

# Chapter 11

## *An Opinion on Visas*

“And on the Newshour for this Friday, March 3, 2034, a decision from the Supreme Court on the authority of states to issue visas, a report from Georgia on mandatory militia membership, and our science correspondent Lou Papas asks how far is too far in virtual worlds. All this, and more, tonight on the PBS Newshour.”

Interest in the news was at a peak, and for good reason. Following passage of the amendment, states raced to craft laws reflecting what they believed to be their unique identity, the principles for which they stood. States wanted to attract likeminded residents. Generally unspoken was the corollary that states were anxious to get rid of people holding beliefs divergent from their own, people who might be viewed as troublemakers.

This was no idle exercise. A Pugh poll indicated that 27% of Americans were considering a move, and that didn't include millions of Americans who'd already moved. In some cases, the motivation was disenchantment with their home state, in others, it was a desire to chase a dream. For many, it was both.

Keeping up with the flood of legislation in each state could be a chore, but for those considering relocation, knowledge of the legal landscape was essential. One could not make an informed choice without understanding the many new laws being enacted. Dozens of apps were available to help with the decision. Software was updated almost daily to keep up with legislative changes. And no one knew what further changes might occur in a week's time.

The rich voice of the announcer intoned, “Tonight the Newshour is brought to you by the Tony and Tami Goode Foundation, the Bill and Melinda Gates Foundation, the State of Texas, where guns and gun owners are treated with respect, and by PBS viewers like you.”

“I'm Katheryn Parks and we open tonight with a discussion of

today's landmark Supreme Court decision allowing states to issue visas. First, we turn to our expert on all things Supreme Court, Tim Emmanuel. Tim, can you give us some background on the decision?"

"Of course, Katheryn. This suit was brought by the federal government against the State of Massachusetts. At issue is a state program offering visas to those visiting from foreign nations. The push for this program came from universities and private schools that have complained for years about the difficulty in obtaining visas for foreign students to study in the U.S."

"If you can hold that thought, Tim, I'd like to bring in Gretchen Tanner, provost of Boston University. Are you there Gretchen?"

A third image now appeared on the screen.

"Yes, Katheryn, can you hear me?"

Parks was annoyed. Her guests were told not to ask whether they could be heard. She would tell them if they couldn't be heard.

"Yes, Gretchen, we can hear you. Can you tell us why this issue is important to you and the University?"

"Certainly, Katheryn. For years now, the visa process for foreign students has been bottlenecked at the federal level. We've had frequent discussions with the State Department on the issue. There are always promises, but the problem has only gotten worse. Each year we admit significant numbers of foreign students, but in many cases their visas are never issued by the state department. Often, no explanation is provided. We're forced to return tuition payments and, perhaps more important, the lives of these students are disrupted. Their educational plans are put on hold. It's unfair to us and unfair to the students. Many are now turning to schools in Britain, Australia, and Saudi Arabia. We had to act."

"Who exactly is 'we'?" asked Parks.

"A consortium of nearly a hundred public and private educational institutions across the state working together to press for a

workable visa process. The key was the support we got from Massachusetts state officials. They listened to our concerns and the result was our state visa program. Credit to state officials for pressing ahead with the plan in the face of a likely challenge from the federal government.”

“And Tim, can you tell us how effective that challenge was?”

The reporter smiled. “I’d say not very effective, Katheryn. The Constitution is silent on the question of visas. Naturalization, yes, but visas, no. It’s fair game for the states. The majority opinion cited a strict interpretation of enumerated powers; the issuance of visas not being among these powers. The minority opinion went with the ‘long-held beliefs doctrine’, that is, that the issuance of visas has always been the exclusive province of the federal government and therefore should remain so. No surprises in the court’s finding, but still a consequential decision.”

“Consequential, indeed,” agreed Parks. “Thank you both for your insight into today’s court decision. And this being Friday, we’ll turn to our pundits Ralph Lowry of the Washington Post and Fran Quinn of the New York Times. Good to see you both. Consequential?”

Quinn jumped in. “Of course consequential. Something I could not have imagined ten years ago. Now we’re seeing the benefits of limiting federal power, and we’re going to see a lot more of this.”

“Ralph?”

“Well, Katheryn, I agree with Fran about not being able to imagine this. I just hate to think where this is heading. What’s going to happen when one of these students wanders over the border into Rhode Island? Does he get arrested and deported for not having a visa?”

“Ralph,” said Quinn, “that’s all you can come up with? The students know they need to stay in Massachusetts. And I can easily see reciprocal agreements to honor visas from other states. It’s like drivers licenses, that’s state-by-state and it works fine.”

“It might work,” said Lowry, “but it’s not efficient.”

“Efficient, Ralph? You just heard the provost tell us how the federal government has been handling visas, or, more accurately, not handling them. Your problem is that you’re stuck in ‘long-held beliefs’.”

“What I’m stuck in, Fran, is the feeling that we’re dismantling America. We’re taking our nation apart. It’s gone so far now that I’m not certain it can be stopped.”

“That’s because you have a particular view of America, Ralph, and you’re not willing to give it up. Popular opinion has shifted. People understand now that the founders didn’t intend for the United States to be a country in the same sense that France is a country. They were envisioning something more like the European Union, where members keep their national sovereignty. I’m not making that up. Have a look at your Webster’s, Ralph, a ‘state’ is a country. The founders viewed the U.S. as something unique. That was the experiment. Over the years we’ve strayed further and further from these principles of federalism. Now, we’ve come home.”

“Nice philosophy, Fran, but in the world of realpolitik, none of this is going to make our nation stronger. Structures that took us two and a half centuries to build are being demolished. It started with the removal of the ‘necessary and proper’ clause, but what’s next? Now California is pushing to amend the commerce clause.”

“And, for our viewers at home,” Parks prompted, “can you explain these clauses?” She thought Lowry should have known better than to use these terms without explaining them. He’d been on enough Fridays.

“Sorry Katherine. The ‘necessary and proper’ clause is what was removed from the Constitution by the 28th amendment. It gave Congress wide latitude making laws that went beyond the ‘enumerated powers’ described Article 1. The commerce clause is one of these enumerated powers. It allows congress to regulate commerce with foreign nations and among the states. California

wants to end federal regulation of foreign trade. It wants its own trade pact with China.”

“Just rumors,” Fran Quinn broke in. “No one’s amending the commerce clause. The enumerated powers aren’t going anywhere. This is just one more scare tactic from people who can’t deal with constructive change.”

“Well, I’m afraid we’ll have to leave it there,” Parks broke in. “Ralph, Fran, I don’t see any agreement from the two of you on this one, but we look forward to seeing you again next Friday.”

Removing his earpiece, Lowry wondered whether Fran Quinn really believed there was no danger. Had she drunk that much of the Kool-Aid?