

**LOCAL LAWS RESTRICTING THE FREEDOM OF
UNDOCUMENTED IMMIGRANTS AS VIOLATIONS OF EQUAL
PROTECTION AND PRINCIPLES OF FEDERAL PREEMPTION**

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INTRODUCTION

A number of cities across America have enacted local regulations that restrict the ability of persons to engage in contractual relations with individuals classified as undocumented immigrants. Undocumented immigrants and their supporters have challenged the validity of laws that make it illegal for landlords and other providers of services to enter into contracts or agreements with them. The topic presented for discussion here is whether local laws restricting the freedom to contract with undocumented immigrants are either prohibited by the suspect class rationale of the Equal Protection Clause or preempted by federal immigration law.

Not all cities have enacted laws hostile toward undocumented immigrants. New Haven, Connecticut, for instance welcomes immigrants regardless of their official immigration status.¹ However, in nearby Suffolk County on Long Island, laws keep undocumented day laborers off the streets and punish companies that hire them.² Suffolk County executives, like other local government officials, cite the economic and social harms that accompany undocumented immigrants as the reasoning behind such openly hostile laws.³ This Article focuses on this latter type of local law, laws which evince hostility toward undocumented immigrants. The Article evaluates whether such laws violate equal protection or are preempted by federal immigration law.

Part I of this Article presents the context of America's current failure to articulate a single voice on the issue of undocumented immigrants. Part II examines whether the Equal Protection Clause should prohibit local

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1. Jennifer Medina, *New Haven Welcomes Immigrants, Legal or Not*, N.Y. TIMES, Mar. 5, 2007, at B1.

2. *Id.*

3. *Id.*

government from imposing group-based hostility against all immigrants, including undocumented immigrants. Part III addresses whether the Constitution's express grant of power to the federal government to regulate immigration as a general matter preempts local laws regulating immigration. The Article concludes that local immigration laws which are hostile toward undocumented immigrants violate the Equal Protection Clause and are, in any case, preempted by federal immigration law.

I. AMERICA CURRENTLY FAILS TO ARTICULATE A SINGLE VOICE ON THE ISSUE OF UNDOCUMENTED IMMIGRANTS

Local municipalities and cities have adopted wide-ranging approaches to undocumented immigrants. No single, united voice has emerged. The State of Connecticut is a prime example. In New Haven, police do not question individuals' immigration status, essentially amounting to a "don't ask, don't tell" immigration policy.⁴ Stamford has established "no hassle" zones for the benefit of day laborers, allowing undocumented immigrants to seek work without fear of arrest.⁵ But, other cities in Connecticut have not been as hospitable. After the city of Danbury became attractive to illegal immigrants, Republican Mayor Mark Boughton began attacking failed federal immigration policies and embarked on an immigration crackdown of his own.⁶ Mayor Boughton requested that the United States Immigration and Customs Enforcement enforce existing federal immigration law in Danbury, resulting in dozens of arrests.⁷

Many cities hoping to drive out illegal immigrant populations have followed the lead of Hazleton, Pennsylvania. Hazleton was the first city in the United States to approve regulations for the purpose of encouraging illegal immigrants to leave the community by penalizing local landlords for renting to illegal immigrants and punishing local employers for hiring them.⁸ A minimum of eighty towns and cities have adopted similar regulations.⁹ On March 12, 2007, a test case challenging Hazleton's ability to regulate immigration began in federal court.¹⁰ The Hazleton case helps to frame the debate. Supporters maintain that Hazleton's regulations are a very reasonable response to a "very real threat," one involving spikes in violent crime and gang

4. Editorial, *Immigration: A Tale of Three Cities*, N.Y. TIMES, Mar. 4, 2007, at A15.

5. *Id.*

6. *Id.*

7. *Id.*

8. Julia Preston, *City's Immigration Restrictions Go on Trial*, N.Y. TIMES, Mar. 13, 2007, at A13.

9. *Id.*

10. *Id.*

warfare.¹¹ Critics contend that regulations like Hazleton's promote discrimination against Hispanic residents and exceed the permissible authority of a local government to regulate immigration.¹² The regulation of immigration is almost completely a matter of federal concern, requiring action only by the Federal Congress.¹³ The remainder of this Article examines the extent to which laws such as Hazleton's violate the Equal Protection Clause and are preempted by federal immigration law.

II. THE EQUAL PROTECTION CLAUSE SHOULD PROHIBIT A LOCAL GOVERNMENT FROM IMPOSING GROUP-BASED HOSTILITY AGAINST ALL IMMIGRANTS, INCLUDING UNDOCUMENTED IMMIGRANTS

The United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws."¹⁴ A number of Supreme Court decisions have concluded that a state or city may not deny persons the equal protections of the law by showing intentional group-based hostility toward a class of persons. In footnote four of *United States v. Carolene Products Co.*, the Supreme Court stated that under certain circumstances a politically powerless group may need judicial intervention to protect them from the political hostility of the majority.¹⁵ Professor Roosevelt correctly observes that *Carolene Products* is often cited by legal experts as the basis of the equal protection suspect class policy.¹⁶ *Carolene Products* footnote four was originally intended to be used in due process cases.¹⁷ The Supreme Court first cited *Carolene Products* in the 1971 suspect class equal protection case *Graham v. Richardson*, a case that labeled aliens as a "prime example of a "discrete and insular" minority."¹⁸ In *Graham*, the Supreme Court stated that a state's wish to safeguard limited welfare benefits for its own citizens is not a proper basis for a policy that makes non-citizens ineligible for public benefits; a state also may not limit its public welfare benefits to only citizens and resident aliens who have lived within the state for a certain length of time.¹⁹ Under established equal protection doctrine, "a State retains broad

11. *Id.*

12. *Id.*

13. Preston, *supra* note 8.

14. U.S. CONST. amend. XIV, § 1.

15. 304 U.S. 144, 152 n.4 (1938) (listing racial minorities as particularly defenseless).

16. Kermit Roosevelt III, *Forget The Fundamentals: Fixing Substantive Due Process*, 8 U. PA. J. CONST. L. 983, 996 (2006) (citing *Toll v. Moreno*, 458 U.S. 1, 23 (1982) (Blackmun, J., concurring) (describing *Carolene Products* as "the moment the Court began constructing modern equal protection doctrine")).

17. *Id.*

18. *Id.* (citing *Graham v. Richardson*, 403 U.S. 365, 372 (1971)).

19. 403 U.S. at 374.

discretion to classify as long as its classification has a reasonable basis.”²⁰ Supreme Court opinions now hold that classifications based on alienage, nationality, or race are fundamentally suspect and subject to strict judicial scrutiny.²¹ The power of a state to target its laws exclusively at its documented immigrant population as a class must be justified by a compelling state interest.²²

It is clear that the city of Hazleton has enacted a law that singles out undocumented immigrants for hostile treatment by punishing landlords who rent to them and employers who hire them.²³ The “singling out” problem by a local governmental entity is reasonably understood as an illustration of *Carolene Products*’s “discrete and insular minorities” forewarning of violating the equal protection of the laws.²⁴ *Carolene Products* advises that when political minorities, such as undocumented immigrants, are confronted with the problem of the political majority crushing their rights to the equal protection of the law, judicial intervention is appropriate.²⁵ While *Carolene Products* observed that identifiable racial, ethnic, or religious minorities without a real voice are most likely to become the victims of majority political abuse, “the problem of majoritarian excess extends well beyond those groups.”²⁶ In the framework of immigration and local regulation, when majorities pander to the temptation to place particular burdens on undocumented immigrants, minorities who are nonvoting residents in a city, the normal political process provides very little equal protection.²⁷ It is as a defense against this type of political abuse that a judicial application of the Equal Protection Clause serves as a check on local laws regulating immigration.²⁸ *Carolene Products*’ heightened scrutiny is appropriate in those circumstances, like Hazleton, where a particular minority group is singled out and afforded little protection because of defects in the political process.²⁹

20. *Id.* at 371 (citing *McGowan v. Maryland*, 366 U.S. 420, 425–27(1961)); *Morey v. Doud*, 354 U.S. 457, 465 (1957); *Williamson v. Lee Optical Co.*, 348 U.S. 483, 489 (1955); *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78 (1911)).

21. *Id.* at 371–72.

22. *Id.* at 372.

23. See Preston, *supra* note 8.

24. See Bradley C. Karkkainen, *The Police Power Revisited: Phantom Incorporation and the Roots of the Takings “Muddle,”* 90 MINN. L. REV. 826, 911 (2006). In the property context, Professor Karkkainen argues that the *Carolene Products* rationale of protecting minority property interests against majority property interests should apply to takings clause cases with a “*Carolene Products*-like heightened scrutiny” by courts. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

28. *Id.*

29. Karkkainen, *supra* note 24.

The Fourteenth Amendment prohibits states from “deny[ing] to any person within its jurisdiction the equal protection of the laws.”³⁰ It has long been settled that the term “person” as used in the Fourteenth Amendment includes lawfully admitted resident aliens and American citizens, entitling both citizens and aliens to the equal protection of the laws of the state in which they reside.³¹ It is my position that the word “person” under the Equal Protection Clause protects undocumented immigrants against local laws that express a hostile intent toward undocumented immigrants who may have violated federal immigration law by entering the United States without proper documentation. Professors Posner and Vermeule recognize that, at a superficial level, the *Carolene Products* analysis gives the impression that it should be applied more for the benefit of aliens than for political or ethnic minorities because aliens, unlike racial minorities, do not have a general right to vote.³² Because aliens do not have the right to vote, “they cannot directly affect political outcomes and thus would seem especially vulnerable to exploitation by the majority.”³³ Courts, using the *Carolene Products* theory, may offer aliens a great deal of protection by applying strict scrutiny to any law that discriminates against a person based on alienage.³⁴

However, Professors Posner and Vermeule go on to expressly reject the application of the *Carolene Products* suspect class theory to aliens.³⁵ A fallacy in the *Carolene Products* view is, they claim, the failure to understand that promoting the welfare of both resident and nonresident aliens is itself a component of protecting the welfare of the voting majority, “so the self-interest of the majority need not produce exploitation of the minority.”³⁶ Professors Posner and Vermeule argue that, because the general welfare of aliens serves the welfare interest of the voting majority, it is not necessary for courts to apply the *Carolene Products* suspect classification theory to either documented or undocumented aliens.³⁷ Although there may be a number of instances where the general welfare of the political majority and the undocumented aliens are the same, I think courts should continue to apply *Carolene Products* to aliens to protect them from being at risk of hostile discrimination by the political majority.

30. U.S. CONST. amend. XIV, § 1.

31. *Graham v. Richardson*, 403 U.S. 365, 371 (1971) (citing *Truax v. Raich*, 239 U.S. 33, 39 (1915); *Yick Wo v. Hopkins*, 118 U.S. 356, 369 (1886)).

32. Eric A. Posner & Adrian Vermeule, *Emergencies and Democratic Failure*, 92 VA. L. REV. 1091, 1138 (2006).

33. *Id.*

34. *Id.*

35. *Id.* at 1139–40.

36. *Id.* at 1140.

37. Posner & Vermeule, *supra* note 32, at 1140–41.

Recent events involving the Texas legislature are illustrative. In Texas, powerful economic interests intervened to protect undocumented aliens or immigrants from an anti-immigrant backlash favored by a political majority. It was generally believed that anti-immigrant fever would spread to Texas in 2007.³⁸ Texas lawmakers entered the new legislative session with many bills expressing a variety of anti-immigrant passions.³⁹ However, during the last week of March 2007, the Texas legislature refused to join the anti-immigration fight because of an unusual alliance supporting sensible immigration reform.⁴⁰ In a sudden change, the influential Republican Chairman of the State Affairs Committee, David Swinford, refused to allow the immigration bills to come to the floor, citing them as “constitutionally flawed, needlessly divisive and a waste of time.”⁴¹ Importantly, Representative Swinford represents an agricultural district that could lose a lot of money if the district lost its immigrant labor.⁴² Though Swinford persists he did not hold back any anti-immigration bills at the behest of big business, he has certainly made big business happy in Texas.⁴³ In Texas, “at least for now, powerful forces have come to understand—whether through warm feelings for workers or, more likely, cold self-interest—that in attacking immigrants, Texas is attacking itself.”⁴⁴

The irony of the current Texas debate on immigration is that big business interests in the State protected undocumented immigrants from the otherwise hostile anti-immigration political mood of the legislature. Though seeming to support the conclusions of Professors Posner and Vermeule, the *Carolene Products* question is whether the interests of the politically influential can always be relied upon to ensure that undocumented immigrants are given the equal protection of the law that other members of society enjoy. In a spirit of self-interest, business may encourage society to tolerate undocumented or illegal immigrants, not as equals but as sources of cheap labor.⁴⁵ If the judiciary fails to guarantee undocumented immigrants the equal protection of the law, they are likely to be exploited by employers as a cheap and expendable labor supply. Although the Texas legislature is to be commended for its refusal to adopt hostile legislation toward immigrants, it should be noted

38. Lawrence Downes, Editorial, *After an Anti-Immigrant Flare-Up, Texas Gets Back to Business*, N.Y. TIMES, Apr. 2, 2007, at A22. The general belief was supported by harsh rhetoric. Representative Leo Berman stated: “Mexico is the world’s most corrupt country and that its citizens are infecting us with their law-breaking culture and with tuberculosis and leprosy.” *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.*

43. Downes, *supra* note 38.

44. *Id.*

45. *Id.*

that the Texas legislature did not adopt any affirmative resolution as a legislative body requesting Congress to adopt appropriate immigration legislation designed to deal with reality and accommodate the needs of current employers hiring undocumented immigrants as well as the needs of current undocumented immigrants residing in communities throughout America. The self-interest of the majority is a far from sufficient basis for protecting undocumented immigrants from hostility. Undocumented immigrants or illegal aliens should be granted suspect class status and protected from state legislation because they are persons who should be protected from the hostile political process. The principles of *Carolene Products* should demand that local governments establish a compelling justification for the unequal treatment of undocumented immigrants.

The need for heightened scrutiny was made apparent by a recent case in Tennessee. Under the traditional rational basis standard, undocumented immigrants will not be adequately protected from a hostile local political environment. A federal district court in Tennessee rejected the argument that illegal aliens are entitled to suspect class status under the Equal Protection Clause and instead applied rational basis review.⁴⁶ A state law enacted in 2004 amended the Tennessee Code by stating that only United States citizens or lawful permanent residents were eligible to receive driver's licenses in Tennessee.⁴⁷ Under the Tennessee law, individuals who were in the United States with the permission of the federal government for a particular purpose and for a particular period of time are qualified to acquire a certificate for driving that may be valid for one to five years.⁴⁸ A person not covered as a citizen, a lawful permanent resident, or residing in the United States under specific federal authority could get an official driving certificate for one year.⁴⁹ The driving certificate displayed on its face the words: "FOR DRIVING PURPOSES ONLY—NOT VALID FOR IDENTIFICATION."⁵⁰

In *LULAC*, the plaintiffs contended that the Tennessee law barring illegal aliens as well as those aliens who do not possess permanent resident status from acquiring a driver's license establishes an unconstitutional classification under the Equal Protection Clause rooted in alienage.⁵¹ It is a basic principle of law that the Equal Protection Clause states that "all persons similarly circumstanced shall be treated alike."⁵² In *Plyler v. Doe*, the Supreme Court

46. League of United Latin Am. Citizens (LULAC) v. Bredeisen, No. 3:04-0613, 2004 WL 3048724, at *3 (M.D. Tenn. Sept. 28, 2004).

47. *Id.* at *1 (citing TENN. CODE ANN. § 55-50-321(c)(1)(C) (2004)).

48. *Id.* (citing TENN. CODE ANN. § 55-50-331(g)).

49. *Id.* (citing TENN. CODE ANN. § 55-50-331(h)).

50. *Id.* (citing TENN. CODE ANN. § 55-50-102(6)).

51. *LULAC*, 2004 WL 3048724, at *2.

52. *Id.* at *3 (citing *Plyler v. Doe*, 457 U.S. 202 (1982)).

ruled that aliens are “persons” for purposes of the Equal Protection Clause.⁵³ A state law that fails to burden a suspect class “must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.”⁵⁴

The federal district court accepted the plaintiffs’ basic argument that classifications based on alienage are intrinsically suspect.⁵⁵ The federal court stated, however, that the Tennessee law “does not classify persons based on alienage.”⁵⁶ The Tennessee law distinguishes “between citizens and lawful permanent resident *aliens* on the one hand, and illegal *aliens* and those *aliens* who are not permanent lawful residents, on the other hand.”⁵⁷ The classification produced by the driver’s license law is not simply between aliens and citizens.⁵⁸ The Tennessee driver’s license law does not treat people differently because of a protected classification.⁵⁹ Aliens are able to meet the requirements for a driver’s license or a driver’s certificate based on legitimate criteria excluding alienage.⁶⁰ “Instead,” the court found, “the classification is based on the legality of the alien’s presence in the country under federal law (lawful permanent resident aliens vs. illegal aliens) and/or the length of time the federal government has authorized the alien to stay in this country (permanent vs. temporary).”⁶¹ The federal district court opined that the Tennessee driver’s license law did not have to meet the strict scrutiny test because it failed to burden a suspect class.⁶²

It appears that Tennessee officially acknowledges the presence of persons living in its borders that it presumes to be undocumented immigrants living in

53. *Id.* at *3 n.1 (citing *Plyler*, 457 U.S. at 215).

54. *Id.* at *3 (citing *FCC v. Beach Commc’ns*, 508 U.S. 307 (1993)).

55. *Id.*

56. *LULAC*, 2004 WL 3048724, at *3.

57. *Id.*

58. *Id.*

59. *Id.*

60. *Id.*

61. *LULAC*, 2004 WL 3048724, at *3 and n.2 (citing *Soskin v. Reinertson*, 353 F.3d 1242, 1255–56 (10th Cir. 2004) (discrimination among subclasses of aliens based on non-suspect classifications, such as work history or military service, is subject to rational basis review); *Doe v. Comm. of Transnational Assistance*, 773 N.E.2d 404, 414 (Mass. 2002) (“In distinguishing between subgroups of aliens, rational basis review is appropriate unless classification is based on race, gender, national origin, or other suspect classification.”)). “The distinctions here, rather, are based on non-suspect classifications such as the legality of presence and length of authorized stay. In any event, the State has shown the legislation furthers a compelling state interest by the least restrictive means. As discussed below, the State has a compelling interest in balancing driver safety, on the one hand, and the deterrence/prevention of crime and terrorist activity, on the other. Drawing the classification based on legality of presence and the length of authorized stay is the least restrictive means to achieve the State’s compelling interests.” *Id.* at *3 n.2 (citation omitted). “Illegal aliens, moreover, are not a ‘suspect class’ under the Constitution.” *Id.* at *3.

62. *Id.* at *3.

America illegally by granting those persons a certificate of driving while denying those individuals a driving license. When Tennessee issues a person a driving certificate that says the certificate is not officially recognized for identification purposes, the state is substantially certain that, in fact, the driver's certificate will identify those possessing it as inferior persons because of their presumed illegal entry into the United States. It is my belief that the Equal Protection Clause of the Fourteenth Amendment prohibits a state from issuing a driver's certificate that has both the purpose and effect of demonstrating hostility toward a group of individuals because of their presumed illegal immigrant status. It should be a fundamental principle of American law that all persons, including illegal aliens, are presumed innocent until they are proven guilty. Until Tennessee is authorized by the federal government to enforce the nation's immigration policy, it does not have any rational basis to independently enforce the lawful entry requirement of federal immigration laws against those it presumes to be illegal aliens.

In *LeClerc v. Webb*, nonimmigrant alien graduates from foreign law schools filed suit under the Equal Protection Clause challenging a Louisiana Supreme Court Rule making them ineligible to sit for the Louisiana Bar.⁶³ The plaintiffs argued that: "(1) . . . nonimmigrant aliens are a suspect class and state laws affecting them are subject to strict scrutiny; (2) . . . nonimmigrant aliens are a quasi-suspect class and state laws affecting them are subject to intermediate scrutiny; and (3) . . . if nonimmigrant aliens are not a suspect class at all, any state law affecting them are subject to rational basis review."⁶⁴ In the face of some doubt about relevant Supreme Court precedent, the Fifth Circuit stated that, because the Louisiana Supreme Court Rule involves only nonimmigrant aliens, the rational basis standard of review applied.⁶⁵ The Fifth Circuit found that the Louisiana Supreme Court Rule survived the rational basis test.⁶⁶

Nonimmigrant aliens are not considered a suspect class under *Griffiths*.⁶⁷ In *Griffiths*, the challenger to the state law was a permanent resident alien, who

63. 419 F.3d 405, 410 (5th Cir. 2005).

The Immigration and Nationality Act distinguishes between immigrant and nonimmigrant aliens, negatively defining an immigrant alien as "every alien except an alien who is within one of the following classes of nonimmigrant aliens." 8 U.S.C. § 1101(a)(15) [IMMLPSD INA § 101]. An alien falling into one of fifteen exclusionary categories is a nonimmigrant alien, a class generally delimited by a lack of intention to abandon his foreign country residence and entry into the United States for specific and temporary purposes.

Id. at 410 n.2.

64. *Id.* at 415.

65. *Id.*

66. *Id.* at 422.

67. *Id.* at 415 (citing *In re Griffiths*, 413 U.S. 717, 718 (1973)).

was not eligible under Connecticut law for bar admission because he was not a United States citizen.⁶⁸ The *LeClerc* plaintiffs that challenged the Louisiana Supreme Court Rule were nonimmigrant aliens.⁶⁹ The Louisiana Supreme Court Rule impacted only nonimmigrant aliens, those aliens who were “not entitled to live and work in the United States permanently.”⁷⁰ It was the total exclusion of aliens in Connecticut from the practice of law that the United States Supreme Court held invalid under the Constitution in *Griffiths*.⁷¹ The Supreme Court has applied strict scrutiny only to those state laws affecting permanent resident aliens.⁷² According to the Fifth Circuit, the Supreme Court has in no way applied the strict scrutiny standard to a state law impacting illegal aliens or nonimmigrant aliens.⁷³

It is my view that the Supreme Court should apply its strict scrutiny rationale to any immigrant, regardless of his or her immigration status, who has become a target of hostile local governmental policy. A local governmental regulation designed to discourage undocumented immigrants from residing in the community because they are presumed to be in violation of federal immigration laws demonstrates irrational political hostility toward the immigrant because the local government cannot enforce federal immigration laws without the permission of Congress. Local laws which restrict a person’s freedom of contract and serve as a pretext for the impermissible enforcement of federal immigration laws are especially suspect when they target an individual because of his presumed federal immigration status.

Judge Carl E. Stewart dissented from the *LeClerc* majority’s position that the plaintiffs’ equal protection claim was properly dismissed and disagreed with the conclusion that the strict scrutiny standard did not apply to the

68. *LeClerc*, 419 F.3d at 415.

69. *Id.*

70. *Id.* (quoting *In re Bourke*, 819 So. 2d 1020, 1022 (La. 2002)).

71. *Id.* (citing *Griffiths*, 413 U.S. at 718).

72. *Id.*

73. *LeClerc*, 419 F.3d at 416.

In such cases, the Court has either foregone Equal Protection analysis, see *Toll v. Moreno*, 458 U.S. 1, 102 S.Ct. 2977, 73 L.Ed.2d 563 (1982) (nonimmigrant G-4 aliens); *DeCanas v. Bica*, 424 U.S. 351, 96 S.Ct. 933, 47 L.Ed.2d 43 (1976) (illegal aliens), or has applied a modified rational basis review, see *Plyler v. Doe*, 457 U.S. 202, 102 S.Ct. 2382, 72 L.Ed.2d 786 (1982) (children of illegal aliens). In the latter case, *Plyler*, the Court employed a heightened level of rational basis review to invalidate a Texas law that denied primary public education to children of illegal aliens. See *Plyler*, 457 U.S. at 224 (“[the Texas law] can hardly be considered rational unless it furthers some *substantial* goal of the State.”) (emphasis added). Yet, while adopting a *sui generis* level of rational basis review, the Court acknowledged that the immigration status of the affected class of aliens precluded use of either intermediate or strict scrutiny review.

Id. (footnotes omitted).

plaintiffs' status as nonimmigrant aliens.⁷⁴ The majority's refusal to apply the strict scrutiny rationale to nonimmigrant aliens as part of a discrete suspect class is not required by the decisions of the United States Supreme Court.⁷⁵ Judge Stewart correctly critiqued the majority's reasoning as flawed because the Supreme Court's proclamation that "alienage is a suspect class" designates nonimmigrant aliens as members of that class.⁷⁶ The Supreme Court has stated that "[t]he fact that the [challenged] statute is not an absolute bar [against all aliens] does not mean that it does not discriminate against the class."⁷⁷ When governmental policy or regulations target aliens, and when only aliens are harmed by the conduct, the suspect class theory is triggered, and the state action may violate the Equal Protection Clause if it is not supported by a compelling justification.⁷⁸ It follows that a local law containing a rental ban that prohibits landlords from renting to immigrants based on their presumed status as not lawfully present in the United States, when motivated by political hostility, should at a minimum be subjected to strict scrutiny to test its constitutional validity under the Equal Protection Clause.

Judge Stewart's *LeClerc* dissent argues that nonimmigrant aliens who are lawfully present in the United States are entitled to the benefit of the suspect classification.⁷⁹ In his analysis, Judge Stewart acknowledged that the Supreme Court had refused to grant suspect classification to illegal aliens.⁸⁰ In *Plyler*, the Supreme Court explicitly stated that it rejected the assertion that "illegal aliens" were members of a suspect class:

No case in which we have attempted to define a suspect class . . . has addressed the status of persons unlawfully in our country. Unlike most of the classifications that we have recognized as suspect, entry into this class, by virtue of entry into this country, is the product of voluntary action. Indeed, entry into the class is itself a crime.⁸¹

Unlike the Supreme Court, I believe an economically productive illegal alien who obeys the law except for his unlawful entry into America is entitled to the benefit of the suspect classification status in order to protect him from hostile local governmental action because of his federal immigration status. An America which values democratic principles will grant suspect category status to aliens as a group because their interests are not protected in the political process because they cannot vote. I am advancing the argument that a

74. *Id.* at 426 (Stewart, J., dissenting).

75. *Id.*

76. *Id.*

77. *Id.* at 427 (quoting *Nyquist v. Mauclet*, 432 U.S. 1, 9 (1977)).

78. *LeClerc*, 419 F.3d at 427 (Stewart, J., dissenting).

79. *Id.* at 428.

80. *Id.*

81. *Plyler v. Doe*, 457 U.S. 202, 219 n.19 (1982).

local governmental entity should be allowed to treat an illegal immigrant differently from other immigrants only when it can meet the strict scrutiny standard. The basis for the suspect class designation for those aliens with lawful presence in the United States is based on aliens' inability to vote, which renders them impotent in the political process, as well as the extensive history of invidious discrimination suffered by legal aliens.⁸² Because millions of illegal immigrants are productive members of our society without the ability to vote, a state or local government should be required to have a compelling justification for laws targeting them.⁸³

The distinction between legal and illegal immigrants "is one of the most tenaciously held distinctions in middle-class America; the people . . . overwhelmingly support legal immigration and express disgust with the illegal variety."⁸⁴ The fact that many in middle class America are disgusted with illegal immigrants who are often welcomed by farmers and the food industry supports my conclusion that laws targeting illegal immigrants should be subjected to strict scrutiny. The illegal immigrant employee is often caught up in a battle between powerful economic interests with national influence and the hostile power of local political interest that want them to vacate the community immediately.

That Americans generally support legal immigration was evident from the broad public support for the recently-failed immigration bill before the United States Senate. The bill contained provisions that would have allowed undocumented immigrants a path to citizenship, which caused a degree of political consternation for both parties.⁸⁵ Though a substantial majority of Democrats supported giving the 12 million or so illegal immigrants a path to citizenship, they found a few of the bill's provisions objectionable.⁸⁶ For Republicans, the political implications of the Senate immigration bill were more challenging. Republican core constituencies did not agree on the bill.⁸⁷ Business groups unquestionably supported it, but various social and cultural

82. *LeClerc*, 419 F.3d at 428–29 (Stewart, J., dissenting) (citing *Plyler*, 457 U.S. at 218 n.14 (citing *Graham*, 403 U.S. at 372 (1997); *Takahashi v. Fish and Game Comm'n*, 334 U.S. 410 (1948); ERWIN CHEMERINSKY, CONSTITUTIONAL LAW 618–19)).

83. See *Immigration: A Tale of Three Cities*, *supra* note 4 (stating that federal immigration policy has allowed 11 million people to move to the United States illegally).

84. David A. Martin, *Graduated Application of Constitutional Protections for Aliens: The Real Meaning of Zadvydas v. Davis*, 2001 SUP. CT. REV. 47, 107 (2001) (quoting ALAN WOLFE, ONE NATION, AFTER ALL 147 (1998)).

85. E.J. Dionne, Jr., Op-Ed., *Immigration Agitation: The Way to Guarantee the Rights and Wages of All Americans is to Give Every Immigrant the Opportunity to Become a Citizen*, PITT. POST-GAZETTE, May 29, 2007, at B7.

86. *Id.* Two of the more objectionable provisions from the Democratic viewpoint were the "return home" requirements and preferential treatment afforded those immigrants with desirable employment and educational skills. *Id.*

87. *Id.*

conservatives (except some religious conservatives) considered any type of large-scale legalization of undocumented immigrants as “amnesty.”⁸⁸ Despite these political differences, polling showed that Americans broadly supported the major provisions in the bill: “A large majority of Americans want to change the immigration laws to allow illegal immigrants to gain legal status and to create a new guest worker program to meet future labor demands”⁸⁹

That Americans clearly support legal immigrants, but show open hostility and disgust toward undocumented immigrants belies the need for the protection afforded undocumented immigrants by the *Carolene Products* suspect class designation. Certainly, it cannot and will not be the case that the self-interest of the politically influential will protect undocumented immigrants from hostile local immigration laws. *Carolene Products*’s heightened scrutiny, requiring a demonstrable compelling interest for the enactment of local immigration laws, affords undocumented immigrants the protection otherwise unavailable through the political process.

III. THE CONSTITUTION’S EXPRESS GRANT OF POWER TO CONGRESS TO REGULATE IMMIGRATION AS A GENERAL MATTER PREEMPTS LOCAL LAWS REGULATING IMMIGRATION

Preemption principles also preclude municipalities, cities, and states from enacting laws hostile to undocumented immigrants. Immigration policy falls within the domain of the Federal Congress, and states are barred from enacting their own legislation as a pretext for establishing local immigration policy not authorized by Congress.

One such example is Tennessee. On May 11, 2005, Congress passed the “Emergency Supplemental Appropriations Act For Defense, The Global War On Terror, Tsunami Relief, 2005,” which contains Division B “The REAL ID Act of 2005.”⁹⁰ The REAL ID Act pronounces that three years after the date of its enactment, a federal agency is prohibited from accepting for any official purpose a driver’s license or identification certificate given out by a state to anyone unless the state complies with specific federal requirements.⁹¹ Under the Act, “official purpose” includes “accessing Federal facilities, boarding federally regulated commercial aircraft” as well as “entering nuclear power plants, and any other purposes that the Secretary [of Homeland Security] shall

88. *Id.*

89. Julia Preston & Marjorie Connelly, *Immigration Bill Provisions Gain Wide Support In Poll*, N.Y. TIMES, May 25, 2007, at A1.

90. *League of United Latin Am. Citizens v. Bredesen* (LULAC II), No. 3:04-0613, 2005 WL 2034935, at *1 (M.D. Tenn. Aug. 23, 2005) (citing The REAL ID Act of 2005, Pub. L. No. 109-13, 119 Stat. 231, §§ 201-202).

91. *Id.* (citing The REAL ID Act of 2005, § 202(a)(1)).

determine.”⁹² Subsection 202(c)(1) of the Act catalogs the kind of identification information that a person is required to make available prior to a state giving out a license or card, and Section 202(c)(2) commands authentication “by valid documentary evidence” of a person’s citizenship or immigration ranking.⁹³ Section 202(c)(3)(B) asserts that to comply with the obligations of Subsections 202(c)(1) or (2), “[t]he State may not accept any foreign document other than an official passport.”⁹⁴

The United States Constitution provides that the laws of the United States are the “supreme Law of the Land.”⁹⁵ The opposing parties in *League of United Latin American Citizens v. Bredesen (LULAC II)* agreed that the REAL ID Act of 2005 preempts Tennessee’s law requiring the issuance of an official driving certificate for those unable to establish United States citizenship or other lawful presence in the United States.⁹⁶ A contention that the Supremacy Clause allows a federal law to preempt a state regulation is different from an argument for the enforcement of that federal law.⁹⁷ “The primary function of the Supremacy Clause is to define the relationship between state and federal law. It is essentially a power conferring provision, one that allocates authority between the national and state governments”⁹⁸ A claim under the Supremacy Clause, in basic terms, declares that a federal statute denies local authority the ability to regulate an undertaking.⁹⁹

Although the Supremacy Clause allows Congress to preempt state regulation, I think the better argument suggests that the REAL ID Act of 2005 does not deny Tennessee the ability to issue an official driving certificate for those not capable of proving lawful presence in the United States. Unlike the federal district court in Tennessee, I am not convinced that the REAL ID Act’s terms governing the type of identity documents required to acquire a driver’s license impliedly preempt Tennessee’s law on the topic. The fact that the REAL ID Act authorizes a state to give out driver’s licenses by means of an

92. *Id.* (citing The REAL ID Act of 2005, § 201(3)).

93. *Id.* at *2.

94. *Id.* (citing The REAL ID Act of 2005 § 202(c)(3)(B)).

95. U.S. Const. art. VI, cl. 2. In full, the Supremacy Clause provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Id.

96. *LULAC II*, 2005 WL 2034935, at *2.

97. *Western Air Lines, Inc. v. Port Authority of New York and New Jersey*, 817 F.2d 222, 225 (2d Cir. 1987).

98. *Id.* (quoting *White Mountain Apache Tribe v. Williams*, 810 F.2d 844, 848 (9th Cir.1987)).

99. *Id.*

optional identification verification procedure provides evidence that Congress did not intend to preempt Tennessee's ability to issue driving certificates to undocumented aliens.¹⁰⁰ However, it is conceded that any Tennessee driver's licenses that fail to meet the federal verification procedures would possess limitations not possessed by those driving licenses meeting the federal standards.¹⁰¹ Any state driver's license failing to meet the federal verifications standard is not capable of being used for admission to federal facilities or to board a federally regulated commercial aircraft.¹⁰²

It is customary for the United States Supreme Court to approve a finding of preemption only when a federal statute demands it.¹⁰³ A conclusion of preemption is virtually always based on the Supreme Court's understanding of statutory language or of regulations unmistakably endorsed by Congress.¹⁰⁴ According to Justice Stevens, the Supreme Court has never endorsed federal administrative action whose one and only purpose is to preempt state law instead of implementing a statutory command of Congress.¹⁰⁵ Since the REAL ID Act provides states with elective identification verification procedures, and it is not impossible to comply with the federal law and the Tennessee driving certificates requirement, a congressional declaration of preemption is not properly found. The fact that Congress allows alternative verification under the REAL ID Act shows that Congress did not intend for federal law to occupy the field of issuing valid driving licenses or certificates.¹⁰⁶ When Congress addresses a specific subject matter, a state law is to be acknowledged as preempted because it conflicts with what Congress has intended.¹⁰⁷ A federal court has no independent power under the Supremacy Clause to preempt state law. In *Gibbons v. Ogden*, the Supreme Court established that it is an essential principle of constitutional law under Article VI, Clause 2, that only Congress has the power to preempt state law.¹⁰⁸ States may use their police power to regulate illegal aliens "where such action mirrors federal objectives and furthers a legitimate state goal."¹⁰⁹

100. *Contra LULAC II*, 2005 WL 2034935, at *2.

101. *Id.*

102. *Id.*

103. *Watters v. Wachovia Bank*, 127 S.Ct. 1559, 1585–86 (2007) (Stevens, J., dissenting) (citing *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 517 (1992)); *see also* *Florida Lime and Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–43 (1963) (holding that a conflict between federal and state law precluded obedience to both sovereigns); *Napier v. Atl. Coast Line R.R. Co.*, 272 U.S. 605, 613 (1926) (explaining that when a federal statute so completely occupies a field, it leaves no room for additional state regulation).

104. *Watters*, 127 S.Ct. at 1586.

105. *Id.*

106. *Charleston & W. Carolina Ry. Co. v. Varnville Furniture Co.*, 237 U.S. 597, 604 (1915).

107. *Id.*

108. 22 U.S. 1, 11 (1824).

109. *Plyler v. Doe*, 457 U.S. 202, 225 (1982).

The Tennessee law is not preempted by the REAL ID Act because the Tennessee driving law regulating driving certificates for aliens unlawfully present in the United States does not conflict with that federal law: “[I]mplicit in the REAL ID act is the federal recognition that states can legally issue driver’s licenses without a person being in a position to establish his legal presence in the United States.”¹¹⁰ The REAL ID Act does not allow states to use its local laws to make unlawful presence in the United States a crime.¹¹¹ In *State v. Lopez*, Neri Lopez was stopped by the New Orleans Police Department after officers noticed that the vehicle he was driving had malfunctioning brake lights.¹¹² When his driver’s license was requested, Lopez gave only Mexican identification.¹¹³ After the officers established that Lopez was not legally in America, he was arrested.¹¹⁴ Louisiana law prohibits nonresident aliens and alien students from driving motor vehicles unless they provide documentation establishing they are lawfully entitled to be in the United States.¹¹⁵ The trial court granted Lopez the motion to quash the bill of information because proof of citizenship is not in general an element of a standard traffic stop in Louisiana.¹¹⁶ In *State v. Lopez* “the trial court found that operating a motor vehicle without proof of citizenship, if it were a crime, would be a federal offense that the state of Louisiana does not have authority to regulate.”¹¹⁷ Louisiana’s Fourth Circuit Court of Appeals held that the trial court’s judgment was legally correct.¹¹⁸

The State of Louisiana has the power to regulate its public roads and highways if the legislation does not conflict with the United States Constitution.¹¹⁹ The states with heightened requirements for aliens to acquire a driver’s license have been upheld as a valid use of a state’s police power.¹²⁰

No federal requirement exists, however, that requires persons who are legally present in the United States to at all times carry documentation of proof of citizenship. Unlike other states’ restrictions regarding the issuance of driver’s licenses, [the Louisiana law] makes the *operation*

110. *State v. Lopez*, 2005-0685 (La. App. 4 Cir. 12/20/06); 948 So. 2d 1121, 1125.

111. *Id.*

112. *Id.* at 1122.

113. *Id.*

114. *Id.*

115. *Lopez*, 2005-0685 (La. App. 4 Cir. 12/20/06); 948 So. 2d at 1122 (citing LA. REV. STAT. ANN. § 14:100.13(A) (2004)).

116. *Id.*

117. *Id.* at 1123.

118. *Id.* at 1125.

119. *Id.* at 1124 (citing *Kaltenbach v. Breaux*, 690 F. Supp. 1551, 1553 (W.D. La. 1988)).

120. *Lopez*, 2005-0685 (La. App. 4 Cir. 12/20/06); 948 So. 2d at 1124–25.

of a motor vehicle while illegally present in the United States a crime.¹²¹

Lopez was charged with driving a motor vehicle without producing documentation proving lawful presence.¹²² Lopez was not charged with living in the country illegally while driving a motor vehicle.¹²³ The definitive problem with the Louisiana law, the court found, was that it placed a burden equally on legal and non-legal immigrants, which surpassed any standard considered appropriate under federal immigration law.¹²⁴ The appellate court held that the Louisiana law, which made it a crime to drive a motor vehicle when lacking evidence of lawful presence in United States, is preempted by the Federal REAL ID Act because that Act does not allow states to use its driver's license laws to make it a crime for an immigrant to fail to establish legal presence in United States.¹²⁵

In *Villas at Parkside Partners v. City of Farmers Branch*, Judge Sam A. Lindsay granted the plaintiffs a temporary restraining order enjoining the enforcement of Farmers Branch Ordinance 2903 because it was preempted by the Supremacy Clause.¹²⁶ The preamble to Ordinance 2903 said the city would benefit from the Federal HUD citizenship and immigration status certification processes.¹²⁷ It appears that Farmers Branch was attempting to suggest that, by certifying the immigration status of immigrants for apartment rentals, it was protecting the general welfare of the public as well as implementing a federal policy required by HUD.¹²⁸ It is self-evident that a finding that Ordinance 2903 probably violates the Supremacy Clause would reject the suggestion that the ordinance was designed to implement any immigration certifications policies of HUD. It is clear that Congress did not intend for 24 C.F.R. section 5.504's definition section about citizenship and status issues to apply to non-covered housing.¹²⁹ The immigration and citizenship status determinations under 24 C.F.R. section 5.504 were designed to apply to three specific federal programs: (1) the Section 235 Program, (2) the Section 236 Program which

121. *Id.* at 1125.

122. *Id.*

123. *Id.*

124. *Id.*

125. *Lopez*, 2005-0685 (La. App. 4 Cir. 12/20/06); 948 So. 2d at 1125.

126. No. 3:06-CV-2371-L, 2007 WL 1498763, at *1 (N.D. Tex. May 21, 2007).

127. *Id.*

128. *Id.*

129. 24 C.F.R. § 5.504 (2006) ("*Housing covered programs* means the following programs administered by the Assistant Secretary for Housing: (1) Section 235 of the National Housing Act (12 U.S.C. 1715z) (the Section 235 Program); (2) Section 236 of the National Housing Act (12 U.S.C. 1715z-1) (tenants paying below market rent only) (the Section 236 Program); and (3) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (the Rent Supplement Program)").

allows tenants to pay below market rent, and (3) the Section 101 the Rent Supplement Program.¹³⁰ Unlike the definitions of 24 C.F.R. section 5.504, which are designed to enforce federal housing policies for specific federal programs, the goal of Ordinance 2903 is to make immigration eligibility decisions for local purposes only rather than to advance any federal objective.¹³¹ Subsection (2) of Ordinance 2903 requires that prior to entering into any rental agreement for housing that an owner or property owner must determine a prospective tenant's eligible immigration status.¹³² It is obvious that Farmers Branch's eligible immigration status requirement is not limited to those specific programs covered under 24 C.F.R. section 5.504.¹³³ Ordinance 2903 places an affirmative duty on the owner and or property owner to check prospective tenants for evidence of eligible immigration status.¹³⁴ Under section 6 of Ordinance 2903 anyone found guilty of violating the ordinance committed a misdemeanor, was subject to a fine not to exceed \$500, and an independent offense occurred every day that the violation continued to exist.¹³⁵ A temporary restraining order is by definition "a temporary measure to protect rights until a hearing can be held."¹³⁶ The federal district court concluded that the plaintiffs' challenge to Ordinance 2903, as preempted under the Supremacy Clause of the Constitution, had a reasonable likelihood of success on the merits.¹³⁷

In *De Canas v. Bica*, the Supreme Court held that only the federal government may regulate immigration.¹³⁸ The "[p]ower to regulate immigration is unquestionably exclusively a federal power."¹³⁹ In contrast to Farmers Branch, in *De Canas*, California used the state labor code to improve

130. *Id.*

131. *Parkside Partners*, 2007 WL 1498763, at *2.

132. *Id.* at *3 (citing FARMERS BRANCH, TEX., ORDINANCE 2903 § 3(B)(f)(2) (January 22, 2007)).

133. *Id.* at *11.

134. *Id.* at *4 (citing FARMERS BRANCH, TEX., ORDINANCE 2903 § 4).

135. *Id.* (citing FARMERS BRANCH, TEX., ORDINANCE 2903 § 6).

136. *Parkside Partners*, 2007 WL 1498763, at *2.

There are four prerequisites for the extraordinary relief of a temporary restraining order or preliminary injunction. To prevail, a plaintiff must demonstrate (i) a substantial likelihood of success on the merits; (ii) a substantial threat of immediate and irreparable harm for which it has no adequate remedy at law; (iii) that greater injury will result from denying the temporary restraining order than from it being granted; and (iv) that a temporary restraining order will not disserve the public interest The party seeking such relief must satisfy a cumulative burden of proving each of the four elements enumerated before a temporary restraining order or preliminary injunction can be granted.

Id. at *3.

137. *Id.* at *4.

138. 424 U.S. 351, 354 (1976).

139. *Id.*

its economy by embracing federal standards in inflicting criminal penalties against state employers who knowingly hire aliens who do not have a federal right to employment in the United States; even if California's local regulation has some indirect impact on immigration, it is a constitutionally permissible because Congress has the power to authorize the approach taken by California.¹⁴⁰ In *Parkside Partners*, the federal district court properly determined that, by approving Ordinance 2903, Farmers Branch "has not . . . adopted federal . . . regulations, as required by . . . *De Canas* . . . , but rather [the city] has adopted federal housing regulations used to determine noncitizens' eligibility for assistance."¹⁴¹ The court found Ordinance 2903 to be preempted because it constitutes a regulation of immigration, "a regulatory power reserved for the federal government."¹⁴² The fact that undocumented immigrants are the subject of a local regulation does not render the law 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."¹⁴³ I believe that the federal courts should expand the rationale of *De Canas* to hold that a regulation of immigration also occurs when a state or local government attempts to regulate the conditions under which illegal aliens or undocumented immigrants remain in this country. In *Parkside Partners*, the practical effect of the court issuing the temporary restraining order was to deny the city the right to determine by local regulation the conditions under which undocumented immigrants remain in this country.¹⁴⁴

The power to regulate immigration from both a historical and constitutional perspective has been entrusted to the federal government, and local governments should avoid enforcing distinctively local immigration laws.¹⁴⁵ According to Barbara Hines, a clinical-law professor at the University of Texas and director of the University's Immigration Clinic, a temporary restraining order, though temporary and not ultimately determinative on the merits, is an important step.¹⁴⁶ Striking down Ordinance 2903 by means of a preliminary injunction conveys an important signal that similar ordinances are likely to violate the Constitution.¹⁴⁷

Principles of preemption therefore dictate that local governments, including states, may not enact laws hostile to undocumented immigrants.

140. *Id.* at 355–56.

141. *Parkside Partners*, 2007 WL 1498763, at *7.

142. *Id.*

143. *Id.* at *5 (quoting *De Canas*, 424 U.S. at 355).

144. *See id.*

145. *Id.*

146. *Parkside Partners*, 2007 WL 1498763, at *5.

147. *Id.*

Because the “[p]ower to regulate immigration is unquestionably exclusively a federal power,”¹⁴⁸ local governments may not enact and enforce local legislation not authorized by Congress. The Court’s *De Canas* rationale should be interpreted broadly to hold that local regulations of the conditions under which undocumented immigrants remain in the United States are also preempted by federal authority on matters of immigration.

CONCLUSION

I think one can easily conclude that America as a nation is substantially in need of a political and constitutional reality check as to how to use its legal processes to treat undocumented immigrants with moral justice. The court recognized this much in *Parkside Partners*:

The court recognizes that illegal immigration is a major problem in this country, and one who asserts otherwise ignores reality. The court also fully understands the frustration of cities attempting to address a national problem that the federal government should handle; however, such frustration, no matter how great, cannot serve as a basis to pass an ordinance that conflicts with federal law.¹⁴⁹

Until Congress can adequately address the immigration issue, I believe the courts should continue to use the Supremacy Clause to protect undocumented immigrants from hostile legal action by local governmental actors. Applying the suspect class rationale and the Supremacy Clause when addressing issues of undocumented immigration are excellent means to protect those individuals unable to protect themselves in the local political process from local governmental attempts to regulate immigration.

The *Carolene Products* goal of protecting those unable to protect themselves in the political process, when extended to illegal immigrants, prohibits local governmental actors from regulating the conditions in which they remain in this country without congressional approval. Local communities are served well when they are properly advised that the United States Constitution grants the United States Congress the exclusive power to establish uniform rules for regulating immigration.¹⁵⁰ I think federal courts should apply the rationale of *Carolene Products* to the exclusive power of the federal government to regulate immigration to protect illegal immigrants from local regulations designed to determine the conditions under which those illegal or undocumented immigrants remain in this country.

In the framework of immigration, local efforts to regulate immigration by placing hostile burdens exclusively on illegal immigrants who, by definition,

148. *De Canas v. Bica*, 424 U.S. 351, 354 (1976).

149. *Parkside Partners*, 2007 WL 1498763 at *10.

150. U.S. CONST. art. I, § 8, cl. 4.

cannot vote, are appropriately treated as suspect and are preempted by the Supremacy Clause because only Congress has the power to regulate immigration. Until the executive branch of the federal government has the political courage to enforce federal law prohibiting illegal immigration, the federal courts are obligated to protect all immigrants from local laws designed to regulate immigration. When a city establishes exclusively local laws for determining the conditions under which an undocumented immigrant remains in that community it is regulating immigration in violation of the Supremacy Clause.

