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# CONSTITUTIONAL LAW-VALIDITY OF MARKETING PROGRAM ESTABLISHED UNDER THE CALIFORNIA AGRICULTURAL PRORATE ACT

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CONSTITUTIONAL LAW — VALIDITY OF MARKETING PROGRAM ESTABLISHED UNDER THE CALIFORNIA AGRICULTURAL PRORATE ACT — Appellee, a producer and packer of raisins in California, alleging that enforcement of the proration marketing agreement established under the California Agricultural Prorate Act [1] would prevent him from fulfilling sales contracts and from purchasing for sale and selling raisins in interstate commerce, brought suit in the district court to enjoin enforcement of the program for marketing the 1940 raisin crop. The marketing program was challenged as in violation of the Sherman Antitrust Act [2] and the commerce clause of the United States Con-

[1] Cal. Gen. Laws (Deering, Supp. 1941), Act 143a (Stat. 1933, p. 1969, as amended by Stat. 1935, pp. 1526, 2087; Stat. Ex. Sess. 1938, p. 39; Stat. 1939, pp. 1702, 1947, 2485; Stat. 1941, pp. 2050, 2858, 2943). The act provides that upon petition of ten producers for the establishment of a marketing plan for any commodity within a defined production zone [§ 8] and after public hearing [§ 9] and prescribed findings that such a program will prevent economic waste and conserve the agricultural wealth of the state without permitting unreasonable profits to producers [§ 10], the Director of Agriculture shall select a program committee from nominees chosen by producers to which he may add not more than two handlers or packers [§§ 11, 14, 15]. The proration marketing program is formulated by the program committee [§ 15] and must be approved by 65% in number of producers within the zone owning 51% of acreage devoted to production of the commodity [§ 16]. The proration program for raisins involved in the principal case provided that 70% of the producer's raisins should be placed in "pools" to be disposed of by the program committee; the remaining 30%—"free tonnage"—could be marketed by the producer through ordinary trade channels providing he obtained a certificate and paid a fee for each ton covered by the certificate. The California Supreme Court sustained the constitutionality of the act in Agricultural Prorate Commission v. Superior Court, 5 Cal. (2d) 550, 55 P. (2d) 495 (1936).

[2] 26 Stat. L. 209 (1890), as amended by 50 Stat. L. 693 (1937), 15 U. S. C. (1940), § 1.

stitution and as in conflict with and superseded by the Federal Agricultural Marketing Agreement Act of 1937.[3] The district court granted the injunction,[4] holding that the effect of the marketing program was to place a controlled embargo on California raisin production and on the supply of raisins in interstate trade channels,[5] thus constituting a direct and illegal interference with interstate commerce. *Held*, on appeal, the California prorate program for the 1940 raisin crop is not rendered invalid by the Sherman Act,[6] the Agricultural Marketing Agreement Act of 1937, or the commerce clause of the federal Constitution. *Parker v. Brown*, (U. S. 1943) 63 S. Ct. 307.

The Court found that the Agricultural Marketing Agreement Act of 1937 does not represent such an occupation of the legislative field by the federal government as to preclude operation of the state act. If Congress acts in the exercise of its commerce power, making clear its intent to occupy the field exclusively, state action conflicting with federal legislation is invalid; but if the prohibition of state action is not express but must be inferred from the scope and objective of federal legislation, state acts are not to be invalidated unless there is a clear case of conflict.[7] To determine whether or not such conflict exists

[3] 50 Stat. L. 246 (1937), 7 U. S. C. (1940), § 601 et seq. After oral argument on appeal, the Supreme Court restored the cause to the docket for reargument, requesting counsel to discuss whether the state statute was rendered invalid by the action of Congress in passing the Sherman Act, the Agricultural Adjustment Act, or any other act of Congress. Parker v. Brown, (U. S. 1942) 62 S. Ct. 1266.

[4] Brown v. Parker, (D. C. Cal. 1941) 39 F. Supp. 895. The opinion of the district court was confined to the interstate commerce question. See note 3, supra.

[5] The district court found that almost all the raisins consumed in the United States are produced in the proration zone involved in the principal case and that between 90 and 95 % of the raisins grown in California are shipped in interstate or foreign commerce. Principal case, 63 S. Ct. 307 at 310 (1943).

[6] The Court found that the purpose of the Sherman Antitrust Act, as indicated by its legislative history and by its language, was not to restrain state action, but to suppress combinations to restrain competition by individuals and corporations. Apex Hosiery Co. v. Leader, 310 U. S. 469, 60 S. Ct. 982 (1940); Standard Oil Co. of New Jersey v. United States, 221 U. S. 1, 31 S. Ct. 502 (1911); United States v. Addyston Pipe & Steel Co., (C. C. A. 6th, 1898) 85 F. 271, affd. 175 U. S. 211, 20 S. Ct. 96 (1899). The prorate program does not operate by force of agreement or combination by individuals or corporations; but rather the state, operating through the Prorate Advisory Commission, adopts and enforces the program in the execution of a state governmental policy. The state makes no contract and enters into no combination or conspiracy in restraint of trade against which the Sherman Act was directed. This aspect of the case will not be discussed further.

[7] Cloverleaf Butter Co. v. Patterson, 315 U. S. 148, 62 S. Ct. 491 (1942); Maurer v. Hamilton, 309 U. S. 598, 60 S. Ct. 726 (1940); Welch Co. v. New Hampshire, 306 U. S. 79, 59 S. Ct. 438 (1939); Kelly v. Washington ex rel. Foss, 302 U. S. 1, 58 S. Ct. 87 (1937); Townsend v. Yeomans, 301 U. S. 441, 57 S. Ct. 842 (1937); Hartford Accident & Indemnity Co. v. Illinois ex rel. McLaughlin, 298 U. S. 155, 56 S. Ct. 685 (1936); Mintz v. Baldwin, 289 U. S. 346, 53 S. Ct. 611 (1933); Atchison, T. & S. F. R. R. v. Railroad Commission of California, 283 U. S. 381, 51 S. Ct. 553 (1930); Lehigh Valley R. R. v. Public Utility Commissioners, 278 U. S. 24, 49 S. Ct. 69 (1928); Oregon-Washington R. & Nav. Co. v. Washington, 270 U. S. 87, 46 S. Ct. 279 (1926); Carey v. South Dakota, 250 U. S.

"the Court must take affirmative congressional legislation by the four corners, study it, and decide whether it forecloses all state action."[8] Examination of the whole structure of the federal act indicated to the Court that Congress contemplated that its purposes might be achieved by a state program either with or without issuance of a federal program by the Secretary of Agriculture.[9] The federal act is effective only if the Secretary of Agriculture orders a program,[10] and since the secretary had taken none of the statutory steps with respect to issuance of an order regulating the marketing of raisins, the Court argued that the secretary did not believe such an order would tend to effectuate the policy of the act. Moreover, the federal act authorizes the secretary to confer and co-operate with state authorities to effectuate the policy of the act;[11] and the absence of conflict between the two statutes is further indicated by the facts that officials of the Department of Agriculture co-operated with state officials in drafting the 1940 state raisin marketing program and that the Department of Agriculture gave approval to the state program by a loan agreement between the state and the Commodity Credit Corporation, the loans being conditional upon adoption of the marketing program at issue. There would thus appear to be no clear case of conflict between the two acts and no such occupation of the field by the federal government, through the mere adoption of the Agricultural Marketing Agreement Act without any issuance of an order by the secretary, as to preclude the state from acting.[12] Since approximately ninety-five per cent of the California raisin crop is marketed in interstate commerce,[13] the marketing program, involving restraints on sale and marketing of raisins to

118, 39 S. Ct. 403 (1919); Illinois Central R. R. v. Public Utility Commission, 245 U. S. 493, 38 S. Ct. 170 (1918); Atlantic Coast R. R. v. Georgia, 234 U. S. 280, 34 S. Ct. 829 (1914); Savage v. Jones, 225 U. S. 501, 32 S. Ct. 715 (1912).

[8] Braden, "Umpire to the Federal System," 10 UNIV. CHI. L. REV. 27 at 30 (1942).

[9] "... The only suggested possibility of conflict is between the declared purpose of the two acts. The object of the federal statute is stated to be the establishment ... of 'orderly marketing conditions for agricultural commodities in interstate commerce' such as will tend to establish 'parity prices' for farm products. ... The declared objective of the California Act is to prevent excessive supplies of agricultural commodities from 'adversely affecting the market' .... the evident purpose and effect of the regulation is to 'conserve the agricultural wealth of the State' by raising and maintaining prices, but 'without permitting unreasonable profits to the producers.' The only possibility of conflict would seem to be, if a State program were to raise prices beyond the parity price prescribed by the Federal Act, a condition which has not occurred." Principal case, 63 S. Ct. 307 at 315-316.

[10] The Agricultural Marketing Agreement Act provides that when the Secretary of Agriculture has reason to believe that the policy of the act will be effectuated by the issuance of an order, after notice and hearing he shall issue the order. 7 U. S. C. (1940), § 608.

[11] 7 U. S. C. (1940), § 610 (i).

[12] "We have no occasion to decide whether the same conclusion would follow if the state program had not been adopted with the collaboration of officials of the Department of Agriculture and aided by loans from the Commodity Credit Corporation recommended by the Secretary of Agriculture." Principal case, 63 S. Ct. 307 at 317.

[13] Principal case, 63 S. Ct. 307 at 310.

buyers who ship out of the state, has a substantial effect on interstate commerce.

The principal case presented the question whether, in the absence of congressional legislation in conflict with the state program, these restrictions, imposed upon sales of raisins within the state by producers to packers who process the product before packing and shipping it in interstate commerce, are in contravention of the commerce clause of the federal Constitution. The Court found the marketing regulation a valid exercise of state power not in contravention of the commerce clause on two grounds: (1) the transactions to which the regulation applies are wholly intrastate before the product is ready for shipment interstate, and (2) the program is a regulation of a matter of local concern which does not impair national control over interstate commerce "in a manner or to a degree forbidden by the Constitution."

In determining the validity of state tax and regulatory measures, the Court has often resorted to a mechanical test to decide when interstate commerce begins and ends, holding that manufacture is not interstate commerce so as to be immune from taxation or regulation.[14] Recent cases involving federal legislation [15] have rejected the concept of the separability of production or manufacture and the commerce in which it results, but apparently the concept still has some vitality in determining the validity of state legislation. On the basis of this distinction, state regulation of manufacture has been upheld where, directed at a matter of local concern, it has resulted in material reduction or even complete prevention of commerce in the regulated product; [16] likewise state licens-

[14] "... manufacture is not commerce. . . . And the fact, of itself, that an article when in the process of manufacture is intended for export to another state does not render it an article of interstate commerce." Crescent Cotton Oil Co. v. Mississippi, 257 U. S. 129 at 136, 42 S. Ct. 42 (1921). To the same effect, Bayside Fish Flour Co. v. Gentry, 297 U. S. 422, 56 S. Ct. 513 (1936); Federal Compress & Warehouse Co. v. McLean, 291 U. S. 17, 54 S. Ct. 267 (1934); Minnesota v. Blasius, 290 U. S. 1, 54 S. Ct. 34 (1933); Champlin Refining Co. v. Commission, 286 U. S. 210, 52 S. Ct. 559 (1932); Utah Power & Light Co. v. Pfost, 286 U. S. 165, 52 S. Ct. 548 (1932); Hope Natural Gas Co. v. Hall, 274 U. S. 284, 47 S. Ct. 638 (1927); Oliver Iron Mining Co. v. Lord, 262 U. S. 172, 43 S. Ct. 526 (1923); Heisler v. Thomas Colliery Co., 260 U. S. 245, 43 S. Ct. 83 (1922); Susquehanna Coal Co. v. South Amboy, 228 U. S. 665, 33 S. Ct. 712 (1913); General Oil Co. v. Crain, 209 U. S. 211, 28 S. Ct. 475 (1908); Coe v. Errol, 116 U. S. 517, 6 S. Ct. 475 (1886).

[15] In Wickard v. Filburn, (U. S. 1942) 63 S. Ct. 82 at 89, involving the Agricultural Adjustment Act, the Court said, "Whether the subject of the regulation in question was 'production,' 'consumption' or 'marketing' is, therefore, not material for purposes of deciding the question of federal power before us. That an activity is of local character may help in a doubtful case to determine whether Congress intended to reach it. The same consideration might help in determining whether in the absence of Congressional action it would be permissible for the state to exert its power on the subject matter, even though in so doing it to some degree affected interstate commerce." See also United States v. Darby, 312 U. S. 100, 61 S. Ct. 451 (1941).

[16] Thompson v. Consolidated Gas Co., 300 U. S. 55, 57 S. Ct. 364 (1937); Champlin Refining Co. v. Corporation Commission, 286 U. S. 210, 52 S. Ct. 599 (1932); Sligh v. Kirkwood, 237 U. S. 52, 35 S. Ct. 501 (1915); Capital City Dairy

ing and taxing statutes have been upheld when applied to intrastate buyers where, in the usual course of business, the article bought will be resold in interstate commerce.[17] The basis of these decisions is that state taxation or regulation is not prohibited by the commerce clause, notwithstanding its effect on interstate commerce, if imposed prior to any operation in interstate commerce. Following this line of argument, the Court concluded in the principal case that the state marketing program, which controls disposition by the producer of his raisins prior to the operation of processing and packing for interstate sale and shipment, applies to transactions wholly intrastate and therefore subject to state regulation.[18] "This distinction between local regulation of those who are not engaged in commerce, although the commodity which they produce and sell to local buyers is ultimately destined for interstate commerce, and the regulation of those who engage in the commerce by selling the product interstate, has in general served, and serves here, as a ready means of distinguishing those local activities which, under the Commerce Clause, are the appropriate subject of state regulation despite their effect on interstate commerce."[19]

But the Court did not rest its decision solely upon the mechanical distinction between interstate and intrastate transactions. It invoked the doctrine of *Cooley v. Board of Port Wardens*[20] that federal power, though unexercised, is exclusive only with respect to matters of national concern requiring uniformity of regulation by a single authority; while in matters of local concern, admitting of diversity of treatment in terms of particular local conditions, the states may act, in the absence of congressional action, even though state regulation may affect interstate commerce.[21] This doctrine involves reconciliation of power

Co. v. Ohio, 183 U. S. 238, 22 S. Ct. 120 (1902); Kidd v. Pearson, 128 U. S. 1, 9 S. Ct. 6 (1888).

[17] Chassaniol v. Greenwood, 291 U. S. 584, 54 S. Ct. 541 (1934).

[18] The Court distinguishes the principal case from Shafer v. Farmers' Grain Co., 268 U. S. 189, 45 S. Ct. 481 (1925) and Lemke v. Farmers' Grain Co., 258 U. S. 50, 42 S. Ct. 244 (1922), relied on by appellee, on the ground that in the latter cases, involving purchase of grain within the state for immediate shipment to out of state points without resale or processing, the purchase was a part of interstate commerce. See also Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282, 42 S. Ct. 106 (1921).

[19] Principal case, 63 S. Ct. 307 at 319.

[20] 12 How. (53 U. S.) 299 (1851).

[21] Illinois Natural Gas Co. v. Public Service Commission, 314 U. S. 498, 62 S. Ct. 384 (1942); Duckworth v. Arkansas, 314 U. S. 390, 62 S. Ct. 311 (1941); California v. Thompson, 313 U. S. 109, 61 S. Ct. 930 (1941); Milk Control Board v. Eisenberg Farm Products, 306 U. S. 346, 59 S. Ct. 528 (1939); South Carolina State Highway Dept. v. Barnwell Bros., 303 U. S. 177, 58 S. Ct. 510 (1938); Kelly v. Washington ex rel. Foss Co., 302 U. S. 1, 58 S. Ct. 87 (1937); Townsend v. Yeomans, 301 U. S. 441, 57 S. Ct. 842 (1937); Bradley v. Public Utilities Commission, 289 U. S. 92, 53 S. Ct. 577 (1933); Continental Baking Co. v. Woodring, 286 U. S. 352, 52 S. Ct. 595 (1932), Sproles v. Binford, 286 U. S. 374, 52 S. Ct. 581 (1931); Morris v. Duby, 274 U. S. 135, 47 S. Ct. 548 (1927); Hendrick v. Maryland, 235 U. S. 610, 35 S. Ct. 140 (1915); Minnesota Rate Cases, 230 U. S. 352, 33 S. Ct. 729 (1913); Gulf, C. & S. F. Ry. v. Hefly, 158 U. S. 98, 15 S. Ct. 802 (1895); Minnesota v. Barber, 136 U. S. 313, 10 S. Ct. 862 (1890); Bowman v.

granted to Congress with that reserved to the states in terms of the competing demands of state and national interests. [22] In determining the validity of state regulation, the Court has often inquired whether the burden on interstate commerce was "direct"[23] or merely incidental and remote [24] or whether the regulation discriminated against interstate commerce. [25] In a dissent in the *Di Santo* [26] case, Chief Justice (then Justice) Stone pointed out the limitations of the "direct" burden test and suggested that "those interferences not deemed forbidden are to be sustained, not because the effect on commerce is nominally indirect, but because a consideration of all the facts and circumstances, such as the nature of the regulation, its function, the character of the business involved and the actual effect of the flow of commerce, lead to the conclusion that the regulation concerns interests peculiarly local and does not infringe the national

Chicago & N. W. Ry., 125 U. S. 465, 8 S. Ct. 689, 1062 (1888); Wabash, St. L. & P. Ry. v. Illinois, 118 U. S. 557, 7 S. Ct. 4 (1886); Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196, 5 S. Ct. 826 (1885); County of Mobile v. Kimball, 102 U. S. 691 (1880); Welton v. Missouri, 91 U. S. 275 (1875); Willson v. Black-Bird Creek Marsh Co., 2 Pet. (27 U. S.) 245 (1829). See also Barnett, "The Supreme Court, The Commerce Clause and State Legislation," 40 MICH. L. REV. 49 (1941); Dowling, "Interstate Commerce and State Power," 27 VA. L. REV. 1 (1940).

[22] Milk Control Board v. Eisenberg Farm Products, 306 U. S. 346, 59 S. Ct. 528 (1939); South Carolina State Highway Dept. v. Barnwell Bros., 303 U. S. 177, 58 S. Ct. 510 (1938).

[23] The Court has not defined the term "direct" burden nor has it attempted to indicate in particular cases the precise effects of state regulation which constitute a "direct" burden. In view of the purpose of the commerce clause, it seems reasonable to assume that the Court had in mind restrictions which cut down the volume of interstate commerce or caused such commerce to be diverted into artificial channels. In any event, the problem is essentially one of degree, since few, if any, of the state statutes held valid by the Court have had no effect on interstate commerce.

[24] Townsend v. Yeomans, 301 U. S. 441, 57 S. Ct. 842 (1937); Foster-Fountain Packing Co. v. Haydel, 278 U. S. 1, 49 S. Ct. 1 (1928); Shafer v. Farmers' Grain Co., 268 U. S. 189, 45 S. Ct. 481 (1925); Air-Way Electric Appliance Corp. v. Day, 266 U. S.71, 45 S. Ct. 12 (1924); Oliver Iron Mining Co. v. Lord, 262 U. S. 172, 43 S. Ct. 526 (1923); Pennsylvania v. West Virginia, 262 U. S. 553, 43 S. Ct. 658 (1923); Lemke v. Farmers' Grain Co., 258 U. S. 50, 42 S. Ct. 244 (1922); Dahnke-Walker Milling Co. v. Bondurant, 257 U. S. 282, 42 S. Ct. 106 (1921); International Paper Co. v. Massachusetts, 246 U. S. 135, 38 S. Ct. 292 (1918); Western Union Telegraph Co. v. Foster, 247 U. S. 105, 38 S. Ct. 438 (1918); Minnesota Rate Cases, 230 U. S. 352, 33 S. Ct. 729 (1913); Crutcher v. Kentucky, 141 U. S. 47, 11 S. Ct. 851 (1890); Munn v. Illinois, 94 U. S. 113 (1876).

[25] Minnesota v. Barber, 136 U. S. 313, 10 S. Ct. 862 (1890).

[26] Di Santo v. Pennsylvania, 273 U. S. 34 at 44, 47 S. Ct. 267 (1927). "... the traditional test of the limit of state action by inquiring whether the interference with commerce is direct or indirect seems to me too mechanical, too uncertain in its application, and too remote from actualities, to be of value. In thus making use of the expressions, 'direct' and 'indirect interference' with commerce, we are doing little more than using labels to describe a result rather than any trustworthy formula by which it is reached." Query: does not this criticism apply also to the mechanical test for determining when interstate commerce begins and ends?

interest in maintaining the freedom of commerce across state lines." [27] While language reminiscent of the "direct" burden approach has appeared in cases decided after the *Di Santo* dissent was written, [28] the Court in a number of cases has approached the question of state regulation in terms of an analysis more nearly akin to that suggested in the *Di Santo* dissent.[29] It should be recognized, however, that this approach involves weighing the practical effects of state legislation, a task which may not prove inviting to those members of the Court who would prefer to leave such matters to legislative decision. [30] In the principal case, the Court rejected the "direct" burden test,[31] upholding the marketing program because upon analysis of all relevant facts and circumstances it believed that the matter was most appropriately regulated by the state and, because of the local character, could never be adequately regulated by Congress. The state, with knowledge of local conditions, was attempting to prevent serious

[27] 273 U. S. 34 at 44, 47 S. Ct. 267 (1927).

[28] Baldwin v. Seelig, 294 U. S. 511, 55 S. Ct. 497 (1935); Continental Baking Co. v. Woodring, 286 U. S. 352, 52 S. Ct. 595 (1932).

[29] Duckworth v. Arkansas, 314 U. S. 390, 62 S. Ct. 311 (1941); California v. Thompson, 313 U. S. 109, 61 S. Ct. 930 (1941); Milk Control Board v. Eisenberg Farm Products, 306 U. S. 346, 59 S. Ct. 528 (1939); South Carolina State Highway Dept. v. Barnwell Bros., 303 U. S. 177, 58 S. Ct. 510 (1938); Kelly v. Washington, ex rel. Foss Co., 302 U. S. 1, 58 S. Ct. 87 (1937); Bradley v. Public Utilities Commission, 289 U. S. 92, 53 S. Ct. 577 (1930); Sproles v. Binford, 286 U. S. 374, 52 S. Ct. 581 (1931).

[30] In McCarroll v. Dixie Greyhound Lines, 309 U. S. 176, 60 S. Ct. 504 (1940), Justices Black, Frankfurter, and Douglas dissented, 309 U. S. at 188-189, saying, "Judicial control of national commerce—unlike legislative regulations—must from inherent limitations of the judicial process treat the subject by the hit-and-miss method of deciding single local controversies upon evidence and information limited by the narrow rules of litigation. Spasmodic and unrelated instances of litigation cannot afford an adequate basis for the creation of integrated national rules which alone can afford that full protection of interstate commerce intended by the Constitution. . . . Unconfined by 'the narrow scope of judicial proceedings' Congress alone can, in the exercise of its plenary constitutional control over interstate commerce, not only consider whether such a tax . . . is consistent with the best interests of our national economy, but can also on the basis of full exploration of the many aspects of a complicated problem devise a national policy fair alike to the States and our Union." Justice Black apparently would be willing to go even further, restricting invalidation of state regulation to those cases where state legislation was, on its face, discriminatory against interstate commerce. See his dissents in Adams Mfg. Co. v. Storen, 304 U. S. 307, 58 S. Ct. 913 (1938) and Gwin, White & Prince v. Henneford, 305 U. S. 434, 59 S. Ct. 325 (1935). In Duckworth v. Arkansas, 314 U. S. 390 at 400, 401, 62 S. Ct. 311 (1941), Justice Jackson, in a separate opinion concurring in the result, says, "It is a tempting escape from a difficult question to pass to Congress the responsibility for continued existence of local restraints and obstructions to national commerce. But these restraints are individually too petty, too diversified, and too local to get the attention of a Congress hard pressed with more urgent matters. . . . If the reaction of this Court against what many of us have regarded as an excessive judicial interference with legislative action is to yield wholesome results, we must be cautious lest we merely rush to other extremes."

[31] Principal case, 63 S. Ct. 307 at 319.

demoralization of a state industry by a marketing program appropriate to the ends sought and which does not discriminate against interstate commerce, although it is likely to affect such commerce by increasing interstate prices and decreasing to some extent interstate trade in raisins. With respect to conflicting local and national interests, the Court pointed out that Congress has recognized the demoralization of the agricultural industry generally and has authorized the Secretary of Agriculture to establish stabilization programs for various products similar to the California raisin marketing program, which are likely to result in raising prices and restricting interstate trade to some extent. Therefore, any effect the California program may have upon interstate commerce is one which Congress itself has encouraged.

The principal case, with other recent cases,[32] is significant as indicating the tendency of the Court to sustain state laws attacked as undue burdens on interstate commerce. Under the rationale of earlier decisions the holding of the district court that the marketing program was an illegal interference with, and an undue burden upon, interstate commerce would likely have been affirmed. The attention which the Court devotes to the problem of federal-state conflicting legislation [33] raises a question as to whether the "federal field" doctrine may not in part supplant the commerce clause as a limitation on state legislation. This question can be answered only by future decisions involving state regulatory measures.

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[32] Duckworth v. Arkansas, 314 U. S. 390, 62 S. Ct. 311 (1941); California v. Thompson, 313 U. S. 109, 61 S. Ct. 930 (1941). Cf. Cloverleaf Butter Co. v. Patterson, 315 U. S. 148, 62 S. Ct. 491 (1942).

[33] See note 3, supra.