro*'s invalidation of an absolute one-year ban on welfare eligibility. In our view, however, the constitutional calculus must change somewhat in the different and unusual circumstances of this case.

Here, Congress has considered and acted on a question affecting the freedom of interstate migration—a freedom that has special structural characteristics and is in important respects a right of national citizenship, as to which Congress stands in a different relation to individual citizens than do the legislatures of the several States. In structuring a decentralized national welfare program, Congress has authorized the States to adopt, not an outright bar on the receipt of benefits after an interstate move, but a temporary application of the benefit limits of the State of former residence—a sort of specialized choice-of-law rule. While of course Congress may not abrogate the right to travel, or "authorize" States to violate the Equal Protection Clause, judicial review of a state statute that purportedly implements Congress's express authorization must take full account of that federal

action. On the other hand, this Court's precedents set outside limits on what sorts of burdens may permissibly be imposed on the freedom to migrate; that freedom is not only a structural implication from the nature of the Union, but also an important personal liberty, and state laws that burden it should always merit more than minimal constitutional scrutiny; and the very purposes that support the congressional authorization in this case may also serve appropriately to limit its scope and constitutional effect.

In light of these considerations, we believe that the state statute at issue in this case should be subject to an intermediate level of constitutional review: It should be upheld if the State can demonstrate that the particular lines it has drawn in Section 11450.03 are substantially related to an important governmental objective. The premise for applying that test here is that Congress has specifically authorized a general type of state classification, and we think it clear that the goals of the congressional authorization—achieving interstate integration and coordination, preventing the distortion of incentives, and promoting the effectiveness of the federal program—are important ones. Thus, if the state statute implements the federal authorization, then the dispositive question will be whether the particular form of implementation selected by California is "substantially related" to those federal purposes.

The proper answer to that question is not clear on the present record. The fact that California's statute was enacted four years before Section 604(c), and its apparent overbreadth in relation to the relevant federal purposes, give rise to sufficient doubt concerning its constitutionality to support the district court's decision to enter a preliminary injunction. The judgment below should accordingly be affirmed. In further proceedings below, however, the State should be afforded the opportunity to show that Section 11450.03 in fact seeks to implement, and is substantially

related to achieving, the purposes underlying the federal statute.

ARGUMENT

I. Congress Authorized Individual States To Impose Some Temporary Benefit Limitations Based On Changes In State Residency When It Comprehensively Reformed The Nation's Welfare Laws In 1996

A. By enacting PRWORA, Congress sought to "put[] in place the most fundamental reform of welfare since the program's inception." H.R. Conf. Rep. No. 725, 104th Cong., 2d Sess. 261 (1996). As we have explained (see pp. 2-4, *supra*), the Act eliminated the familiar program of individual AFDC "entitlements" and replaced it with a new program based on block grants, subject to limited federal requirements, that was intended to "restore[] the States' fundamental role in assisting needy families." *Ibid.* In signing the Act, the President described it as bipartisan legislation that provided "an historic opportunity to end welfare as we know it and transform our broken welfare system by promoting the fundamental values of work, responsibility, and family." 32 Weekly Comp. Pres. Doc. 1487-1488 (Aug. 26, 1996).

In setting the limited federal parameters for its new program of Temporary Assistance for Needy Families, Congress specifically considered the question of temporary benefit limitations based on changes in state residency. In 42 U.S.C. 604(c), it specified that in operating a TANF program a State might "apply to a family the rules (including benefit amounts) of the [TANF] program * * * of another State if the family has moved to the State from the other State and has resided in the State for less than 12 months." That provision on its face imports a general authorization to impose temporary benefit differentials of the sort established by California's Section 11450.03.

The nature and purpose of that authorization are clarified by PRWORA's legislative history. The House Budget Com-

mittee's report noted both that existing law "forb[ade] the Secretary to approve a plan that denies AFDC eligibility to a child unless he ha[d] resided in the State for 1 year" (see 42 U.S.C. 602(b) (1994)) and that this Court had "invalidated some State laws that withheld aid from persons who had not resided there for at least 1 year." H.R. Rep. No. 651, 104th Cong., 2d Sess. 1337 (1996). The report went on to observe, however, that the Court "has not ruled on the question of paying lower amounts of aid for incoming residents." *Ibid.*; see also H.R. Conf. Rep. No. 725, *supra*, at 272-273. The report then explained Congress's reasons for enacting Section 604(c):

> States are allowed to pay families who have moved from another State in the previous 12 months the cash benefit they would have received in the State from which they moved because research shows that some families move across State lines to maximize welfare benefits. Furthermore, States that want to pay higher benefits should not be deterred from doing so by the fear that they will attract large numbers of recipients from bordering States.

H.R. Rep. No. 651, *supra*, at 1337.

B. 1. From this discussion, including the reference to "the question of paying lower amounts of aid for incoming [state] residents," it seems clear that Congress was aware of this Court's decision in *Shapiro* v. *Thompson* and the Court's inconclusive consideration, only the year before, of the very California statute that is again at issue in this case. See *Anderson* v. *Green*, *supra*.[4] Notwithstanding acknowledged

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[4] In letters presenting its views on earlier versions of the legislation eventually enacted as PRWORA, the Department of Justice specifically directed Congress's attention to *Shapiro*, *Green*, and other cases, commenting that "[u]nless and until the Supreme Court revisits this issue, courts applying this case law are very likely to hold unconstitutional state laws passed pursuant to the[] provisions of the bills" now codified at 42

uncertainty concerning the scope of applicable constitutional constraints, Congress determined that it was desirable, as a matter of federal statutory welfare policy, to authorize each participating State to adopt at least some form of temporary limitation on the benefits made available to new state residents, should the State deem it necessary to do so in designing its own system of benefits within the federal TANF program.

As the explanation offered by the House Report makes clear, at least two related grounds underlie that congressional judgment. First, Congress was concerned that "some families move across State lines to maximize welfare benefits." H.R. Rep. No. 651, *supra*, at 1337. Because Congress was fashioning a national social welfare program that would, nonetheless, depend heavily for its success on the full and committed participation of the several States, it could properly be concerned to avoid having that federal program introduce real or perceived distortions into the ordinary patterns of interstate migration that would have prevailed in the absence of federal intervention. See, *e.g.*, *States' Perspective on Welfare Reform: Hearing Before the Senate Comm. on Finance*, 104th Cong., 1st Sess. 9 (1995) (statement of Sen. Graham) (noting that one argument in favor of completely federalizing the welfare program was that "with unequal standards, you could create incentives for populations to move from one State to another in order to access the higher benefits. * * * That is not in the nation's interest to be trying to stimulate that kind of population movement.").

That concern would have been particularly acute in the context of the new TANF block grants, which were designed to encourage experimentation by the States and therefore

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U.S.C. 602(a)(1)(B)(i) and 604(c). See Letter from Andrew Fois, Assistant Attorney General for Legislative Affairs, to the Hon. Robert Dole, Majority Leader, United States Senate 2-3 (Nov. 9, 1995).

could lead to a high degree of variation among state anti-poverty programs. Because TANF programs will typically be more complex than simple cash grants to needy families, featuring a mixture of benefits (such as child care and job training) and incentives (such as time limitations on the availability of benefits) designed to move recipients into the workforce, they may become significantly more difficult to implement successfully as the population receiving assistance becomes more transient. Because TANF programs will also typically demand from each recipient a substantial commitment to work toward bettering his or her own situation (see, *e.g.*, 42 U.S.C. 608(b), which allows States to require recipients to sign "individual responsibility plan[s]" and to reduce benefits for noncompliance), the varying state aid-and-incentive structures encouraged by the federal block-grant program could also produce new incentives for interstate relocation on the part of recipients who might seek to avoid those new responsibilities or otherwise to take advantage of the variable rules operative in different jurisdictions. A benefit recipient's movement from State to State within the federal program could also raise choice-of-law considerations, because Congress could reasonably determine that the standards applicable to the recipient in the State where he or she was previously receiving benefits need not be disregarded for purposes of continued participation in the overall federal program as implemented by the destination State, at least for a limited transition period.[5]

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[5] Under TANF, for example, States A and B might each have a limited portion of the federal grant—for purposes of illustration, say $100—available to commit, over time, to providing cash aid to help move any one recipient from welfare to work. State A might adopt a program that provides relatively high cash benefits for a relatively short time—say $50 per year for two years—so as to free recipients to focus on job training, while giving them an incentive to move quickly toward independence. State B might adopt a different approach, providing lower cash benefits but for a longer period of time—say $25 per year for four years.

Finally, in its effort to encourage the development of new and effective ways to break the cycle of long-term welfare dependency, Congress in PRWORA chose to eliminate any individual entitlement to benefits and to give the States specific incentives by providing them with stable but generally *non-increasing* annual grants for an extended period. See 42 U.S.C. 603(a) (fixing grant levels through 2002); H.R. Rep. No. 651, *supra*, at 1332 (system "provides States with an incentive to help recipients leave welfare because, unlike [under the AFDC program], States do not get more money for having more recipients on the welfare rolls"); see also 42 U.S.C. 607(a), 609(a)(3) (authorizing reduction of State grants if percentage of adult welfare recipients engaged in work activities falls below specified percentages). In short, much of the thrust of the 1996 Act was to give both the States and welfare recipients themselves the ability and responsibility to address the issue of moving needy families from welfare to work. In the context of that effort, it was reasonable for Congress to seek, through a specialized choice-of-law provision, to mitigate incentives for interstate migration, and to accommodate the interests of various States and the federal government, that stem from the decentralized structure of the TANF program itself.

While the real-world variables are obviously complex, a recipient who sought to maximize cash benefits would have some incentive to reside in State A for two years, collecting a full $100 and exhausting eligibility under the State's program, and then to move to State B for the succeeding two years, collecting another $50. Free mobility from one state program to the next within the overall federal program would thus both (i) reduce the intended incentive effect of State A's time limit and (ii) allow the recipient to receive still further funds from State B (and, indirectly, from the federal taxpayer) under that State's lengthier pay-out period. For present purposes, the most important point is that the incentive to move would have been unintentionally but effectively *created* by the decentralized structure of the federal program, which not only allowed, but encouraged, States A and B to adopt different program approaches.

2. The second, and related, reason set out in the legislative history for authorizing States to impose temporary residence-related benefit limitations is that "States that want to pay higher benefits should not be deterred from doing so by the fear that they will attract large numbers of recipients from bordering States." H.R. Rep. No. 651, *supra*, at 1337. That statement expresses concern over a phenomenon often referred to as the "race to the bottom": In a system in which (i) each State sets its own benefit levels, (ii) the State's total resources available for welfare benefits are limited, and (iii) there is no restriction on interstate migration, each State has some incentive to set its benefit level at or below the level selected by every other State, so as to avoid attracting an influx of benefit-eligible migrants. See, *e.g.*, Zubler, *The Right to Migrate and Welfare Reform: Time for Shapiro v. Thompson to Take a Hike*, 31 Val. U. L. Rev. 893, 929-939 (1996); see also *States' Perspective on Welfare Reform*, *supra*, at 9 (statement of Sen. Graham) (suggesting concern that a State might also have an incentive to reduce its benefit level below the level in other States in order to encourage emigration of benefit recipients).

On this model, no State is necessarily motivated by an invidious desire to "fence out" the poor. Rather, from the State's perspective, it is unfortunate but evident that, although each needy immigrant may act on the expectation that the State's present (relatively high) benefit level will continue to be available after his move, the inevitable effect of many such individual choices to immigrate, over a limited time, will be to depress the level of benefits the State can pay to each recipient using a given level of resources. Conversely, allowing the imposition of limited restrictions that have the effect of eliminating or mitigating any given individual's perceived incentive to move in search of higher benefits may, paradoxically, increase not only the stability of the system, but also the average level of benefits offered by

States throughout the program (if the promise of stability encourages States to commit greater resources to the program, or to set and maintain higher benefit levels on the expectation that they will prove sustainable, over time, within the limits of the State's resources).

As in the case of other incentives to move potentially created by the federal welfare benefits program, this race-to-the-bottom concern may have been exacerbated by the 1996 reforms. Unlike AFDC, in which federal payments to a State were generally based on the number of benefit recipients within the State in any given period, thus offsetting a substantial portion of the additional cost to the State of any welfare-eligible immigrant, TANF bases the amount of state grants on a base period and generally provides for no increase in the commitment of federal funds over an extended period. See 42 U.S.C. 603(a)(1). The new program thus significantly increases the degree to which the amount available to a State for the payment of cash benefits is fixed, and correspondingly increases the effect on average sustainable benefit levels of the arrival of any new benefit recipient. Particularly in light of that change introduced by PRWORA, it was reasonable for Congress to address the race-to-the-bottom problem that might be *caused* by the existence of variable state benefit programs by authorizing individual States to include in their programs, should they feel the need to do so, some temporary restrictions on a new resident's ability to receive welfare benefits more generous than those provided by his or her former State.

It is important to observe, however, that Congress's action in this regard is permissive, not mandatory, and that the federal authorization, although it sets some limits on the restrictions a State may impose, does not purport to specify what particular limitations may be appropriate in the context of a particular state program. Those characteristics of the federal action are consistent with PRWORA's overall approach of establishing relatively general federal para-

meters for the TANF program and leaving individual States substantially free to design their own benefit programs in accordance with local conditions and legislative judgments. Moreover, like all legislation, the federal authorization is bounded to some extent by the purposes that underlie it. For those reasons, Congress's general decision to authorize some residency-based benefit limits does not resolve—although, as we explain below, it is highly relevant to—the question whether any particular benefit restriction adopted by a State pursuant to that authorization falls within the independent limits imposed on the State's action by the federal Constitution.

II. The Particular Benefit Restriction Imposed By California Must Be Examined To Determine Whether It Is Substantially Related To The National Governmental Purposes That Underlie Congress's General Authorization Of Such Limitations In The Context Of The TANF Program

The courts below determined that California's Section 11450.03 would likely be held unconstitutional on the basis of this Court's decisions in *Shapiro* v. *Thompson* and other cases involving state laws challenged as impermissibly burdening "the constitutional right to travel, or, more precisely, the right of free interstate migration." *Attorney General* v. *Soto-Lopez*, 476 U.S. 898, 902 (1986) (plurality opinion); see Pet. App. 9-10, 26-30. That position has considerable force. Through Section 11450.03, the State seeks to treat some of its citizens differently from others solely on the basis of how recently they became residents of the State. This Court's cases make clear that any state classification drawn on that basis is constitutionally problematic. See, *e.g.*, *Soto-Lopez*, 476 U.S. at 902-905 (plurality opinion) (describing previous cases).

Although we think that the doubt concerning Section 11450.03's constitutionality is sufficient to sustain the district

court's entry of a preliminary injunction, we agree with the State that the district court erred in concluding (Pet. App. 30), at the outset of the present proceedings, that Section 11450.03 "must" be held unconstitutional. Because Congress has affirmatively authorized the imposition of some limitations of this type in the context of the nationwide, federally funded TANF program, the constitutional question in this case cannot be properly resolved without a serious examination of whether the particular limitation adopted by California is sufficiently tailored so that it may fairly be regarded as "substantially related" to the national governmental interests furthered by that authorization. While we question whether the California provision, enacted four years before PRWORA, will be able to satisfy that standard, the State should have the opportunity to demonstrate that it does.

1. In some cases, this Court has held that particular lines drawn by state legislatures on the basis of length of residency in the State simply bore no rational relationship to any legitimate state purpose. See *Zobel* v. *Williams*, 457 U.S. 55, 61-64 (1982); *Hooper* v. *Bernalillo County Assessor*, 472 U.S. 612, 618-623 (1985); see also *Soto-Lopez*, 476 U.S. at 912-916 (Burger, C.J., concurring in the judgment), 916 (White, J., concurring in the judgment). The same might be true in this case if, as the lower courts essentially assumed, Section 11450.03 reflected nothing more than a unilateral State purpose "to deter migration of poor people to California." Pet. App. 9; see *Shapiro*, 394 U.S. at 631; compare *Romer* v. *Evans*, 517 U.S. 620, 631-636 (1996); *City of Cleburne* v. *Cleburne Living Ctr.*, 473 U.S. 432, 446-447 (1985) ("[S]ome objectives—such as 'a bare . . . desire to harm a politically unpopular group,'—are not legitimate state interests.") (citation omitted). It is not, however, appropriate simply to assume such an impermissible purpose with respect to a state statute that falls within the express authorization in 42 U.S.C. 604(c).

Unlike the state laws at issue in the Court's prior cases (including *Shapiro*, see 394 U.S. at 638-640), Section 11450.03 is a provision of a type that Congress has clearly authorized States to enact in the specific context of their participation in a nationwide but decentralized federal benefits program. That distinction is critical, because the national governmental purposes that support 42 U.S.C. 604(c) would also serve to support state legislation that fairly implements it. Compare Pet. App. 9, 30 (dismissing the enactment of PRWORA as irrelevant). Those federal purposes—avoiding the creation, through a federal program, of distorted incentives for interstate migration by benefit recipients; addressing the unique choice-of-law considerations that may reasonably be deemed to arise when a participant in one State's implementation of the federal program moves to another State with different rules; and mitigating any tendency, in such a program, toward a "race to the bottom" in the State-by-State establishment of benefit levels—are plainly legitimate, even though it may be doubted that an individual State, pursuing only its own interests, would ever have valid reasons for distinguishing new citizens from old in allocating benefits under a program designed and funded solely by the State. And the imposition by a State of some temporary limitation on benefits payable to new residents, as authorized by Section 604(c), is reasonably calculated to advance those national ends.[6]

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[6] The ultimate strength of the connection between ends and means largely depends, of course, on the proposition that individuals are or may be influenced in their decisions about interstate migration by the perceived availability of higher welfare benefits in a destination State. Although respondents dispute that proposition as an empirical matter (see, *e.g.*, Pet. App. 23-24), there is some evidence to support it. See *id.* at 25 (citing P. Peterson & M. Rom., *Welfare Magnets* (Brookings Inst. 1990)); Zubler, 31 Val. U. L. Rev. at 933-939; Moffitt, *Incentive Effects of the U.S. Welfare System: A Review*, 30 J. Econ. Lit. 1, 34 (1992). In the case of a judgment made by Congress in fashioning an integrated national

2. In other cases, including of course *Shapiro*, the Court has invalidated state classifications akin to that drawn in Section 11450.03 on the ground that they unduly burdened the federal constitutional right of citizens of the United States "to enter and abide in any State in the Union." *Dunn* v. *Blumstein*, 405 U.S. 330, 338 (1972); see *Soto-Lopez*, 476 U.S. at 901-913 (plurality opinion); *Memorial Hosp.* v. *Maricopa County*, 415 U.S. 250 (1974); *Shapiro*, *supra*; see also *Zobel*, 457 U.S. at 65-71 (Brennan, J., concurring); *Hooper*, 472 U.S. at 624 (same). In *Shapiro* and *Dunn*, the Court indicated that "any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a *compelling* governmental interest, is unconstitutional." *Shapiro*, 394 U.S. at 634; see *Dunn*, 405 U.S. at 338-343. As the Court subsequently observed, however, although "any durational residence requirement impinges to some extent on the right to travel," some such impingements may not rise to the level of "penalties"; and the Court's cases have not made entirely clear "[t]he amount of impact required to give rise to the compelling-state-interest test." *Memorial Hosp.*, 415 U.S. at 256-257, 258-259; see also *Soto-Lopez*, 476 U.S. at 903-906 & n.5 (plurality opinion); *id.* at 921 (O'Connor, J., dissenting); *Sosna* v. *Iowa*, 419 U.S. 393 (1975) (upholding durational residency requirement for invoking jurisdiction to obtain divorce, without expressly addressing applicable standard of review); *Vlandis* v. *Kline*, 412 U.S. 441, 452-453 & n.9 (1973) (acknowledging permissibility of

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program of state participation like TANF, we do not believe that more is required to support the governmental interest. Cf. *Turner Broad. Sys.* v. *FCC*, 512 U.S. 622, 665 (1994) ("Sound policymaking often requires legislators to forecast future events and to anticipate the likely impact of these events based on deductions and inferences for which complete empirical support may be unavailable."); *FCC* v. *Beach Communications, Inc.*, 508 U.S. 307, 313-315 (1993).

reasonable durational residency requirements to establish entitlement to in-state tuition at public university).[7]

We in no way question the correctness of *Shapiro*'s holding that an absolute one-year bar on welfare eligibility was unconstitutional. Nor do we believe there is any occasion in this case to reconsider the rationale of *Shapiro* or subsequent cases addressing durational residency requirements that are adopted by the State on the basis of state authority alone, to identify a single source in the Constitution for the freedom of interstate migration, or to articulate an overarching theory for resolving the constitutionality of all state measures that are alleged to burden that freedom. For in our view the constitutional calculus must change somewhat in the unusual circumstance in which Congress has considered a question affecting the right of interstate migration, in the unique context of structuring a decentralized national welfare program, and has authorized the States to adopt not an outright bar, but rather a specialized choice-of-law rule that calls for application of the laws of the prior State of residence for a limited transitional period.

That federal authorization is of central importance in part because the freedom of interstate migration reflects both the national interest in interstate commerce (see *Edwards* v.

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[7] In recent cases, some Justices have suggested that claims based primarily on the right of interstate migration should be evaluated under the Privileges and Immunities Clause of Article IV, Section 2 of the Constitution. *Zobel*, 457 U.S. at 71-81 (O'Connor, J., concurring in the judgment); see also *Soto-Lopez*, 476 U.S. at 918-925 (O'Connor, J., joined by Rehnquist and Stevens, JJ., dissenting); *id*. at 916 (White, J., concurring in the judgment). On that analysis, a State may not draw any legislative distinction on the basis of an individual's exercise of the "fundamental" right "to establish residence in a new State" unless (i) there is "something to indicate that non-citizens [including the new residents affected by the challenged classification] constitute a peculiar source of the evil at which the statute is aimed," and (ii) there is "a 'substantial relationship' between the evil and the discrimination practiced against the noncitizens." *Zobel*, 457 U.S. at 76-77 (O'Connor, J., concurring in the judgment).

California, 314 U.S. 160, 172-173 (1941)), which Congress has express power to regulate (U.S. Const. Art. I, § 8, cl. 3), and the nature of a national Union, as opposed to a federation of independent States. Congress's authorization is also important because insofar as interstate migration is a fundamental personal right (in addition to a structural attribute of national union), it is in important respects a right of national citizenship, as to which Congress stands in a different relation to individual citizens than do the legislatures of the several States. See, *e.g.*, *Soto-Lopez*, 476 U.S. at 902 (plurality opinion) (noting "the important role that principle has played in transforming many States into a single Nation"); *Zobel*, 457 U.S. at 73 (O'Connor, J., concurring); *Passenger Cases*, 48 U.S. (7 How.) 282, 492 (Taney, C.J., dissenting) ("For all the great purposes for which the Federal government was formed, we are one people, with one common country."); cf. *Edwards*, 314 U.S. at 173 (Of the limits on State legislation, "none is more certain than the prohibition against attempts on the part of any single State to isolate itself from difficulties common to all of them by restraining the transportation of persons and property across its borders.").

The form in which Congress has acted—by authorizing a specialized choice-of-law rule, rather than an outright ban—is also significant. In the first place, under that approach (unlike in *Shapiro*), there is a built-in assurance that a person who relocates to a new State ordinarily will not receive lower cash benefits by reason of relocating to a new State. More fundamentally, under a national program such as TANF, Congress may reasonably determine, for example, that when a family was receiving TANF benefits in another State, that State retains a sufficient connection to the family's continued receipt of benefits under the federal program that its law may properly be taken into account by the destination State during a transition period. In such circumstances, Congress determined, a destination State might

provide that the family would not become fully eligible under its laws until after completion of the one-year period of transition. Compare *Sosna*, 419 U.S. at 404-410. Ordinarily, of course, there would be little or no justification for one State, in the administration of its own public benefits laws, unilaterally to apply the standards of *another* State's laws. See *Restatement (Second) of Conflict of Laws* § 9, cmt. g (1971); compare *Phillips Petroleum Co.* v. *Shutts*, 472 U.S. 797, 814-823 (1985). But where a decentralized benefit program is established and funded by the federal government, Congress may reasonably determine that the laws of more than one State may be relevant when a person who is eligible for benefits in one State moves to another State. As we have explained (see p. 14 & n.5, *supra*), the effectiveness of the TANF program depends in part on mutual commitments made by participants and the States. The special choice-of-law rules authorized by Section 604(c) can serve to reenforce the effect of such commitments made in the State of origin by giving some temporary continuing effect to that State's laws in the destination State. Section 604(c) therefore furthers purposes recognized by the Full Faith and Credit Clause of the Constitution (Art. IV, § 1), which grants Congress power to prescribe certain rules for giving effect in one State to the "public Acts" of another.

We do not suggest that Congress may "authorize the States to violate the Equal Protection Clause" (*Shapiro*, 394 U.S. at 641), or that the right to travel may be "eliminated by Congress" (*Bray* v. *Alexandria Women's Health Clinic*, 506 U.S. 263, 277 n.7 (1993)). Plainly neither proposition is supportable. There is, however, a salient difference, in this regard, between state legislation that is purely local in character and imposes a flat bar to eligibility, as in *Shapiro*, and state choice-of-law legislation that seeks to implement a national policy, related to interstate commerce and the incidents of national citizenship, that Congress has explicitly articulated in the federal law that creates a nationwide benefit

program.[8] When a State acts unilaterally, there is a risk that it seeks to limit the allocation of its resources in ways that may properly be condemned as parochial and based on a desire to exclude persons from out-of-State. That risk is substantially lessened when Congress acts, because Congress represents, by definition, all citizens of the United States. Moreover, as we have suggested, the creation of a decentralized welfare program may also create both new incentives for movement and new problems of how to determine what rules should apply when an individual moves from program to program within the system—issues that Congress must be able to address if they are to be addressed at all under our Constitution. Thus, when Congress acts to structure and protect a nationwide program, in which it wishes to enlist the willing cooperation of the several States, a court should not lightly hold that state action implementing the multistate aspects of that program, under an express congressional authorization, impermissibly burdens a right of interstate migration that has at its core a concept of national citizenship, and that presupposes the existence of a Union and a Government of the United States in which Congress has the legislative power.

The rationale for taking account of congressional authorization in this context also suggests, however, limits to the principle. First, severe deprivations of the sort that this Court has already held impermissibly burden the freedom of interstate migration, such as a State's complete (even if temporary) denial of all welfare benefits to new residents because of their recent arrival, as in *Shapiro*, or of any abil-

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[8] There is accordingly no occasion here to reconsider the Court's statement in *Shapiro*, 394 U.S. at 641, that the state laws at issue in that case, which imposed a flat one-year bar to eligibility on all new residents, would be unconstitutional even if, contrary to the Court's actual reading of federal law (394 U.S. at 638-640), the version of 42 U.S.C. 602(b) then in effect had affirmatively authorized that bar.

ity to exercise the right to vote, as in *Dunn*, would presumably remain subject to strict scrutiny even if they had been specifically authorized by Congress. Second, the right to change state citizenship is an important personal liberty, and a state law that substantially burdens that right will always warrant more than minimal constitutional scrutiny, even if it has been authorized by Congress. Finally, the effect of any legislative action, including a congressional authorization, is appropriately limited, to some extent, by the purposes that underlie it. When, as in PRWORA, Congress delegates to the States substantial authority to implement an overall federal program in State-specific ways, it necessarily does so in relatively general terms. Accordingly, although it is appropriate to recognize that a State that legislates pursuant to a specific federal authorization is acting in part on behalf of national interests, when an individual alleges that the State has unduly burdened the right to migrate, it is also appropriate for a court to assure itself that the State's action is designed—and sufficiently tailored—to serve the purposes of the federal authorization.

In light of these considerations, we believe a state statute that does not clearly impose a burden of the sort that was held impermissible under *Shapiro* and subsequent cases, and that implements a specific congressional authorization within the context of a decentralized federal program, should be subject to an intermediate form of constitutional review. That degree of heightened scrutiny is normally described as requiring that a statutory classification be "substantially related to an important governmental objective." *Clark* v. *Jeter*, 486 U.S. 456, 461 (1988). Because the premise for applying less-than-strict scrutiny in this class of cases is that Congress has specifically authorized a general type of state classification, it should normally be clear, as we think it is here, that the goals of achieving interstate integration and coordination, preventing the distortion of incentives, and promoting the effectiveness of the federal program are im-

portant ones. Accordingly, the dispositive question will normally be whether a State's particular implementation is "substantially related" to the purposes of the federal authorization. That inquiry will generally focus on whether the State's chosen means are sufficiently tailored so as to promote the supporting important federal governmental ends, without unreasonably burdening the affected class's individual right of interstate migration.[9]

3. In this case, the burden that Section 11450.03 imposes on respondents is not one that the Court's prior cases have clearly identified as sufficient to constitute a "penalty" on the right to migrate. Unlike the eligibility waiting-period struck down in *Shapiro*, California's limitation on benefits for new arrivals does not completely bar eligible new residents from receiving welfare benefits. Rather, it adopts a specialized choice-of-law rule that calls for the application of the law of the recipient's prior State of residence with respect to one aspect of the benefit determination—the amount of cash benefits to be paid. It follows as well that all families that are otherwise eligible under the California TANF program will receive some level of benefits. Even

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[9] Under the Privileges and Immunities Clause analysis discussed in note 7, *supra*, the federal purposes of the general congressional authorization in Section 604(c) could presumably be attributed to the State for purposes of determining that non-residents, or new residents, are a "peculiar source" of the problem that a State's legislation seeks to address. *Zobel*, 457 U.S. at 76 (O'Connor, J., concurring in the judgment). The additional inquiry suggested in the text, concerning how well the State's particular benefit limitation serves the purposes of the federal authorization, would be essentially the same as the second inquiry under the Privileges and Immunities test—whether there is a "substantial relationship" between that problem and the discrimination at issue. *Ibid.*; see also, *e.g.*, *Supreme Court of New Hampshire* v. *Piper*, 470 U.S. 274, 284 (1985) ("The [Privileges and Immunities] Clause does not preclude discrimination against nonresidents where (i) there is a substantial reason for the difference in treatment; and (ii) the discrimination practiced against nonresidents bears a substantial relationship to the State's objective.").

that limitation may, of course, cause hardship in individual cases; but the California provision on its face does not completely "den[y] welfare aid upon which may depend the ability of the [recipient] families to obtain the very means to subsist." *Shapiro*, 394 U.S. at 627; see also *Memorial Hosp.*, 415 U.S. at 269. Nor does this case, like *Dunn*, involve even the temporary deprivation, on the basis of interstate migration, of the ability to exercise another fundamental right. And nothing in Section 11450.03 creates a class of state residents whose rights are permanently inferior to those of longer-term inhabitants, as could be said of the employment-preference, tax-benefit, and revenue-sharing schemes the Court struck down, on a rational-basis analysis, in *Soto-Lopez*, *Hooper*, and *Zobel*. In light of Congress's authorization, this case is therefore an appropriate one in which to apply intermediate rather than strict scrutiny.

The district court accordingly erred in concluding that Section 11450.03 "must" be unconstitutional (Pet. App. 30), because it reached that conclusion without acknowledging the importance of the federal authorization contained in 42 U.S.C. 604(c), and without evaluating whether the California provision is sufficiently tailored to be "substantially related" to the advancement of Section 604(c)'s purposes. The proper answer to that inquiry is not, in our view, clear on the present record. California's benefit limitation was first enacted four years before Congress enacted Section 604(c), and it appears to be overbroad as a means of addressing the federal purposes of eliminating distorted incentives, accommodating choice-of-law issues created by the federal program, and preventing a "race to the bottom." So far as appears, the State has made no effort to limit the application of its rule to categories of recipients who are most likely to have moved in search of higher or additional federal benefits. The State's provision is not, for example, limited to applicants who were receiving TANF benefits in their prior State of residence at the time they moved, the situation in which the choice-of-law

rationale for the limitation most readily applies. See pp. 23-24, *supra*; Pet. App. 17-18 (describing State's implementation of Section 11450.03). Nor does the State appear to grant any categorial exemptions from its rule for applicants who, for example, moved to California to accept job offers, but became unemployed after a period of work; or, alternatively, to allow any applicant an opportunity to receive an exemption from the across-the-board limitation by making an individualized showing that he or she did not come to California for the purpose of seeking higher (or any) welfare benefits. *Ibid.*[10]

The apparent overbreadth of Section 11450.03 in relation to the national purposes behind Section 604(c) raises a substantial question about its constitutionality under intermediate scrutiny. Because the balance of harms in this case also appears to favor respondents (see Pet. App. 10-11, 30-31), the court of appeals correctly concluded that the district court did not abuse its discretion in entering a preliminary injunction. That was the only issue resolved by the judgment below, see *id.* at 11-12, and that judgment should accordingly be affirmed. In further proceedings in the district court, however, the State should be afforded the opportunity to demonstrate that its benefit restrictions are substantially related to the purposes of the federal authorization—perhaps, for instance, because they are in fact better tailored than they appear, or perhaps because the costs of administering any more discriminating rule would be prohibitive. In any event, before entering its final judgment the district court should evaluate, on the basis of the record

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[10] At least one state has made an effort to tailor its durational residency limitation more narrowly to support the relevant federal statutory goals. Illinois limits the TANF benefits payable to an applicant who has resided in Illinois for fewer than 12 months to those payable by the State of prior residence, but only if the applicant received aid in the prior State at any time within 12 months of becoming a resident of Illinois. 305 Ill. Comp. Stat. Ann. 5/11-30 (West 1993).

presented by the parties, whether Section 11450.03 is substantially related to the important national purposes that underlie Congress's enactment of 42 U.S.C. 604(c).[11]

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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[11] Intermediate scrutiny requires not only an inquiry into the "substantial relationship" between the legislative purpose and its restrictions, but also a demonstration that the legislation is designed to achieve an important goal. For state statutes that are expressly intended to implement the TANF program, we believe the congressional findings and purpose that underlie Section 604(c) should ordinarily satisfy the "purpose" inquiry with respect to the implementing state statute—at least in the absence of convincing proof that the state legislature in fact acted with another, impermissible purpose. In the unique circumstance of this case, where the California statute was enacted four years before PRWORA, that state statute plainly could not have been enacted specifically to implement the federal statute. Accordingly, respondents should not be foreclosed from attempting to demonstrate that California in fact enacted Section 11450.03 solely for the invidious purpose of discouraging poor people generally from settling in the State, rather than for the permissible purpose of implementing the goals now reflected in the national program.