No. 16-575

In the Supreme Court of the United States

KEITH HARRIS, PETITIONER

v.

HAROLD HAHN, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Under the Hazlewood Act, the Texas Legislature offers a prospective tuition benefit at Texas public universities to all Texas residents who enlist in the military when they reside in Texas and receive an honorable discharge. That benefit is available no matter how long a resident has lived in Texas or when he arrived in the State. Individuals who enlisted in the military before moving to Texas, and thus could not possibly have responded to the Hazlewood Act's incentive, receive the same treatment as all other Texans for purposes of admission and in-state tuition. The questions presented are:

1. Whether offering a tuition benefit to Texas residents, on the condition that they enlist in the military and receive an honorable discharge, is rationally related to legitimate State interests.

2. Whether a veteran who was discharged before moving to Texas suffers a penalty, implicating the constitutional right to travel, if he receives the same admission preference and in-state tuition as all other Texas residents but does not receive an additional tuition benefit offered to Texas residents as an incentive to enlist in the military.

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BRIEF IN OPPOSITION

INTRODUCTION

Texas encourages all of its existing residents, no matter when they arrived or how long they have lived in Texas, to enlist in the armed forces by offering them an exemption from tuition at the State's public universities if they enlist and serve honorably. Petitioner Keith Harris asserts that this inducement is unconstitutional unless Texas also encourages every honorably discharged veteran in the Nation to attend a Texas public university by offering them the same tuition exemption even if they enlisted while a resident of another State. But Texas had a rational basis to target its enlistment incentive at Texas residents, and Texas has not subjected petitioner to any penalty for his choice to move to Texas. At most,

it has denied him a gratuitous benefit, but that denial does not impose any permanent disadvantage or relegate petitioner to second-class citizenship.

Petitioner fails to engage the critical point—not addressed by the cases he cites for a purported split of authority—that the tuition benefit at issue here is *portable*, thereby raising distinct state interests recognized by this Court, which have not been squarely addressed by other lower courts. The Court should deny the petition because there is no developed split of authority on the questions presented, and the court of appeals' decision is correct.

STATEMENT

A. Factual Background

1. In 1923, the Texas Legislature enacted a law that provided a tuition exemption at public educational institutions for citizens of Texas who served or were nurses during the "late war." Act approved Mar. 28, 1923, 38th Leg., R.S., ch. 147, 1923 Tex. Gen. Laws 316. State Senator Grady Hazlewood led an expansion of the law in 1943, and it became known as the "Hazlewood Act." Pet. App. 2 n.1. As part of the 1943 amendments, the Act's tuition exemption was extended to members of the Women's Army Auxiliary Corps, Women's Auxiliary Emergency Service, and all members of the United States armed forces who "have, or are now serving, or who may after the passage of this Act serve" in World War II. Act of April 29, 1943, 48th Leg., R.S., ch. 337, § 1, 1943 Tex. Gen. Laws 568, 569. The benefits of the Act were also provided to the children of members of the armed forces who died in service. *Id.*

In 1959, the Texas Legislature added the requirement that veterans seeking the benefits have been "bona fide legal residents of [Texas] at the time of entering such service." Act of July 15, 1959, 56th Leg., 2d C.S., ch. 12, § 2, 1959 Tex. Gen. Laws 99, 101. And in 2009, the Texas Legislature amended the language of the Act to its current form, extending the tuition exemption to veterans who "entered the service at a location in [Texas], declared [Texas] as the person's home of record in the manner provided by the applicable military or other service, or would have been determined to be a resident of [Texas] . . . at the time the person entered the service." Act of May 31, 2009, 81st Leg., R.S., ch. 1340, § 2, 2009 Tex. Gen. Laws 4238, 4239.

At the same time, the Texas Legislature extended eligibility for the Hazlewood Act's tuition exemption to children of eligible veterans—so-called "legacy" grantees. *See id.*, 2009 Tex. Gen. Laws 4238, 4240-41 (the "Legacy Act"). This enables an eligible veteran who has not used all 150 hours of tuition-free education granted by the Hazlewood Act to pass the remaining hours on to a child or spouse. *Id.*; *see also* Tex. Educ. Code § 54.341(k).

The Act has been updated to include veterans of "the national emergency by reason of certain terrorist attacks that began on September 11, 2001." Tex. Educ. Code § 54.341(a)(4)(F). It also provides a tuition exemption for the spouses of service members who are killed or disabled in the line of duty. *Id.* § 54.341(a-2), (b-1).

2. Public universities in Texas bear the cost of the tuition exemption. R.452.[1] In 2013, the Texas Legislature created a Permanent Fund to provide money to the universities to cover their Hazlewood Act expenses, but the fund covers only a fraction of the costs. R.452, 1075.

A total of 9,882 individuals took advantage of Hazlewood Act tuition exemptions in 2009, at a cost of $24.7 million to their respective schools. R.1073. With the adoption of the 2009 Legacy Act, the program has grown significantly, leading the Legislature to seek a feasibility study of the program from the Legislative Budget Board in 2013. R.1073. That study found that in the five years since the Legacy Act, the number of Hazlewood Act recipients had almost quadrupled to 38,946, at a cost of $169.1 million. R.1073, 1087-89, 1101. The study projected that the cost would balloon to over $379 million by 2019. R.1102.

B. Procedural History

1. In 1996, Petitioner Keith Harris enlisted in the Army when he was eighteen years old and a resident of Georgia. Pet. App. 3, 30. He was honorably discharged four years later. Pet. App. 3, 30-31. He moved to Texas in 2004 and used his federal GI Bill educational benefits to obtain an undergraduate degree from the University of Houston-Downtown. Pet. App. 3, 31. He then enrolled in law school at the University of Houston Law Center. Pet. App. 3, 31.

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[1] "R." refers to the electronic record on appeal in the Fifth Circuit.

After exhausting his federal benefits, petitioner sought a tuition exemption under the Hazlewood Act. Pet. App. 31; Tex. Educ. Code § 54.341. At the time petitioner enlisted in the Army, the Hazlewood Act included veterans who "serv[ed] on active military duty, excluding training, for more than 180 days and who served a portion of their active duty during . . . the Persian Gulf War which began on August 2, 1990, and ends on the date thereafter prescribed by Presidential proclamation or September 1, 1997, whichever occurs first." Act of May 9, 1995, 74th Leg., R.S., ch. 159, § 1, 1995 Tex. Gen. Laws 1013, 1013. The benefits were limited to veterans who were currently Texas residents and were "citizens of Texas at the time they entered the services." *Id.* Petitioner did not qualify because he was not a Texas resident when he enlisted. Pet. App. 30-31; Tex. Educ. Code § 54.341(a). Consequently, petitioner was denied the tuition exemption. Pet. App. 4.

2. Petitioner filed suit in federal district court, arguing that the Hazlewood Act's requirement that he have been a Texas resident at the time he enlisted (which he refers to as "the fixed-point residency requirement") violated both the Equal Protection Clause of the Fourteenth Amendment and his constitutional right to travel. R.102-03 (live complaint). During the litigation, the parties agreed that petitioner would not have to pay tuition unless and until the defendants prevailed in this lawsuit. R.373-74. Both parties moved for summary judgment. Pet. App. 30-62.

Based on this Court's opinions in *Zobel v. Williams*, 457 U.S. 55 (1982), *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985), and *Attorney General of New*

York v. Soto-Lopez, 476 U.S. 898 (1986), the district court held that the Act was subject to rational-basis scrutiny under the Equal Protection Clause. Pet. App. 38-53. It found that the Act had a rational basis because it advanced the State's legitimate interest in promoting education (both at the high school and college levels). Pet. App. 45-46. The court nevertheless held that the Act violated the Equal Protection Clause because the State failed to prove that excluding veterans who enlisted in other States was *necessary* to promote the State's legitimate interest in education. Pet. App. 45-46. The district court did not explain how offering a tuition exemption to non-residents would encourage Texans to complete their education or enlist in the military.

The court rejected the State's interest in stimulating the economy by encouraging veterans to return to Texas after their service as illegitimate. It reasoned that denying tuition benefits to veterans like petitioner would undermine the State's interest in attracting veterans. Pet. App. 46-47. The court also concluded that any interest in targeting tuition benefits to those residents most likely to stay in Texas after graduation (that is, those who were from Texas in the first place) was deemed unconstitutional in *Soto-Lopez*. Pet. App. 47-48. The court rejected arguments that the residency requirement prevented individuals from relocating to Texas simply to obtain a portable benefit and that it controlled costs, concluding this Court had rejected those reasons as illegitimate. Pet. App. 48-50.

The court drew further support for its opinion from (1) *Del Monte v. Wilson*, 824 P.2d 632 (Cal. 1992), in

which the California Supreme Court invalidated a California statute that was similar to the Hazlewood Act, and (2) a Texas Attorney General opinion from 1998, concluding that the Hazlewood Act would not withstand constitutional scrutiny. Pet. App. 51-52.[2] Having determined the Hazlewood Act lacked a rational basis and violated the Equal Protection Clause, the court did not reach petitioner's right-to-travel claim.

Finally, the court concluded, contrary to defendants' arguments, that the residency requirement was severable. Pet. App. 53-57. The court enjoined defendants from denying petitioner the benefits of the Hazlewood Act. Pet. App. 60-62.

3. A three-judge panel of the Fifth Circuit unanimously reversed. Pet. App. 28-29. Like the district court, the Fifth Circuit began with this Court's decisions in *Zobel*, *Hooper*, and *Soto-Lopez*. Pet. App. 11-14. It rejected petitioner's equal-protection claim, holding that the Act rationally furthered the State's interests in education and security by encouraging Texas high school students to graduate and enlist. Pet App. 16. The court distinguished *Zobel* and *Hooper* by noting that the benefits of the Hazlewood Act are prospective, creating a current incentive for Texas high school students to graduate and enlist—whereas *Zobel* and *Hooper* considered retroactive, fixed-point residency requirements that could not rationally provide any incentive to act. Pet. App. 16-18.

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[2] The Attorney General opinion was withdrawn during the pendency of this litigation and replaced with an opinion concluding the Act was likely constitutional. Pet. App. 6 n.5.

The court of appeals rejected the district court's demand that Texas prove the necessity of excluding individuals who did not reside in Texas when they enlisted. And it recognized that Texas's desire to encourage education and enlistment of current Texas residents would not be furthered by offering benefits to residents of other States. Pet. App. 19-20.

The court of appeals then considered petitioner's right-to-travel claim under *Saenz v. Roe*, 526 U.S. 489 (1999). Pet. App. 22-23. In *Saenz*, the Court found that a durational residency requirement limiting welfare benefits to new residents violated the right to travel because the law was intended to "fence out the indigent." Pet. App. 22-23. The Fifth Circuit concluded that the Hazlewood Act did not implicate the right to travel because it imposed no similar penalty on new entrants to the State. Pet. App. 23. The court noted that the vast majority of Texans will never qualify for Hazlewood Act benefits, whereas the scheme in *Saenz* excluded a small number of citizens from a generally available benefit only because they were new to the State. Pet. App. 23-24. The Fifth Circuit recognized that new entrants to Texas are not worse off than if they had remained in their prior States. Pet. App. 24-25. And there were no findings that the Act was intended to exclude new residents. Pet. App. 25. Because the Act was not intended to deter travel or migration to the State, and because it did not have that effect, it did not trigger heightened scrutiny. Pet. App. 22 n.11.

The court of appeals went on to hold that, even if the right to travel was implicated, Texas had sufficient justification to include the residency requirement. Pet. App.

23. Because a college education is a portable benefit, Texas had an interest in safeguarding its investment by limiting it to those most likely to stay in the State. Pet. App. 25-26. Moreover, any burden on the right to travel was slight, as a tuition exemption was a gratuity, unlike constitutional rights such as the right to vote. Pet. App. 26-27.

The Fifth Circuit denied petitioner's petition for rehearing en banc without any recorded dissent. Pet. App. 63-64.

ARGUMENT

I. Petitioner Does Not Identify a Conflict with Other Circuit Courts or State Supreme Courts.

Petitioner claims that the Fifth Circuit's decision is contrary to the opinions of one circuit court, one federal district court, and two state courts of last resort. Pet. 12-13. But petitioner's effort to create a conflict conducts almost no analysis of the cited cases. He focuses only on whether the courts upheld residency requirements without considering whether they addressed the arguments that were presented and dispositive in this case.

Petitioner does not identify a single case holding that a State's decision to offer a prospective, portable benefit to current residents violates the Equal Protection Clause or the constitutional right to travel. None of the cited cases purport to require States to justify the necessity of their legislative judgments in order to survive rational-basis scrutiny under the Equal Protection Clause. And none of the cited cases hold that the right to travel bars States from restricting non-essential benefits based on duration of residency. That is not what the Hazlewood

Act does, in any event—it provides an incentive to enlist in the military to all existing Texas residents, no matter how long they have lived in Texas or when they arrived in the State. Finally, because all of the cited cases predate *Saenz v. Roe*, those cases had no occasion to consider this Court's most recent discussion of portable benefits under the right-to-travel analysis, as the Fifth Circuit correctly did below.

The only circuit-court decision that petitioner identifies, *Bunyan v. Camacho*, 770 F.2d 773 (9th Cir. 1985), concerned a purely retroactive benefit. Pet. 12. The Ninth Circuit considered an equal-protection challenge to a statute that retroactively granted retirement credit to employees of Guam's government who had a college degree, were "bona fide residents of Guam at the time they began their undergraduate studies," and had been employed by the government for at least ten years. 770 F.2d at 774. Guam defended the statute as an expression of gratitude to those residents who had chosen to return to Guam after receiving a college education. *Id.*

Applying rational-basis scrutiny and considering *Zobel*, *Hooper*, and *Soto-Lopez*, the Ninth Circuit noted the then-recent trend of limiting the ability to reward residents for past contributions. *Id.* at 775. The court determined that Guam's justification of rewarding "established" residents was not a legitimate state purpose. *Id.* at 776. Thus, the statute violated the Equal Protection Clause. *Id.*

The Fifth Circuit's decision is not to the contrary. Unlike Guam, Texas has not defended its statute as a means of rewarding "established" Texans for their military ser-

vice, and its statute does not retroactively benefit individuals who have already completed their college education (or their military service). *Cf. Bunyan*, 770 F.2d at 774. The Hazlewood Act encourages Texans prospectively to complete high school and enlist. Pet. App. 16. It offers a prospective benefit as an incentive to Texas residents still contemplating military service. Pet. App. 16-17. And it provides that incentive to every existing Texan, no matter how long they have lived in the State or when they arrived in the State.

Petitioner also cites the federal district court decision in *Lloyd v. City of Philadelphia*, No. Civ. A. No. 88-5812, 1990 WL 92531 (E.D. Pa. June 28, 1990), Pet. 13, but *Lloyd* had nothing to do with residency requirements or the right to travel. Instead, it concerned the constitutionality of a city ordinance that provided certain health benefits only to employees who had joined a union. 1990 WL 92531, at *1. The district court cited the plurality opinion in *Soto-Lopez* for the proposition that "in some instances withholding a benefit may be tantamount to imposing a penalty." *Id.* at *6. The court then concluded that withholding certain health benefits from non-union employees infringed on the right to associate and failed to survive heightened scrutiny. *Id.* at *7. This presents no conflict with the Fifth Circuit's ruling here.

In *Del Monte v. Wilson*, 824 P.2d 632, the California Supreme Court struck down a series of statutes that provided benefits to veterans, such as tuition, farm and home loan assistance, and disaster indemnity. To be eligible for the benefits, the California statutes required that the veteran have been "a native of or a bona fide resident" of California at the time of entry into active duty.

Id. at 633-34. The California court felt "constrained" by this Court's decisions to conclude that this limitation violated the Equal Protection Clause because the State's justifications—rewarding past service and taking care of its own—had already been rejected as illegitimate. *Id.* at 635, 638-39.

Del Monte does not conflict with the Fifth Circuit's decision for at least two reasons. First, *Del Monte* did not consider the justifications that Texas has offered here, namely (1) prospective encouragement to complete high school and enlist, and (2) targeting a portable benefit to the individuals most likely to remain in the State. *Cf. id.* at 640 ("The intent of the entire scheme, as the state frankly admits, is to benefit the state's 'own.'"). Second, the California Supreme Court did not have the benefit of *Saenz v. Roe*, where this Court expressly identified college education as a "readily portable benefit," 526 U.S. at 505, that a State could rationally limit to certain state residents. Thus, although the California court and Fifth Circuit addressed similar statutes, they did not consider the same arguments or the same precedent. And as explained below, the Fifth Circuit's decision was correct. *See infra* Part II.

Finally, in *Bagley v. Vermont Department of Taxes*, Vermont offered a tax credit to taxpayers who installed alternative energy systems and who had lived in Vermont for the entire calendar year. 500 A.2d 223, 224 (Vt. 1985). The Vermont Supreme Court determined that this violated the Equal Protection Clause. *Id.* Specifically, the court held that the requirement that a taxpayer be a resident on January 1 through the date of installation

bore no relationship to the State's interest in encouraging alternative energy. *Id.* at 226. The Fifth Circuit's opinion is not to the contrary. The Hazlewood Act's residency requirement relates directly to Texas's interest in encouraging residents to complete high school, enlist, and return to and remain in Texas.

None of these cases establishes a conflict with the Fifth Circuit's decision below. Each case applied the same rational-basis standard, and each reached a different conclusion because they considered different asserted bases for the laws at issue. None of the cases considered a right-to-travel claim, so none can establish a conflict on that point. Thus, there is no conflict for this Court to resolve. *See* Sup. Ct. R. 10(a).

II. The Fifth Circuit Correctly Applied This Court's Equal-Protection and Right-to-Travel Precedent.

The Fifth Circuit's holding is not in conflict with this Court's decisions. As in his analysis of lower court decisions, petitioner alleges a conflict merely because some decisions have rejected various residency requirements while the Fifth Circuit did not reject this particular one. In an effort to create the impression of conflict, petitioner cites only selective language from this Court's opinions and blurs the distinction between equal-protection and right-to-travel claims. There is no conflict to resolve because the Fifth Circuit faithfully applied this Court's precedent to the law and arguments before it.

To survive an equal-protection challenge, residency requirements must "rationally further[] a legitimate state purpose." *Hooper*, 472 U.S. at 618. A residency requirement that penalizes the right to interstate travel

may trigger a higher level of scrutiny, requiring justification by a compelling state interest. *Mem'l Hosp. v. Maricopa Cnty.*, 415 U.S. 250, 258-59 (1974). The Fifth Circuit identified and applied the Court's precedent, concluding that the Hazlewood Act had a rational basis and did not penalize the right to travel. Pet. App. 2. Petitioner asserts that the Fifth Circuit reached the wrong result, but "misapplication of a properly stated rule of law" is not a sufficient reason to grant certiorari. Sup. Ct. R. 10. In any event, the Fifth Circuit's ruling was correct.

A. The Court applies different tests to equal-protection and right-to-travel claims.

This Court's analyses for equal-protection claims and right-to-travel claims are distinct. Neither is proven simply by asserting, as petitioner does, that the "Constitution will not tolerate" fixed-point residency requirements. Pet. 10-13. The Fifth Circuit identified the proper test for each of petitioner's claims and applied those tests to the facts and arguments presented by the parties.

1. This Court has applied rational-basis scrutiny to strike down laws granting *retroactive* benefits to residents based on the length of their residency in the State. But since those decisions, the Court has emphasized that States have "no obligation to produce evidence to sustain the rationality of a statutory classification," and legislative determinations "may be based on rational speculation unsupported by evidence or empirical data." *Heller v. Doe*, 509 U.S. 312, 320 (1993); *see also id.* at 321 ("[C]ourts are compelled under rational-basis review to accept a legislature's generalizations even when there is

an imperfect fit between means and ends."). Under rational-basis review, "it is entirely irrelevant for constitutional purposes whether the conceived reason for the challenged distinction actually motivated the legislature." *F.C.C. v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993).

The Court's equal-protection analysis of residency requirements stems from *Zobel v. Williams*, which involved an equal-protection challenge to an Alaska statute that distributed income from its natural resources to residents in varying amounts based on the length of time they had previously resided in Alaska. 457 U.S. at 56. The parties disagreed as to whether rational-basis or heightened scrutiny would apply. *Id.* at 60. Concluding that the law lacked a rational basis, the Court did not resolve that question. *Id.* at 60-63.

The Court rejected as irrational Alaska's asserted purposes of creating a financial incentive for individuals to establish and maintain residence in Alaska and encouraging prudent management of the natural-resource funds. *Id.* at 61-63. It explained that the interest in attracting residents was "not in any way served by granting greater dividends to persons for their residency during the 21 years prior to enactment." *Id.* at 62.

The Court compared Alaska's third rationale—rewarding citizens for past contributions to the State—to the denial of welfare benefits in *Shapiro v. Thompson*, 394 U.S. 618, 632-33 (1969). *Zobel*, 457 U.S. at 63. The *Shapiro* Court had concluded that the Equal Protection Clause prohibited such an apportionment of welfare benefits on the basis of contributions to the State, 394 U.S.

at 632-33, and the *Zobel* Court concluded that this reasoning extended to natural-resource funds. 457 U.S. at 63-64. The Court expressed concern that Alaska's reasoning would allow the apportionment of other rights and benefits based on length of residency. *Id.* at 64; *see also id.* at 65 ("The only apparent justification for the retrospective aspect of the program, 'favoring established residents over new residents,' is constitutionally unacceptable."). The Court did not consider, however, whether the State could apply the dividend program prospectively, as the legislature had made the statute nonseverable. *Id.* at 64-65.

Two years later, the Court in *Hooper* applied rational-basis scrutiny to hold that a tax exemption for veterans who resided in New Mexico prior to May 8, 1976, violated the Equal Protection Clause. 472 U.S. at 618. The Court rejected New Mexico's argument that the law rationally served its interests in (1) encouraging veterans to settle in New Mexico and (2) expressing New Mexico's appreciation to veterans. *Id.* at 618-19. The Court concluded that, because the cut-off date of May 8, 1976, passed long before the law was enacted, it bore no rational relationship to encouraging veterans to move to New Mexico. *Id.* at 619. The Court recognized that it was legitimate to compensate veterans for their past sacrifices. *Id.* at 620 (citing *Regan v. Taxation With Representation*, 461 U.S. 540, 551 (1983)). But the Court determined that the distinction between long-time residents and new residents, for purposes of a retroactive benefit, was not rationally related to that goal. *Id.* at 621-22; *see also id.* at 623 ("Neither the Equal Protection Clause, nor this Court's precedents, permit the State to prefer

established resident veterans over newcomers in the retroactive apportionment of an economic benefit.").

2. The Court's right-to-travel cases have applied heightened scrutiny to state laws imposing a durational residency requirement for state benefits providing the basic necessities of life. *See, e.g.*, *Shapiro*, 394 U.S. at 621-22. Because the Constitution protects the right to move between States, "any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional." *Id.* at 634.

In *Shapiro*, two States and the District of Columbia denied welfare assistance to residents who had not yet resided in the jurisdiction for at least one year. *Id.* Recognizing that the laws deprived families of "food, shelter, and other necessities of life"—"the very means to subsist"—the Court determined that the laws failed to promote a compelling governmental interest. *Id.* at 627.

The Court cited "weighty evidence" that the laws in question were intended to exclude the poor, *id.* at 628, holding that "inhibiting migration by needy persons" is "constitutionally impermissible." *Id.* at 629. The Court also held that preserving the fiscal integrity of welfare programs does not permit "invidious distinctions" between classes of its citizens. *Id.* at 633. The Court then rejected the jurisdictions' administrative arguments regarding budget predictability and the prevention of fraud. *Id.* at 633-37.

Several years later, the Court invalidated an Arizona statute requiring one year's residence in a county before the county would pay for nonemergency medical hospitalization or medical care. *Mem'l Hosp.*, 415 U.S. at 251.

The Court concluded that the limitation burdened the right to travel and required Arizona to demonstrate a compelling state interest. *Id.* at 254. As in *Shapiro*, the Court rejected the argument of preserving the public fisc, inhibiting the migration of indigents, determining bona fide residence, preventing fraud, and ensuring budget predictability. *Id.* at 263-69.

The Court recognized, however, that it had not yet made clear the "amount of impact" on travel necessary to require a compelling governmental interest. *Id.* at 256-57. "Whatever the ultimate parameters of the . . . penalty analysis," the Court found it clear that medical care was as much a "basic necessity of life" as welfare assistance. *Id.* at 259. But it expressly distinguished college education, which—unlike food, clothing, and shelter—is not a basic necessity of life. *Id.* at 260 n.15.

In its most recent right-to-travel case, *Saenz v. Roe*, 526 U.S. 489 (1999), the Court considered a California statute that limited the amount of welfare benefits available to newly arrived residents for one year. *Id.* at 492. Considering the constitutional basis of the right to travel, the Court concluded that the law should not be judged by "mere rationality nor some intermediate standard of review." *Id.* at 504. It rejected California's asserted interests, which were primarily aimed at protecting the state fisc. *Id.* at 506-07.

Importantly, this Court in *Saenz* expressly distinguished portable benefits. The Court noted that its holding regarding California welfare benefits would not extend to portable benefits: the decision would not "encourage citizens of other States to establish residency for just long enough to acquire some readily *portable benefit*,

such as a divorce or a *college education*, that will be enjoyed after they return to their original domicile." *Id.* at 505 (emphases added).

3. The Court has also invalidated a statute granting an employment preference to certain residents, but the Court was divided on whether the statute implicated the right to travel or the Equal Protection Clause. In *Soto-Lopez*, the Court considered a New York statute that gave a civil-service employment preference to veterans who were residents of New York when they joined the armed services. 476 U.S. at 899 (plurality op.). The Court split on whether to treat the restriction as a right-to-travel violation or an equal-protection violation. A four-Justice plurality considered the statute as a violation of the right to travel and determined that it failed strict scrutiny. 476 U.S. at 911 (plurality op.). Chief Justice Burger concurred in the judgment, reasoning that the case should have been decided as an equal-protection violation under the rational-basis test. *Id.* at 912 (Burger, C.J., concurring). Justice White also concurred in the judgment, agreeing with the dissent that the right to travel was not implicated but also agreeing with Chief Justice Burger that the law failed the rational-basis test. *Id.* at 916 (White, J., concurring). Three Justices dissented, concluding that the law did not violate the Equal Protection Clause or the right to travel. *Id.* at 918 (O'Connor, J., dissenting).

Both the plurality and concurrences rejected New York's justifications for that particular fixed-point residency requirement, which included: (1) encouragement of New York residents to join the armed services, (2) the compensation of residents for service in time of war by

helping them reestablish upon returning home, (3) inducement of veterans to return to New York after wartime service, and (4) employment of a uniquely valuable class of public servants. *Id.* at 909-11 (plurality op.); *id.* at 913-16 (Burger, C.J., concurring); *id.* at 916 (White, J., concurring). The multiplicity of opinions finding the statute unconstitutional, then, reflected only a disagreement whether to treat the statute as a violation of the Equal Protection Clause or the right to travel. The plurality and concurrences did not disagree regarding which legal analysis applied to which constitutional right.

B. The Fifth Circuit's decision correctly applied this Court's precedent.

Unlike petitioner's certiorari petition, the Fifth Circuit correctly identified the two distinct tests for petitioner's two distinct claims. The court then applied those tests to the arguments asserted by the parties, concluding that petitioner had not proven either an equal-protection or right-to-travel violation.

1. Beginning with petitioner's equal-protection claim, the Fifth Circuit first recognized that "[t]he Supreme Court has held that the Equal Protection Clause restricts the extent to which a state may discriminate between newly established and incumbent state residents in apportioning benefits." Pet. App. 7 (citing *Saenz*, *Soto-Lopez*, *Hooper*, and *Zobel*). The court then determined that fixed-point residency requirements were subject to rational-basis review under this Court's precedents. Pet. App. 9 & n.6 (citing *Zobel*, *Hooper*, and *Soto-Lopez*).

The court also correctly recognized that the rational-basis test is satisfied "if there is any reasonably conceivable state of facts that could provide a rational basis for the classification." Pet. App. 10 (quoting *Heller*, 509 U.S. at 320); *see also Beach Commc'ns*, 508 U.S. at 313. The court properly placed the burden on petitioner to "negative every conceivable basis which might support" the Hazlewood Act. Pet. App. 10-11 (quoting *Heller*, 509 U.S. at 320-21). And the court noted that "[c]lassifications survive rational basis review even when there is an imperfect fit between means and ends." Pet. App. 11 (quoting *Heller*, 509 U.S. at 321); *see also Metropolis Theatre Co. v. Chicago,* 228 U.S. 61, 69-70 (1913) ("The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific.").

Turning to Texas's rationale for the residency requirement—promoting education and security by offering a tuition exemption to those individuals most likely to remain in Texas after college, Pet. App. 16, 18-19[3]—the court of appeals concluded that the asserted interests were valid and not illegitimate or irrational under *Zobel*, *Hooper*, and *Soto-Lopez*. *See also* Pet. App. 45-46 (dis-

[3] Petitioner asserts that there is no requirement that anyone in Texas complete high school before getting Hazlewood Act benefits. Pet. 24-25. But a high school diploma or GED is generally required before one can go to college, and, as noted by the Fifth Circuit, some branches of the armed forces require the completion of high school or a GED. Pet. App. 18.

trict court agreeing that the Act promotes the State's legitimate interest in education and encourages Texans to graduate, enlist, and return to Texas).

The court reasoned that the benefits of the Hazlewood Act were prospective, distinguishing the analysis of retroactive benefits in *Zobel* and *Hooper*. Pet. App. 16-17. In those cases, the applicable deadline passed before the statutes were enacted. But the Hazlewood Act provides an incentive to individuals who have not yet made the decision to complete high school or enlist. The court also recognized that Texas had not asserted an interest in "taking care of its own," a rationale rejected as illegitimate in *Zobel*, *Hooper*, and *Soto-Lopez*. Pet. App. 19.

The court rejected petitioner's argument that rational-basis review required Texas to explain why excluding veterans like him was *necessary* to further the State's interest in education. Pet. App. 19-20 ("Offering benefits to non-Texans who enlist would not further Texas's interest in advancing the education or enlistment of its citizens."). Following this Court's rational-basis precedent, the court concluded that the fit between Texas's goals and the method used need not be precise. Pet. App. 20. In short, the Fifth Circuit applied the correct level of scrutiny and found that the Act was rational without relying on arguments that had previously been rejected by this Court.

2. The court of appeals next turned to petitioner's claim that the Hazlewood Act's residency requirement violated his constitutional right to travel. Reviewing the Court's decision in *Saenz*, the Fifth Circuit determined that, to the extent the right to travel was implicated, it was the right of a new resident to be treated equally with

previously established residents. Pet. App. 21-22. The court concluded that, unlike the denial of welfare benefits in *Saenz*, the Hazlewood Act did not impose a penalty on new entrants to Texas. Pet. App. 23.

Each reason for the court's decision that the Act does not impose a penalty is grounded in this Court's precedent. First, the Fifth Circuit distinguished *Shapiro* and *Saenz*, in which a small group of individuals (new residents) were treated differently from the majority of state residents in terms of eligibility for welfare benefits. Pet. App. 23-24. Under the Hazlewood Act, by contrast, a small group of individuals is treated exactly the same as the majority of Texans, who will never be eligible for Hazlewood Act benefits, no matter how long they have lived in the State or when they arrived. Pet. App. 24.

Second, the court of appeals distinguished *Shapiro* and *Saenz* because the plaintiffs in those cases were worse off than if they had not migrated. Pet. App. 24-25. The individuals in *Shapiro* and *Saenz* had to trade full welfare benefits in their original States for reduced benefits or no benefits at all in their new States. Pet. App. 24-25 (citing *Shapiro*, 394 U.S. at 622-23, and *Saenz*, 526 U.S. at 493). Petitioner, however, lost nothing upon moving to Texas that he would have received in his prior State of residence, as veteran tuition exemptions are not common in the United States. Pet. App 24-25.

And third, there was no evidence of discriminatory purpose. Unlike *Shapiro*, 394 U.S. at 628, there were no findings that Texas requires residency at enlistment in order to deter the migration of needy persons into the State. Pet. App. 25. Thus, there was no purpose to deter

migration. *See Saenz*, 526 U.S. at 506 (holding that such a purpose would be "unequivocally impermissible"). Consequently, the Fifth Circuit concluded that the Hazlewood Act imposed no penalty on petitioner's right to travel.

The court went on to conclude that, even if the Act did implicate the right to travel, Texas had offered sufficient justification. Pet. App. 25-27. This Court has explicitly recognized that a "college education" is a "portable benefit" that merits different treatment than welfare benefits in the right-to-travel analysis. *Saenz*, 526 U.S. at 505; *see Mem'l Hosp.*, 415 U.S. at 260 n.15. The benefit of a college education is portable and will go with petitioner (or any other veteran) should he choose to leave Texas. Pet. App. 25-26. Hazlewood Act benefits are therefore unlike the benefits offered in *Zobel*, *Hooper*, *Soto-Lopez*, *Shapiro*, and *Saenz,* all of which required continued presence in the State. Pet. App. 25-26.

Relatedly, although not mentioned by the Fifth Circuit, a college or graduate-school tuition exemption is not one of the basic necessities of life that has caused the Court to invalidate durational residency requirements. "[G]overnmental privileges or benefits necessary to basic sustenance have often been viewed as being of greater constitutional significance than less essential forms of governmental entitlements." *Mem'l Hosp.*, 415 U.S. at 259. Thus, the right to travel has been used to invalidate limitations on basic necessities such as welfare benefits and medical care. *Id.* at 258-59. It has not been used by a majority of the Court to strike down limitations on any non-essential benefits. Accordingly, a conclusion

that the right to travel requires heightened scrutiny of a non-essential benefit, such as college tuition, would actually require an *expansion* of the Court's precedent.

Finally, the Fifth Circuit noted that a college tuition exemption is a gratuity, in the sense that it is not constitutionally required. Thus, the Court's reasoning in *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972), which concerned the fundamental right to vote, does not apply. Pet. App. 26-27.

As in its equal-protection analysis, the Fifth Circuit grounded its decision in this Court's precedent, and it did not rely on any factors that the Court has previously deemed impermissible. Petitioner may disagree with the result reached by the Fifth Circuit, but it is not inconsistent with this Court's prior holdings.[4]

III. Petitioner Exaggerates the Consequences of the Fifth Circuit's Decision.

To create the impression of unworkable and pernicious standards, petitioner takes language from this Court's decisions out of context and ignores settled doctrine. Contrary to his prediction, the Fifth Circuit's decision will not enable Texas to create "ranks, castes, constructive walls, [or] barriers to migration." Pet. 5. Texas may offer its residents a college education to encourage graduation, enlistment, and honorable service. The Fifth

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[4] The Fifth Circuit's opinion was not a plea for further clarification from this Court. Pet. 15. Its comment about a "clearer indication" was a comment on existing precedent, which was more than sufficient to support the Fifth Circuit's conclusion. Pet. App. 27.

Circuit's decision will not lead to unconstitutional conduct in the future.

A. Petitioner erroneously suggests that fixed-point residency requirements are unconstitutional per se.

Petitioner fixates on a single quotation from *Hooper*: "*Zobel* made clear that the Constitution will not tolerate a state benefit program that 'creates fixed, permanent distinctions . . . between . . . classes of concededly bona fide residents, based on how long they have been in the State.'" 472 U.S. at 623, *quoted in* Pet. 10-11; *see also* Pet. 12-13, 14.[5] He faults the Fifth Circuit for not referencing or quoting this language. Pet. 11. But petitioner overemphasizes the importance—and the relevance—of the Court's statement, treating it as a per se rule against fixed-point residency requirements and suggesting that no further analysis is necessary. The Court has established no such rule. In any event, the Hazlewood Act does not create "fixed, permanent distinctions between classes of concededly bona fide residents, based on how long they have been in the State"; it offers an incentive to enlist to all existing Texas residents, no matter how long they have lived in the State or when they arrived.

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[5] This language in *Zobel* comes not from the Court's constitutional analysis, but from its description of the statute at issue as a fixed-point residency requirement: "[T]he dividend statute creates fixed, permanent distinctions between an ever-increasing number of perpetual classes of concededly bona fide residents, based on how long they have been in the State." 457 U.S. at 59.

The Court has never treated *Hooper*'s statement as a categorical rule against fixed-point residency requirements. Instead, the Court has conducted a context-specific rational-basis analysis when considering an equal-protection challenge to fixed-point residency requirements. *Soto-Lopez*, 476 U.S. at 913-16 (Burger, C.J., concurring on equal-protection grounds); *Hooper*, 472 U.S. at 618-23; *Zobel*, 457 U.S. at 60-65.

The statement also is inapplicable to the Court's right-to-travel cases, which concern durational residency requirements and therefore do not involve "fixed, permanent distinctions." *See Saenz*, 526 U.S. at 492 (one-year durational residency requirement); *Mem'l Hosp.*, 415 U.S. at 251 (same); *Shapiro*, 394 U.S. at 621-22 (same). And review of the fixed-point residency requirement in *Soto-Lopez* would not have resulted in multiple opinions if the *Hooper* quotation were as clear and binding as petitioner appears to believe. 476 U.S. at 911 (plurality op.); *id.* at 912 (Burger, C.J., concurring); *id.* at 916 (White, J., concurring); *id.* at 918 (O'Connor, J., dissenting).

The Court analyzes each case, statute, and argument individually, applying the correct constitutional analysis, be it rational-basis or heightened scrutiny. Petitioner makes no attempt to do so here. He ignores doctrinal distinctions and fixates on a selected quotation from a single case. That is not sufficient to demonstrate that the Fifth Circuit erred.

B. Petitioner incorrectly states that the Fifth Circuit applied the wrong standards and created unworkable exceptions.

Petitioner's litany of alleged errors demonstrates his own mistaken analysis, not any fault in the Fifth Circuit's decision. Pet. 16-21. Petitioner misconstrues and exaggerates the importance of the Fifth Circuit's statements. The Fifth Circuit's ruling is sound.

First, petitioner asserts that the Fifth Circuit erred in stating that strict scrutiny did not apply unless the Hazlewood Act had the purpose or effect of creating a "disincentive" to migration. Pet. 16 (citing Pet. App. 22 n.11). Petitioner argues that the standard is a "penalty" to migration. Pet. 16. This makes no difference, and the Fifth Circuit determined that the Act imposed no "penalty on new entrants to the state." Pet. App. 23.

Second, petitioner asserts that the Fifth Circuit failed to recognize that being "permanently treated unequally" in a new State is a constitutional "penalty." Pet. 18 & n.6 (citing *Saenz* and *Soto-Lopez*). But no majority of this Court has ever held that a fixed-point residency requirement is necessarily a constitutional penalty. In *Soto-Lopez*, the case from this Court most similar to this lawsuit, four Justices believed the fixed-point residency requirement was a constitutional "penalty" on the right to travel, 476 U.S. at 909 (plurality op.), and four Justices believed it was not, *id.* at 916 (White, J., concurring); *id.* at 921-22 (O'Connor, J., dissenting). No conclusion can be drawn from the plurality's opinion on this point when the same number of Justices reached the opposite conclusion.

Third, petitioner faults the Fifth Circuit for noting that he was not "penalized" because he did not lose anything by moving to Texas, given that Texas has greater veteran benefits than most States. Pet. 18. The Fifth Circuit was drawing a contrast between residents who are denied welfare benefits in their new states (*Saenz* and *Shapiro*) and those who are denied college tuition. Pet. App. 24-25. The Court has already recognized that college tuition is different in kind from welfare benefits or medical care. *Saenz*, 526 U.S. at 505; *Mem'l Hosp.*, 415 U.S. at 260 n.15. Harris is no more "penalized" by ineligibility for tuition assistance than another student is "penalized" by failure to secure a scholarship. *Cf.* Tex. Educ. Code § 54.341(j) (providing that in making admissions decisions, "an institution of higher education may not consider the fact that the person is eligible for [Hazlewood Act benefits]"). In any case, petitioner was not denied a benefit because he was a new resident; he was not eligible for benefits because he enlisted while he was not a resident of Texas. Had he enlisted after moving to Texas, he would have qualified under the Hazlewood Act, no matter how long he had lived in Texas.

Fourth, petitioner asserts that the Fifth Circuit adopted a "nebulous and undefinable 'portability' exception to fixed-point residency requirement[s]," contrary to *Zobel*, *Hooper*, and *Soto-Lopez*. Pet. 19. Petitioner conflates the constitutional standards and exaggerates what the Fifth Circuit did. The Fifth Circuit's equal-protection analysis did not rely on or reference portability. Pet. App. 16-20. Its holding therefore cannot be contrary to *Zobel* and *Hooper*, which concern only equal-protection claims. Nor did the Fifth Circuit create a portability

"exception" for right-to-travel claims; it merely treated portability as a factor in determining whether Texas had a legitimate interest in the residency requirement. Pet. App. 25-26. This Court has recognized that a "college education" is a "portable" benefit, contrary to petitioner's assertion. *Saenz*, 526 U.S. at 505. It has also recognized that portable benefits may be treated differently in the right-to-travel analysis in order to account for a State's valid interest in accounting for the possibility that individuals could move to a State simply to obtain that portable benefit and leave. *Mem'l Hosp.*, 415 U.S. at 260 n.15. This Court has never prohibited consideration of the portability of a benefit.

Fifth, petitioner wrongly asserts that *Zobel* and *Hooper* actually dealt with "prospective" incentives. Pet. 20-21 & n.9. In *Zobel*, the Court expressly declined to consider a prospective application of the law. 457 U.S. at 64 ("We need not consider whether the State could enact the dividend program prospectively only."). And in *Hooper*, eligibility was pegged to a date that passed five years before the law was enacted, so prospective application was impossible. 472 U.S. at 619 ("The legislature cannot plausibly encourage veterans to move to the State by passing such retroactive legislation.").

Sixth, petitioner claims that the Fifth Circuit's conclusion that encouraging enlistment was rational is contrary to *Soto-Lopez*. Pet. 21 & n.10. Petitioner overstates the ruling in *Soto-Lopez*. Only two Justices in *Soto-Lopez* determined that encouraging enlistment was not a rational basis. 476 U.S. at 913-14 (Burger, C.J., concurring) (distinguishing Civil War-era "bounty" laws "through which States paid residents cash bonuses for enlisting");

id. at 916 (White, J., concurring). The four-Justice plurality never reached the question of rationality, as it applied heightened scrutiny. *Id.* at 909 (plurality op.). And the three-Justice dissent determined that the law satisfied the rational-basis test. *Id.* at 924-25 (O'Connor, J., dissenting).

And seventh, petitioner claims that the Fifth Circuit incorrectly concluded that *Soto-Lopez* was distinguishable because it was decided at a time when there were more draftees than enlistees. Pet. 21-22 & n.11. But the plurality in *Soto-Lopez* recognized this distinction, stating that because the benefit applied to inductees, it was not aimed at encouraging enlistment. 476 U.S. at 910. Most, if not all, of the veterans who benefit from the Hazlewood Act will be those who voluntarily enlisted, so the rationale of the *Soto-Lopez* plurality lacks continuing force.

Petitioner also criticizes the Fifth Circuit's comment that any burden on the right to travel is minimal because college tuition is a "gratuity." Pet. 22. But the Fifth Circuit was contrasting the tuition exemption with a case involving the fundamental right to vote. Pet. App. 26-27 (citing *Dunn*, 405 U.S. 330). Had a fundamental right been infringed, as in *Dunn*, strict scrutiny would have applied regardless of any right-to-travel argument. But because a college tuition exemption is not constitutionally required, there is no need to otherwise conduct a strict-scrutiny analysis.

Petitioner's single-minded focus on the reasons for his own exclusion from the Hazlewood Act rather than the rationality of the Legislature's determination, Pet. 25, shows that his real complaint is with rational-basis

review. "[R]ational-basis review in equal protection analysis is not a license for courts to judge the wisdom, fairness, or logic of legislative choices." *Heller*, 509 U.S. at 319. Unless a statute implicates a suspect class or implicates fundamental rights—and the Act does neither—the Equal Protection Clause gives States broad latitude in "allocating limited public welfare funds among the myriad of potential recipients." *Dandridge v. Williams*, 397 U.S. 471, 487 (1970). Classification of governmental beneficiaries "inevitably requires that some persons who have an equally strong claim to favored treatment be placed on different sides of the line, and the fact [that] the line might have been drawn differently at some points is a matter for legislative, rather than judicial, consideration." *Beach Commc'ns*, 508 U.S. at 315-16.

C. Petitioner incorrectly argues that the Fifth Circuit's decision legitimizes unconstitutional conduct.

Petitioner suggests that the Fifth Circuit's opinion in this case will enable States to discriminate against Mexican-Americans, Muslims, single moms on welfare, the sick, and the unemployed, in addition to non-residents. Pet. 23. Unfounded hyperbolic speculation aside, his overwrought hypotheticals do not demonstrate that the Fifth Circuit's opinion will be misused.

The fundamental problem with petitioner's series of hypotheticals is that he continues to blur the distinction between equal-protection and right-to-travel arguments. Petitioner posits a right-to-travel violation and then asserts that the Fifth Circuit would permit the law to stand

using only rational-basis arguments. Nothing in the Fifth Circuit's decision permits that type of analysis.

For example, petitioner first asserts that a State may someday choose to limit public high school enrollment to those who were in-state residents in junior high or elementary school as a cost-saving measure. Pet. 26. He then suggests that the State could justify that measure by calling it "prospective" and a high school diploma "portable." Pet. 26. But this Court (and the Fifth Circuit) would likely consider a high school education as more analogous to welfare benefits and medical care. *Cf. Plyler v. Doe*, 457 U.S. 202, 230 (1982). Consequently, a court very well might analyze this hypothetical law as a penalty on migration, and the State would have to meet heightened scrutiny to justify such a durational residency requirement. *See, e.g.*, *Saenz*, 526 U.S. at 504; *Mem'l Hosp.*, 415 U.S. at 254. The Court has already rejected the cost-saving rationale, *Saenz*, 526 U.S. at 506-07, and while the prospective nature of the benefit might suffice in an equal-protection context, it is unlikely to withstand heightened scrutiny in a right-to-travel claim, even if portable, when basic education is at issue. Nothing in the Fifth Circuit's decision in this case would require a court to reach any other conclusion.

The same result would hold for petitioner's second hypothetical in which he asserts that a State could choose to discriminate against individuals of Mexican heritage by barring their children from public school altogether if their parents were not graduates of an in-state high school. Pet. 26. If a State's law created an express classification discriminating based on Mexican heritage, any court would quickly strike it down without resort to any

residency requirement or right to travel. Discrimination on the basis of national origin is subject to strict scrutiny, *Fisher v. Univ. of Tex.*, 133 S. Ct. 2411, 2419 (2013), and unconstitutional in almost every circumstance. Further, the hypothetical purpose of "politically target[ing]" lawful immigrants is also constitutionally impermissible. *See Saenz*, 526 U.S. at 506 (stating that deterring migration is impermissible). Finally, for the reasons petitioner's first hypothetical would violate the right to travel, his arguments regarding this one also fail.

Petitioner's third hypothetical, the denial of medical care to Texans who were not residents at the age of thirty, Pet. 26-27, is foreclosed by this Court's decision in *Memorial Hospital*. 415 U.S. at 263-69. Again, this durational residency requirement would be considered a penalty on the right to travel and would not survive strict scrutiny. *Id.* The Fifth Circuit's decision would not require or permit any other result. The denial of a tuition exemption is not the same as the denial of a basic necessity such as medical care. *See, e.g.*, *id.* at 260 n.15. Further, because petitioner has misconstrued Texas's discussion of portability as an exception to the right to travel, rather than one of several factors, petitioner's argument that a healthy body is "portable" would not alter the analysis given the importance of the benefits at issue.

Finally, petitioner suggests that Texas could limit hunting licenses to those who were Texas residents who obtained their first license before their eighteenth birthday in order to incentivize Texas youth to develop an interest in wildlife and conservation. Pet. 27. He also suggests that Texas could justify such a restriction on the

ground that meat is "portable." *Id.* This inapposite hypothetical only demonstrates the superficiality of petitioner's reasoning. A complete denial of hunting licenses to certain residents would raise different concerns, and it is unclear whether a State would have a rational basis for such a rule. But providing hunting licenses to Texas youth at a reduced price or giving a discount to longtime license holders would very likely bear a rational relation to the State's interest in encouraging conservation and education, even if others with an equal interest in hunting did not qualify for the discount because they took up hunting as adults. The question is whether the State has some rational basis for the initial classification. Petitioner misses the point when he suggests that the Fifth Circuit's use of the words "incentive" (in an equal-protection analysis) and "portable" (in a right-to-travel analysis) implies that Texas can automatically justify any future law by invoking the terms "incentive" and "portable."

Regardless, these hypothetical scenarios have not arisen. There is no conflict of authority for this Court to resolve, and the Fifth Circuit's application of long-settled equal-protection doctrine to this particular prospective, portable benefit does not merit this Court's attention.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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DECEMBER 2016