

93 S.Ct. 2842
Supreme Court of the United States

Jule M. SUGARMAN, etc., et al., Appellants,
v.
Patrick McL. DOUGALL et al.

No. 71-1222. | Argued Jan. 8, 1973. | Decided June
25, 1973.

Action challenging New York civil service law provision that only citizens may hold permanent positions in the competitive class of the state civil service. A Three-Judge United States District Court for the Southern District of New York, 339 F.Supp. 906, held the provision unconstitutional and appeal was taken. The Supreme Court, Mr. Justice Blackmun, held that such provision violates the Fourteenth Amendment's equal protection guarantee, and the provision could not be sustained on theory that employment of aliens in the career civil service would be inefficient in that state would have expense of training replacements for aliens leaving their positions.

Affirmed.

Mr. Justice Rehnquist filed a dissenting opinion, see 93 S.Ct. 2861.

****2843 *634 Syllabus***

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

Section 53 of the New York Civil Service Law provides that only United States citizens may hold permanent positions in the competitive class of the state civil service. The District Court concluded that the statute was violative of the Fourteenth Amendment and the Supremacy Clause, and granted injunctive relief. Held:

1. Section 53 violates the Equal Protection Clause of the Fourteenth Amendment since, in the context of New York's statutory civil service scheme, it sweeps indiscriminately and is not narrowly limited to the accomplishment of substantial state interests. Pp. 2845-2848.

2. The 'special public interest' doctrine has no applicability in this case. Pp. 2848-2849.

****2844** 3. Nor can the citizenship requirement be justified on the unproved premise that aliens are less permanent employees than citizens, or on other grounds asserted by appellants. Pp. 2849-2850.

4. While the State has an interest in defining its political community, and in corresponding interest in establishing the qualifications for persons holding state elective or important nonelective executive, legislative, and judicial positions, the broad citizenship requirement established by s 53 cannot be justified on this basis. Pp. 2850-2851.

339 F.Supp. 906, affirmed.

Attorneys and Law Firms

Samuel A. Hirshowitz, New York City, for appellants.

***635** Lester Evens, New York City, for appellees.

Opinion

Mr. Justice BLACKMUN delivered the opinion of the Court.

Section 53(1) of the New York Civil Service Law reads: 'Except as herein otherwise provided, no person shall be eligible for appointment for any position in the competitive class unless he is a citizen of the United States.'¹

¹ The restriction has its statutory source in Laws of New York, 1939, c. 767, s 1. We are advised that the legislation was declarative of an administrative practice that had existed for many years. Tr. of Oral Arg. 43, 45. Section 53(2) of N.Y.Civ.Serv.Law (Supp.1972-1973) makes a temporary exception to the citizenship requirement:

'2. Notwithstanding any of the provisions of this chapter or of any other law, whenever a department head or appointing authority deems that an acute shortage of employees exists in any particular class or classes of positions by reason of a lack of a sufficient number of qualified personnel available for recruitment, he may present evidence thereof to the state or municipal civil service commission having jurisdiction which, after due inquiry, may determine the existence of such shortage and waive the citizenship requirement for appointment to such class or classes of positions. The state commission or such municipal commission, as the case may be, shall annually review each such waiver of the citizenship requirement, and shall revoke any such waiver whenever it finds that a shortage no longer exists. A non-citizen appointed pursuant to the provisions of this section shall not be eligible for continued employment unless he diligently

prosecutes the procedures for citizenship.’

It is to be observed that an appointment under this exception permits the alien to continue his employment only until, or annual review, it is deemed that ‘a shortage no longer exists.’ And, in any event, the alien ‘shall not be eligible for continued employment unless he diligently prosecutes the procedures for citizenship.’

636** The four appellees, Patrick McL. Dougall, Esperanza Jorge, Teresa Vargas, and Sylvia Castro, are federally registered resident aliens. When, because of their alienage, they were discharged in 1971 from their competitive civil service positions with the city of New York, the appellees instituted this class action challenging the constitutionality of s 53. The named defendants, and appellants here, were the Administrator of the city’s Human Resources Administration (HRA), and the city’s Director of Personnel and Chairman of its Civil Service Commission. The appellees sought (1) a declaration that the statute was invalid under the First and Fourteenth Amendments, (2) injunctive relief against any refusal, on the ground of alienage, to appoint and employ the appellees, and all persons similarly situated, in civil service positions in the competitive class, and (3) damages for lost earnings. A defense motion to dismiss for want of jurisdiction was denied by Judge Tenney, 330 F.Supp. 265 (SDNY 1971). A three-judge court was convened. That court ruled that the statute was violative of the Fourteenth Amendment and the Supremacy Clause, and granted injunctive relief. 339 F.Supp. 906 (SDNY 1971).² Judge Lumbard joined the *2845** court’s opinion and judgment, but wrote separately in concurrence. *Id.*, at 911. Probable jurisdiction was noted. 407 U.S. 908, 92 S.Ct. 2434, 32 L.Ed.2d 682 (1972).

² The court found jurisdiction in the Civil Rights Statutes, 28 U.S.C. s 1343(3) and (4). 339 F.Supp. 906, 907 n. 5. It held that the suit was properly maintainable as a class action and defined the class as consisting of ‘all permanent resident aliens residing in New York State who, but for the enforcement of Section 53, would otherwise be eligible to compete for employment in the competitive class of Civil Service.’ *Id.*, at 907 n. 4.

***637 I**

Prior to December 28, 1970, the appellees were employed by nonprofit organizations that received funds through HRA from the United States Office of Economic Opportunity. These supportive funds ceased to be available about that time and the organizations, with approximately 450 employees, including the appellees

and 16 other noncitizens, were absorbed by the Manpower Career and Development Agency (MCDA) of HRA.³ The appellant Administrator advised the transferees that they would be employed by the city.⁴ The appellees in fact were so employed in MCDA. In February, however, they were informed that they were ineligible for employment by the city and that they would be dismissed under the statutory mandate of s 53(1). Shortly thereafter, they were discharged from MCDA solely because of their alienage.⁵

³ Affidavit of Harold O. Basden, Director of Personnel of the Human Resources Administration, App. 31-33.

⁴ Section 45 of the New York Civil Service Law, applicable to employees of a private institution acquired by the State or a public agency, contains a restriction, similar to that in s 53(1), against the employment of an alien in a position classified in the competitive class.

⁵ The appellants in their answer alleged that appellee Castro was terminated for the additional reason that she lacked sufficient experience to qualify for the position of senior human resources technician. App. 49. The three-judge court in its order, App. 93, excluded appellee Castro from the recognized class. That exclusion is not contested here.

Appellee Dougall was born in Georgetown, Guyana, in September 1927. He has been a resident of New York City since 1964. He was employed by MCDA as an administrative assistant in the staff Development Unit.

Appellee Jorge was born in November 1948 in the Dominican Republic. She has been a resident of New ***638** York City since 1967. She was employed by the Puerto Rican Forum as a clerk-typist and, later, as a human resources technician. She worked in the latter capacity for MCDA.

Appellee Vargas was born in the Dominican Republic in June 1946. She has been a resident of New York City since 1963. She worked as a clerk-typist for the Puerto Rican Forum and in the same capacity for MCDA.

Appellee Castro was born in El Salvador in June 1944. She has resided in New York City since 1967. She was employed by the Puerto Rican Forum as an assistant counselor and then as a human resources technician and worked in the latter capacity for MCDA.

The record does not disclose that any of the four appellees ever took any step to attain United States citizenship.

The District Court, in reaching its conclusion that s 53 was unconstitutional under the Fourteenth Amendment, placed primary reliance on this Court's decisions in *Graham v. Richardson*, 403 U.S. 365, 91 S.Ct. 1848, 29 L.Ed.2d 534 (1971), and *Takahashi v. Fish Comm'n*, 334 U.S. 410, 68 S.Ct. 1138, 92 L.Ed. 1478 (1948), and, to an extent, on *Purdy & Fitzpatrick v. State*, 71 Cal.2d 566, 79 Cal.Rptr. 77, 456 P.2d 645 (1969). On the basis of these cases, the court also concluded that s 53 was in conflict with Congress' comprehensive regulation of immigration and naturalization because, in effect, it denied appellees entrance to, and abode in, New York. Accordingly, ****2846** the court held, s 53 encroached upon an exclusive federal power and was constitutionally impermissible under Art. VI, cl. 2, of the Constitution.

II

As is so often the case, it is important at the outset to define the precise and narrow issue that is here presented. The Court is faced only with the question ***639** whether New York's flat statutory prohibition against the employment of aliens in the competitive classified civil service is constitutionally valid. The Court is not asked to decide whether a particular alien, any more than a particular citizen, may be refused employment or discharged on an individual basis for whatever legitimate reason the State might possess.

Neither is the Court reviewing a legislative scheme that bars some or all aliens from closely defined and limited classes of public employment on a uniform and consistent basis. The New York scheme, instead, is indiscriminate. The general standard is enunciated in the State's Constitution, Art. V, s 6, and is to the effect that appointments and promotions in the civil service 'shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive.' In line with this rather flexible constitutional measure, the classified service is divided by statute into four classes. New York Civil Service Law s 40. The first is the exempt class. It includes, generally, the higher offices in the state executive departments, certain municipal officers, certain judicial employees, and positions for which a competitive or noncompetitive examination may be found to be impracticable. The exempt class contains no citizenship restriction whatsoever. s 41. The second is the noncompetitive class. This includes positions, not otherwise classified, for which a noncompetitive examination would be practicable. There is no citizenship requirement. s 42. The third is the labor class. This includes unskilled laborers holding positions for which competitive examinations would be impracticable. No alienage exclusion is imposed. s 43. The fourth is the

competitive class with which we are here concerned. This includes all positions for which it is practicable to determine merit and fitness by a competitive examination. ***640** s 44. Only citizens of the United States may hold positions in this class. s 53. The limits of these several classes, particularly the competitive class from which the appellees were deemed to be disqualified, are not readily defined. It would appear, however, that, consistent with the broad scope of the cited constitutional provision, the competitive class reaches various positions in nearly the full range of work tasks, that is, all the way from the menial to the policy making.

Apart from the classified civil service, New York has an unclassified service. s 35. This includes, among others, all elective offices, offices filled by legislative appointment, employees of the legislature, various offices filled by the Governor, and teachers. No citizenship requirement is present there.

Other constitutional and statutory citizenship requirements round out the New York scheme. The constitution of the State provides that voters, Art. II, s 1, members of the legislature, Art. III, s 7, the Governor and Lieutenant-Governor, Art. IV, s 2, and the Comptroller and Attorney-General, Art. V, s 1, are to be United States citizens. And Public Officers Law s 3 requires that any person holding 'a civil office' be a citizen of the United States. A 'civil office' is apparently one that 'possesses any of the attributes of a public officer or . . . involve(s) some portion of the sovereign (sic) power.' 1967 Op.N.Y.Atty.Gen. 60; *New York Post Corp. v. Moses*, 12 A.D.2d 243, 250, 210 N.Y.S.2d 88, 95, rev'd on other grounds, 10 N.Y.2d 199, 219 N.Y.S.2d 7, 176 N.E.2d 709 (1961).

We thus have constitutional provisions and a number of statutes that, together, constitute New York's scheme for the ****2847** exclusion of aliens from public employment. The present case concerns only s 53 of the Civil Service Law. The section's constitutionality, however, is to be judged in the context of the State's broad statutory framework and the justifications the State presents.

***641 III**

^[1] It is established, of course, that an alien is entitled to the shelter of the Equal Protection Clause. *Graham v. Richardson*, 403 U.S. 365, 371, 91 S.Ct. 1848, 1851, 29 L.Ed.2d 534 (1971); *Truax v. Raich*, 239 U.S. 33, 39, 36 S.Ct. 7, 9, 60 L.Ed. 131 (1915); *Wong Wing v. United States*, 163 U.S. 228, 238, 16 S.Ct. 977, 981, 41 L.Ed. 140 (1896); *Yick Wo v. Hopkins*, 118 U.S. 356, 369, 6 S.Ct. 1064, 1070, 30 L.Ed. 220 (1886). See *In re Griffiths*, 413 U.S. 717, 93 S.Ct. 2851, 37 L.Ed.2d 910. This protection extends, specifically, in the words of Mr. Justice Hughes,

to aliens who ‘work for a living in the common occupations of the community.’ *Truax v. Raich*, 239 U.S., at 41, 36 S.Ct., at 10.

A. Appellants argue, however, that s 53 does not violate the equal protection guarantee of the Fourteenth Amendment because the statute ‘establishes a generic classification reflecting the special requirements of public employment in the career civil service.’⁶ The distinction drawn between the citizen and the alien, it is said, ‘rests on the fundamental concept of identity between a government and the members, or citizens, of the state.’⁷ The civil servant ‘participates directly in the formulation and execution of government policy,’ and thus must be free of competing obligations to another power.⁸ The State’s interest in having an employee of undivided loyalty is substantial, for obligations attendant upon foreign citizenship ‘might impair the exercise of his judgment or jeopardize public confidence in his objectivity.’⁹ Emphasis is placed on our decision in *United Public Workers v. Mitchell*, 330 U.S. 75, 67 S.Ct. 556, 91 L.Ed. 754 (1947), upholding the Hatch Act and its proscription of political activity by certain public employees, and it is said that the public employer ‘has broad discretion to establish qualifications *642 for its employees related to the integrity and efficiency of the operations of government.’¹⁰

⁶ Brief for Appellants 17.

⁷ *Id.*, at 22.

⁸ *Id.*, at 23.

⁹ *Ibid.*

¹⁰ *Id.*, at 13.

It is at once apparent, however, that appellants’ asserted justification proves both too much and too little. As the above outline of the New York scheme reveals, the State’s broad prohibition of the employment of aliens applies to many positions with respect to which the State’s proffered justification has little, if any, relationship. At the same time, the prohibition has no application at all to positions that would seem naturally to fall within the State’s asserted purpose. Our standard of review of statutes that treat aliens differently from citizens requires a greater degree of precision.

In *Graham v. Richardson*, 403 U.S., at 372, 91 S.Ct., at 1852, we observed that aliens as a class ‘are a prima example of a ‘discrete and insular’ minority (see *United States v. Carolene Products Co.*, 304 U.S. 144, 152-153, n. 4, 58 S.Ct. 778, 783-784, 82 L.Ed. 1234 (1938)),’ and that classifications based on alienage are ‘subject to close judicial scrutiny.’ And as long as a quarter century ago we held that the State’s power ‘to apply its laws exclusively to its alien inhabitants as a class is confined within narrow limits.’ *Takahashi v. Fish Comm’n*, 334 U.S., at 420, 68 S.Ct., at 1143. We therefore look to the substantiality of the State’s interest in enforcing the statute in question, and to the narrowness of the limits within which the discrimination is confined.

****2848** ^[2] Applying this standard to New York’s purpose in confining civil servants in the competitive class to those persons who have no ties of citizenship elsewhere, s 53 does not withstand the necessary close scrutiny. We recognize a State’s interest in establishing its own form of government, and in limiting participation in that government to those who are within ‘the basic conception of a political community.’ *643 *Dunn v. Blumstein*, 405 U.S. 330, 344, 92 S.Ct. 995, 1004, 31 L.Ed.2d 274 (1972). We recognize, too, the State’s broad power to define its political community. But in seeking to achieve this substantial purpose, with discrimination against aliens, the means the State employs must be precisely drawn in light of the acknowledged purpose.

^[3] Section 53 is neither narrowly confined nor precise in its application. Its imposed ineligibility may apply to the ‘sanitation man, class B,’ *Perotta v. Gregory*, 4 Misc.2d 769, 158 N.Y.S.2d 221 (1957), to the typist, and to the office worker, as well as to the person who directly participates in the formulation and execution of important state policy. The citizenship restriction sweeps indiscriminately. Viewing the entire constitutional and statutory framework in the light of the State’s asserted interest, the great breadth of the requirement is even more evident. Sections 35 and 41 of the Civil Service Law, relating generally to persons holding elective and high appointive offices, contain no citizenship restrictions. Indeed, even s 53 permits an alien to hold a classified civil service position under certain circumstances. In view of the breadth and imprecision of s 53 in the context of the State’s interest, we conclude that the statute does not withstand close judicial scrutiny.

B. Appellants further contend, however, that the State’s legitimate interest is greater than simply limiting to citizens those high public offices that have to do with the formulation and execution of state policy. Understandably relying on this Court’s decisions in *Crane v. New York*, 239 U.S. 195, 36 S.Ct. 85, 60 L.Ed. 218 (1915), *Heim v. McCall*, 239 U.S. 175, 36 S.Ct. 78, 60 L.Ed. 206 (1915), and *Ohio ex rel. Clarke v. Deckebach*, 274 U.S. 392, 47 S.Ct. 630, 71 L.Ed. 1115 (1927), appellants argue that a

State constitutionally may confine public employment to citizens. Mr. Justice (then Judge) Cardozo accepted this ‘special public interest’ argument because of the State’s concern with ‘the restriction of the resources of the state.’ *People v. Crane*, 214 N.Y. 154, 161, 108 N.E. 427, 429 aff’d, 239 U.S. 195, 36 S.Ct. 85, 60 L.Ed. 218 (1915). We rejected that approach, however, in the context of public assistance in *Graham*, where it was observed that ‘the special public interest doctrine was heavily grounded on the notion that ‘(w)hatever is a privilege, rather than a right, may be made dependent upon citizenship.’ *People v. Crane* . . . But this Court now has rejected the concept that constitutional rights turn upon whether a governmental benefit is characterized as a ‘right’ or as a ‘privilege.’ 403 U.S., at 374, 91 S.Ct., at 1853. See also *Sherbert v. Verner*, 374 U.S. 398, 404, 83 S.Ct. 1790, 1794, 10 L.Ed.2d 965 (1963); *Shapiro v. Thompson*, 394 U.S. 618, 627 n. 6, 89 S.Ct. 1322, 1327, 22 L.Ed.2d 600 (1969); *Goldberg v. Kelly*, 397 U.S. 254, 262, 90 S.Ct. 1011, 1017, 25 L.Ed.2d 287 (1970); *Bell v. Burson*, 402 U.S. 535, 539, 91 S.Ct. 1586, 1589, 29 L.Ed.2d 90 (1971).

Appellants argue that our rejection of the special-public-interest doctrine in a public assistance case does not require its rejection here. That the doctrine has particular applicability with regard to public employment is demonstrated, according to appellants, by the decisions in *Crane* and *Heim* that upheld, under Fourteenth Amendment challenge, those provisions of the New York Labor Law that confined employment on public ****2849** works to citizens of the United States.¹¹ See M. Konvitz, *The Alien and the Asiatic in American Law*, c. 6 (1946).

¹¹ In the past, the Court has invoked the special-public-interest doctrine to uphold statutes that, in the absence of overriding treaties, limit the right of noncitizens to exploit a State’s natural resources, *McCready v. Virginia*, 94 U.S. 391, 24 L.Ed. 248 (1877), *Patsone v. Pennsylvania*, 232 U.S. 138, 34 S.Ct. 281, 58 L.Ed. 539 (1914); to inherit real property, *Hauenstein v. Lynham*, 100 U.S. 483, 25 L.Ed. 628 (1880), *Blythe v. Hinckley*, 180 U.S. 333, 21 S.Ct. 390, 45 L.Ed. 557 (1901); and to acquire and own land, *Terrace v. Thompson*, 263 U.S. 197, 44 S.Ct. 15, 68 L.Ed. 255 (1923), *Porterfield v. Webb*, 263 U.S. 225, 44 S.Ct. 21, 68 L.Ed. 278 (1923), *Webb v. O’Brien*, 263 U.S. 313, 44 S.Ct. 112, 68 L.Ed. 318 (1923), *Frick v. Webb*, 263 U.S. 326, 44 S.Ct. 115, 68 L.Ed. 323 (1923); but see *Oyama v. California*, 332 U.S. 633, 68 S.Ct. 269, 92 L.Ed. 249 (1948).

***645** ¹⁴ We perceive no basis for holding the special-public-interest doctrine inapplicable in *Graham* and yet applicable and controlling here. A resident alien may reside lawfully in New York for a long period of time. He must pay taxes. And he is subject to service in this country’s Armed Forces. 50 U.S.C.App. s 454(a). See

Astrup v. Immigration Service, 402 U.S. 509, 91 S.Ct. 1583, 29 L.Ed.2d 68 (1971). The doctrine, rooted as it is in the concepts of privilege and of the desirability of confining the use of public resources, has no applicability in this case. To the extent that *Crane*, *Heim*, and *Clarke* intimate otherwise, they were weakened by the decisions in *Takahashi* and *Graham*, and are not to be considered as controlling here.

¹⁵ C. The State would tender other justifications for s 53’s bar to employment of aliens in the competitive civil service. It is said that career civil service is intended for the long-term employee, and that the alien, who is subject to deportation and, as well, to conscription by his own country, is likely to remain only temporarily in a civil service position. We fully agree with the District Court’s response to this contention:

‘There is no offer of proof on this issue and (appellants) would be hard pressed to demonstrate that a permanent resident alien who has resided in New York or the surrounding area for a number of years, as have (appellees), and whose family also resides here, would be a poorer risk for a career position in New York . . . than an American citizen who, prior to his employment with the City or State, had been residing in another state.’ 339 F.Supp., at 909.

Appellants further assert that employment of aliens in the career civil service would be inefficient, for when aliens eventually leave their positions, the State will ***646** have the expense of hiring and training replacements. Even if we could accept the premise underlying this argument—that aliens are more likely to leave their work than citizens—and assuming that this rationale could be logically confined to the classified competitive civil service, the State’s suggestion does not withstand examination. As we stated in *Graham*, noting the general identity of an alien’s obligations with those of a citizen, the “justification of limiting expenses is particularly inappropriate and unreasonable when the discriminated class consists of aliens.” 403 U.S., at 376, 91 S.Ct. at 1854.

We hold that s 53, which denies all aliens the right to hold positions in New York’s classified competitive civil service, violates the Fourteenth Amendment’s equal protection guarantee.¹²

¹² We are aware that citizenship requirements are imposed in certain aspects of the federal service. See 5 U.S.C. s 3301; Exec. Order No. 10577, 19 Fed.Reg. 7521, s 2.1 (1954); 5 CFR ss 338.101, 302.203(g) (1973); and, for example, Treasury, Postal Service, and General Government Appropriation Act, 1972, s 602, Pub.L. 92-49, 85 Stat. 122, and Public Works Appropriations Act, 1971, s 502, Pub.L. 91-439, 84 Stat. 902. In deciding the present case, we intimate no view as to whether these federal citizenship requirements are or

are not susceptible of constitutional challenge. See *Jalil v. Hampton*, 148 U.S.App.D.C. 415, 460 F.2d 923, cert. denied, 409 U.S. 887, 93 S.Ct. 112, 34 L.Ed.2d 144 (1972); Comment, *Aliens and the Civil Service: A Closed Door?*, 61 Geo.L.J. 207 (1972).

****2850** Because of this conclusion, we need not reach the issue whether the citizenship restriction is in conflict with Congress' comprehensive regulation of immigration and naturalization. See *Graham v. Richardson*, 403 U.S., at 376-380, 91 S.Ct. at 1854-1856.

IV

^[6] While we rule that s 53 is unconstitutional, we do not hold that, on the basis of an individualized determination, an alien may not be refused, or discharged from, ***647** public employment, even on the basis of noncitizenship, if the refusal to hire, or the discharge, rests on legitimate state interests that relate to qualifications for a particular position or to the characteristics of the employee. We hold only that a flat ban on the employment of aliens in positions that have little, if any relation to a State's legitimate interest, cannot withstand scrutiny under the Fourteenth Amendment.

Neither do we hold that a State may not, in an appropriately defined class of positions, require citizenship as a qualification for office. Just as 'the Framers of the Constitution intended the States to keep for themselves, as provided in the Tenth Amendment, the power to regulate elections,' *Oregon v. Mitchell*, 400 U.S. 112, 124-125, 91 S.Ct. 260, 263, 27 L.Ed.2d 272 (1970) (footnote omitted) (opinion of Black, J.); see *id.*, at 201, 91 S.Ct. at 303 (opinion of Harlan, J.), and *id.*, at 293-294, 91 S.Ct. at 348-349 (opinion of Stewart, J.), '(e)ach State has the power to prescribe the qualifications of its officers and the manner in which they shall be chosen.' *Boyd v. Thayer*, 143 U.S. 135, 161, 12 S.Ct. 375, 382, 36 L.Ed. 103 (1892). See *Luther v. Borden*, 7 How. 1, 41, 12 L.Ed. 581 (1849); *Pope v. Williams*, 193 U.S. 621, 632-633, 24 S.Ct. 573, 575, 48 L.Ed. 817 (1904). Such power inheres in the State by virtue of its obligation, already noted above, 'to preserve the basic conception of a political community.' *Dunn v. Blumstein*, 405 U.S., at 344, 92 S.Ct., at 1004. And this power and responsibility of the State applies, not only to the qualifications of voters, but also to persons holding state elective or important nonelective executive, legislative, and judicial positions, for officers who participate directly in the formulation, execution, or review of broad public policy perform functions that go to the heart of representative government. There, as Judge Lumbard phrased it in his

separate concurrence, is 'where citizenship bears some rational relationship to the special demands of the particular position.' 339 F.Supp., at 911.

648** ^[7] We have held, of course, that such state action, particularly with respect to voter qualifications is not wholly immune from scrutiny under the Equal Protection Clause. See, for example, *Kramer v. Union School District*, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed.2d 583 (1969). But our scrutiny will not be so demanding where we deal with matters resting firmly within a State's constitutional prerogatives. *Id.*, at 625, 89 S.Ct., at 1888; *Carrington v. Rash*, 380 U.S. 89, 91, 85 S.Ct. 775, 777, 13 L.Ed.2d 675 (1965). This is no more than a recognition of a State's historical power to exclude aliens from participation in its democratic political institutions, *Pope v. Williams*, 193 U.S., at 632-634, 24 S.Ct., at 575-576; *Boyd v. Thayer*, 143 U.S., at 161, 12 S.Ct., at 381, and a recognition of a State's constitutional responsibility for the establishment and operation of its own government, as well *2851** as the qualifications of an appropriately designated class of public office holders.¹³ U.S.Const. Art. IV, s 4; U.S.Const. Amdt. X; *Luther v. Borden*, *supra*; see *In re Duncan*, 139 U.S. 449, 461, 11 S.Ct. 573, 577, 35 L.Ed. 219 (1891). This Court has never held that aliens have a constitutional right to vote or to hold high public office under the Equal ***649** Protection Clause. Indeed, implicit in many of this Court's voting rights decisions is the notion that citizenship is a permissible criterion for limiting such rights. *Kramer v. Union School District*, 395 U.S., at 625, 89 S.Ct., at 1888; *Reynolds v. Sims*, 377 U.S. 533, 567, 568, 84 S.Ct. 1362, 1384, 12 L.Ed.2d 506 (1964); *Harper v. Virginia Board of Elections*, 383 U.S. 663, 666-667, 86 S.Ct. 1079, 1081, 16 L.Ed.2d 169 (1966); *Carrington v. Rash*, 380 U.S., at 91, 93-94, 96, 85 S.Ct., at 777-779; *Lassiter v. Northampton Election Board*, 360 U.S. 45, 50-51, 79 S.Ct. 985, 989, 3 L.Ed.2d 1072 (1959); *Mason v. Missouri*, 179 U.S. 328, 335, 21 S.Ct. 125, 128, 45 L.Ed. 214 (1900). A restriction on the employment of noncitizens, narrowly confined, could have particular relevance to this important state responsibility, for alienage itself is a factor that reasonably could be employed in defining 'political community.'

¹³ In congressional debates leading to the adoption of the Fourteenth Amendment, there is clear evidence that Congress not only knew that as a matter of local practice aliens had not been granted the right to vote, but that under the amendment they did not receive a constitutional right of suffrage or a constitutional right to participate in the political process of state government, and that, indeed, the right to vote and the concomitant right of participation in the political process were matters of local law. Cong. Globe, 39th Cong., 1st Sess., 141-142, 2766-2767 (1866).

It is noteworthy, as well, that the 40th Congress considered and very nearly proposed a version of the Fifteenth Amendment that expressly would have

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prohibited discriminatory qualifications not only for voting but also for holding office. The provision was struck in conference. It is evident from the debate that, for whatever motive, its opponents wanted the States to retain control over the qualifications for office. Cong. Globe, 40th Cong., 3d Sess., at 1425-1426, 1623-1633 (1869). And, of course, the Fifteenth Amendment applies by its terms only to 'citizens.'

The judgment of the District Court is affirmed.

Affirmed.

Parallel Citations

93 S.Ct. 2842, 5 Fair Empl.Prac.Cas. (BNA) 1152, 6 Empl. Prac. Dec. P 8682, 37 L.Ed.2d 853