AMERICAN CONSTITUTIONALISM

VOLUME I: STRUCTURES OF GOVERNMENT

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Supplementary Material

Chapter 9: Liberalism Divided – Federalism/States and the Commerce Clause

**De Canas v. Bica, 424 U.S. 351** (1976)

*In 1971, the state of California adopted a statute prohibiting anyone from employing “an alien who is not entitled to lawful residence in the United States if such employment would have an adverse effect on lawful resident workers.” It was the first law in the United States that sought to punish employers for employee undocumented aliens. A group of migrant farm workers who were lawful residents in the United States filed suit in state court against a labor contractor, contending that the contractor had declined to employ them while employing undocumented aliens. They sought an injunction blocking the contractor from continuing to employ unlawful workers. The contractor argued in turn that the state law encroached on exclusive federal authority over immigration. The state trial court and appellate court struck down the state law, concluding that Congress had adopted a comprehensive scheme to regulate immigration and had specifically declined to adopt a policy that would punish employers of undocumented workers. The state supreme court declined to hear the case, but the U.S. Supreme Court accepted it and unanimously reversed the California courts.*

JUSTICE BRENNAN delivered the opinion of the Court.

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Power to regulate immigration is unquestionably exclusively a federal power. *Passenger Cases* (1849). . . . But the Court has never held that every state enactment which in any way deals with aliens is a regulation of immigration and thus *per se* pre-empted by this constitutional power, whether latent or exercised. . . . [S]tanding alone, the fact that aliens are the subject of a state statute does not render it a regulation of immigration, which is essentially a determination of who should or should not be admitted into the country, and the conditions under which a legal entrant may remain. . . . In this case, California has sought to strengthen its economy by adopting federal standards in imposing criminal sanctions against state employers who knowingly employ aliens who have no federal right to employment within the country; even if such local regulation has some purely speculative and indirect impact on immigration, it does not thereby become a constitutionally proscribed regulation of immigration that Congress itself would be powerless to authorize or approve. Thus, absent congressional action, § 2805 would not be an invalid state incursion on federal power.

Even when the Constitution does not itself commit exclusive power to regulate a particular field to the Federal Government, there are situations in which state regulation, although harmonious with federal regulation, must nevertheless be invalidated under the Supremacy Clause. . . .

States possess broad authority under their police powers to regulate the employment relationship to protect workers within the State. Child labor laws, minimum and other wage laws, laws affecting occupational health and safety, and workmen's compensation laws are only a few examples. California's attempt in § 2805 (a) to prohibit the knowing employment by California employers of persons not entitled to lawful residence in the United States, let alone to work here, is certainly within the mainstream of such police power regulation. Employment of illegal aliens in times of high unemployment deprives citizens and legally admitted aliens of jobs; acceptance by illegal aliens of jobs on substandard terms as to wages and working conditions can seriously depress wage scales and working conditions of citizens and legally admitted aliens; and employment of illegal aliens under such conditions can diminish the effectiveness of labor unions. These local problems are particularly acute in California in light of the significant influx into that State of illegal aliens from neighboring Mexico. In attempting to protect California's fiscal interests and lawfully resident labor force from the deleterious effects on its economy resulting from the employment of illegal aliens, § 2805 (a) focuses directly upon these essentially local problems and is tailored to combat effectively the perceived evils.

Of course, even state regulation designed to protect vital state interests must give way to paramount federal legislation. But we will not presume that Congress, in enacting the Immigration and Nationality Act, intended to oust state authority to regulate the employment relationship covered by § 2805 (a) in a manner consistent with pertinent federal laws. Only a demonstration that complete ouster of state power—including state power to promulgate laws not in conflict with federal laws—was " `the clear and manifest purpose of Congress' " would justify that conclusion. . . .

Nor can such intent be derived from the scope and detail of the INA. The central concern of the INA is with the terms and conditions of admission to the country and the subsequent treatment of aliens lawfully in the country. The comprehensiveness of the INA scheme for regulation of immigration and naturalization, without more, cannot be said to draw in the employment of illegal aliens as "plainly within . . . [that] central aim of federal regulation." . . .

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There remains the question whether, although the INA contemplates some room for state legislation, § 2805 (a) is nevertheless unconstitutional because it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" in enacting the INA. We do not think that we can address that inquiry upon the record before us. . . .

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*Reversed*.

JUSTICE STEVENS took no part in the consideration or decision of this case.