(B) AN OPINION HOLDING THE ACT UNCONSTITUTIONAL

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On appeal from the decision of the District Court the Government contends (1) that the statute is primarily a regulation of commerce, (2) that any regulation of local matters is secondary and merely incidental, (3) that the local matters so regulated, namely, wages, hours and the employment of minors, are all matters which directly and substantially affect interstate commerce, and (4) that the statute does not offend against the Fifth Amendment.

THE ACT AS A REGULATION OF COMMERCE

In attacking the decision below, the Government has argued that Section 15(a)(1) of the statute clearly stamps it as a commerce regulation. That Section prohibits the interstate sale, shipment or delivery of goods produced in violation of Section 6 or 7 of the Act. The same contention is made with respect to Section 12, prohibiting the interstate sale, shipment or delivery of goods produced in establishments employing "oppressive child labor." With emphasis upon these provisions, we are told the statute is obviously a regulation of commerce among the several states and clearly within constitutional bounds.

Prior decisions of this Court go far toward sustaining this contention. We have repeated at the risk of becoming trite, that the power to regulate commerce is the power to prescribe the rule by which that commerce shall be governed. *Gibbons v. Ogden,* 9 Wheat. 1, 196 (U. S. 1824); *The Daniel Ball,* 10 Wall. 557, 564 (U. S. 1871); *County of Mobile v. Kimball,* 102 U. S. 691, 696 (1880). We have gone further. In recent years this Court on numerous occasions has held that the power to regulate includes the power to prohibit such commerce. As we said in *Kentucky Whip & Collar Co. v. Illinois Central R. R.,* 299 U. S. 334, 346 (1937):

". . . The power to prohibit interstate transportation has been upheld by this Court in relation to diseased livestock, lottery tickets, commodities owned by the interstate carrier transporting them, except such as may be required in the conduct of its business as a common carrier, adulterated and misbranded articles, under the Pure Food and Drug Act, women, for immoral purposes, intoxicating liquors, diseased plants, stolen motor vehicles, and kidnaped persons."

This series of decisions found its logical culmination in *Mulford v. Smith,* 59 Sup. Ct. 648, decided April 17, 1939. In that case we held that the power to regulate commerce included the power to regulate the supply of tobacco to move in interstate commerce by imposing heavy penalties upon tobacco marketed in excess of quotas fixed by the Secretary of Agriculture.

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In view of these principles now established it can no longer be argued that the power to regulate commerce does not include the power to prohibit. Consequently if the statute before us merely prohibited interstate commerce in forbidden articles, the argument of the Government would have the support of an imposing and unbroken line of authority in the cases cited.

While Appellee would distinguish such cases, we are not called upon to do so, for Appellee relies primarily on the contention that the true import of the statute does not appear from mere examination of Sections 12 and 15(a)(1) alone. It is argued that the real regulation prescribed can be determined only by reading those sections in connection with other portions of the Act. Counsel for Appellee refer in particular to Section 3 (definitions), Sections 6, 7 and 8 (pertaining to minimum wages and maximum hours of employment), Section 11 (inspections and records), Section 13 (exemptions), Section 14 (pertaining to learners, apprentices and handicapped workers), Section 15(a), paragraphs (2), (3), (4) and (5) (prohibited acts) and to Section 16 (penalties).

In the light of these provisions, Appellee contends that the Act is first and foremost a regulation of local operations which precede the commerce subject to regulation under Section 15(a)(1). They impress upon us the argument that the chief purpose and effect of the statute is to regulate wages, hours and other conditions of employment in local enterprise; that the regulation (prohibition) of commerce is utilized to enforce or supplement this local regulation. In support of this, Appellee refers us to the familiar principle that Congress may not, under the guise of an admitted power, regulate matters not within its constitutional grant of authority. *McCulloch v. Maryland,* 4 Wheat. 316, 423 (U. S. 1819) *Linder v. United States,* 268 U. S. 5, 17 (1925); *Railroad Retirement Board v. Alton R. R.,* 295 U. S. 330 (1935); *Schechter Poultry Corp. v. United States,* 295 U. S. 495 (1935).

The Government would escape the effect of such decisions by urging that this Court is without authority to examine the motives of Congress or to defeat the exercise of an admitted power by consideration of its incidental effect upon subjects outside its orbit. *Mulford v. Smith, supra.*

The issue thus drawn is clear. Is the statute essentially a regulation of interstate commerce which only incidentally includes subjects local in character or is the statute primarily a regulation of wages and hours of employment in local enterprise reinforced by the prohibition against interstate commerce in articles produced under lower standards? We think it clearly the latter.

It is true, as the Government contends, that an admitted power cannot be denied merely because it indirectly or incidentally controls matters which Congress has no power to regulate directly. While application of this principle has frequently evoked disagreement, the principle itself has never been disputed. Cf. *Mulford v. Smith, supra; Hammer v. Dagenhart,* 247 U. S. 251 (1918); *Bailey v. Drexel Furniture Co.,* 259 U. S. 20 (1922).

Appellee has referred us to the decision in *Hammer v. Dagenhart, supra,* to justify

examination of the purposes of the statute now before us as revealed in its background and legislative history. The Government contends, however, that *Hammer v. Dagenhart* has been so modified by subsequent cases that it must now be considered overruled. We think each argument misconstrues the principle there applied and its subsequent application under particular circumstances.

The issue before us in the original *Child Labor Case* was clearly expressed in the dissenting opinion of Mr. Justice Holmes when he said:

"The question, then, is narrowed to whether the exercise of its otherwise constitutional power by Congress can be pronounced unconstitutional because of its possible reaction upon the conduct of the states in a matter upon which I have admitted that they are free from direct control. I should have thought that that matter had been disposed of so fully as to leave no room for doubt. I should have thought that the most conspicuous decisions of this court had made it clear that the power to regulate commerce and other constitutional powers could not be cut down or qualified by the fact that it might interfere with the carrying out of the domestic policy of any state."

The majority, speaking through Mr. Justice Day, expressly recognized that the Court had "neither authority nor disposition to question the motives of Congress in enacting this legislation." They did find on the face of the statute a regulation of "a purely local matter to which the Federal authority does not extend."

Mr. Justice Holmes, and those members of the Court who concurred in his dissent, believed the majority had condemned the statute for an indirect and incidental local regulation necessarily imposed upon those who would ship their products in interstate commerce. The minority believed this incidental effect did not make the statute any less a commerce regulation.

The incidental or speculative effect of the first Child Labor Law appeared as direct and certain in the Child Labor Tax Law before this Court in *Bailey v. Drexel Furniture Co., supra.* After examination of the statute, the Court, through Mr. Chief Justice Taft, concluded (at page 37) that:

". . . In the light of these features of the act, a court must be blind not to see that the so-called tax is imposed to stop the employment of children within the age limits prescribed. Its prohibitory and regulatory effect and purpose are palpable. All others can see and understand this. How can we properly shut our minds to it?"

Criticism of the *Dagenhart* case has been directed, not against the fundamental principle underlying it, but against the willingness of that Court to restrain the exercise of the commerce power because of its incidental regulation of production. We are not now faced with that danger. The incidental local regulation implicit in the first *Child Labor Case* is found in the statute before us to be clear, explicit and undisguised. Similarly, it bears no resemblance whatever to the Act of Congress sustained in *Mulford v. Smith, supra,* wherein we emphasized that:

"The statute does not purport to control production (italics added). It sets no limit upon the acreage which may be planted or produced and imposes no penalty for the planting and producing of tobacco in excess of the marketing quota. It purports to be solely a

regulation of interstate commerce, which it reaches and affects at the throat where tobacco enters the stream of commerce,—the marketing warehouse."

While the Fair Labor Standards Act of 1938 expressly prohibits interstate commerce in goods produced under the conditions proscribed in Sections 6, 7 and 12, it does more. Section 6 prohibits employment at less than the stipulated minimum wages or for hours longer than the specified workweek. While these prohibitions extend to any employee "engaged in commerce," they also apply to any employee "engaged in the production of goods for commerce." The term "produced" is defined in Section 3(j) to include the mining, manufacturing, processing, or handling of goods, and for the purpose of the Act an employee shall be deemed to be engaged in production if engaged in "any occupation necessary thereto." The term "goods" is defined in Section 3(i) to include articles of commerce of any character, including "any parts or ingredients thereof."[1]

Sections 5 and 8 set forth elaborate plans for fixing minimum wages industry by industry to expedite attainment of the 40 cent minimum ultimately contemplated by the statute. Section 13 provides for numerous and detailed exemptions and Section 11 requires the keeping of payroll records of information pertinent to any detailed regulation of wages and hours of employment.

Section 12 prohibits the interstate sale, transportation or delivery of any goods produced in an establishment in or about which oppressive child labor has been employed at any time within thirty days prior to removal of the goods. Section 3(l) defines "oppressive child labor" and vests authority in the Department of Labor to specify occupations deemed hazardous.

If these provisions leave doubt of the true nature of the regulation, such doubt is definitely removed by Sections 15 and 16. Section 15(a)(2) declares unlawful the *employment* of any person in violation of Section 6 or 7. Paragraph (4) likewise declares unlawful any act prohibited in Section 12. For these infractions of the law, Section 16 provides the penalties, criminal and civil, and Section 17 vests jurisdiction in District Courts to restrain any act or practice prohibited in Section 15.

When employment under the prohibited conditions may lead to imposition of such penalties, can it be said the statute does not regulate local affairs or that the regulation of such matters is merely incidental to a primary regulation of commerce? We think the answer is obvious. The statute regulates far more than subjects heretofore included in the broadest concept of commerce. It regulates activities and practices which are the essence of production, and for which there is no constitutional

[1] As indicative of the scope of the Act, Appellee has referred us to the views of those charged with its administration, particularly Interpretative Bulletin No. 5, December 2, 1938, wherein it is stated that: ". . . Employees are engaged in the production of goods for commerce where the employer intends or hopes or has reason to believe that the goods or any unsegregated part of them will move in interstate commerce. If, however, the employer does not intend or hope or have reason to believe that the goods in production will move in interstate commerce, the fact that the goods ultimately do move in interstate commerce would not bring employees engaged in the production of these goods within the purview of the Act. . . ."

sanction unless it can be said that these local practices directly and substantially affect interstate commerce. In *Kidd v. Pearson,* 128 U. S. 1, 21 (1888), we said:

"If it be held that the term (commerce with foreign nations and among the several states) includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry."

See also, *Schechter Poultry Corp. v. United States, supra,* p. 547; *Carter v. Carter Coal Co.,* 298 U. S. 238, 304, 317, 327 (1936); and *National Labor Relations Board v. Jones & Laughlin Steel Corp.,* 300 U. S. 1 (1937).

REGULATION OF PRACTICES AFFECTING COMMERCE

The Government has anticipated this conclusion by arguing in the alternative that low wages, excessive hours and the employment of minors directly and substantially burden interstate commerce. Consequently our attention is directed to Section 2 of the Act. The Government contends that low wages, long hours and the employment of minors burden and obstruct commerce and are therefore subject to regulation. Specific reference is made to the Congressional findings that these labor conditions lead to labor disputes which burden and obstruct commerce; that their existence constitutes an unfair method of competition in commerce and interferes with the orderly and fair marketing of goods.

On the basis of these findings, the Government invokes the familiar principle that Congress may protect commerce from injury arising at any source. While the standards required by the statute before us are not imposed, as in the National Labor Relations Act, only when observance of contrary conditions may "affect commerce," the Government contends the same result is achieved by Sections 6 and 7 prescribing wage and hour standards for employees "engaged in the production of goods for commerce." The authorities relied upon include such landmarks as *National Labor Relations Board v. Jones & Laughlin Steel Corp., supra,* and cases therein cited.

Appellee, however, stands squarely upon our decision in *Schechter Poultry Corp. v. United States, supra,* and in *Carter v. Carter Coal Co., supra.*

Decisions of this Court support with adequate authority the contention of the Government that the power to regulate commerce includes the power to protect that commerce from injury from whatever source it comes. No immunity attaches merely because the injury arises in production or manufacture. While activities may be local in character when separately considered, they are not thereby removed from federal control if their relation to interstate commerce is so close and substantial as to require regulation or restraint to protect that commerce. *Schechter Poultry Corp. v. United States, supra; National Labor Relations Board v. Jones & Laughlin Steel Corp., supra.*

This Court has constantly emphasized, however, that federal intervention is justified only if it clearly appears that there is a close and substantial relation between interstate commerce and the local activities sought to be controlled. *Santa Cruz Fruit Packing Co. v. National Labor Relations Board,* 303 U. S. 453 (1938); *Schechter Poultry Corp. v. United States, supra.* The commerce power cannot be distorted to bring under federal rule complete control of local affairs which, because of our growing and complex economic system, create temporary disturbance or dislocations indirectly affecting interstate commerce. "Activities local in their immediacy do not become interstate and national because of distant repercussions." *Schechter Poultry Corp. v. United States, supra,* p. 554.

The distinction between what is "direct" and "substantial," as contrasted with the "remote" and "indirect," never has been defined except by degree and the usual process of inclusion and exclusion. Nevertheless the distinction is real. Upon its preservation depends continuance of our constitutional system. *Santa Cruz Fruit Packing Co. v. National Labor Relations Board, supra; National Labor Relations Board v. Jones & Laughlin Steel Corp., supra.*

While imaginary cases may be cited to obscure the line, the facts before us leave no doubt upon which side this statute must fall. The issue before us now is the same as that presented in *Schechter Poultry Corp. v. United States, supra,* and *Carter v. Carter Coal Co., supra.* Neither the facts before us, nor the arguments presented by the Government have induced us to deviate from our prior decisions. While we have moved far in recent years toward a broad expansion of federal authority, we are not at liberty to alter our dual system by interpretation based upon theoretical arguments of cause and effect.

The soundness of our decision is apparent when we contrast this statute with the Act of Congress sustained in the *Labor Board Cases.* In upholding the validity of the National Labor Relations Act, we were faced with a long record of experience with labor disputes. That record demonstrated beyond any reasonable doubt that there was a direct connection between unfair labor practices causing labor disputes and restraint upon interstate commerce.

As we stated in the *Jones & Laughlin* case:

". . . it is idle to say that the effect would be indirect or remote. It is obvious that it would be immediate and might be catastrophic."

Cf. *Santa Cruz Fruit Packing Co. v. National Labor Relations Board, supra,* and *Consolidated Edison Co. v. National Labor Relations Board,* 305 U. S. 197 (1938).

In the light of history and experience, Congress had ample authority to protect commerce from the ravages of costly and disruptive strikes, even though the regulatory scheme was incomplete and imperfect as a deterrent to industrial strife. Our decision in the *Jones & Laughlin* case was the logical advance from previous decisions under the Sherman and Clayton Acts. Cf. *Coronado Coal Co. v. United Mine Workers,* 268 U. S. 295 (1925).

Nevertheless, in each of the decisions in the *Labor Act Cases* we have carefully preserved in full vigor the principle applied (and its application) in *Schechter Poultry Corp. v. United States, supra* and *Carter v. Carter Coal Co., supra.* Our decision in those cases was carefully distinguished by the Government in argument upon the validity of the National Labor Relations Act.[2]

In the *Schechter* case we had occasion to pass upon the validity of federal regulation of wages and hours as authorized in the National Industrial Recovery Act. In that case the Government argued that hours and wages affected prices and that low wages and long hours, by reducing costs, resulted in price cutting and demoralization of the price structure of commodities moving in interstate commerce. Those arguments were met by a unanimous decision of this Court declaring "that the attempt . . . to fix the hours and wages of employees of defendants in their intrastate business was not a valid exercise of federal power." In the opinion written by Mr. Chief Justice Hughes this Court pointed out that:

". . . The argument of the government proves too much. If the federal government may determine the wages and hours of employees in the internal commerce of a State, because of their relation to cost and prices and their indirect effect upon interstate commerce, it would seem that a similar control might be exerted over other elements of cost, also affecting prices, such as the number of employees, rents, advertising, methods of doing business, etc. All the processes of production and distribution that enter into cost could likewise be controlled. If the cost of doing an intrastate business is in itself the permitted object of federal control, the extent of the regulation of cost would be a question of discretion and not of power."

In a separate concurring opinion, Mr. Justice Cardozo voiced even more vigorous objections to this attempted extension of federal power. Referring to the regulation of wages and hours of labor in intrastate transactions, Justice Cardozo described its fallacious theory in colorful language:

". . . There is a view of causation that would obliterate the distinction between what is national and what is local in the activities of commerce. Motion at the outer rim is communicated perceptibly, though minutely, to recording instruments at the center. A society such as ours 'is an elastic medium which transmits all tremors through its territory; the only question is of their size.' Per Learned Hand, J., in the court below. The law is not indifferent to considerations of degree. Activities local in their immediacy do not become interstate and national because of distant repercussions. What is near and what is distant may at times be uncertain. Cf. *Board of Trade v. Olsen,* 262 U. S. 1. There is no penumbra of uncertainty obscuring judgment here. To find immediacy or directness here is to find it almost everywhere. If centripetal forces are to be isolated to the exclusion of the forces that oppose and counteract them, there will be an end to our federal system."

[2] The then Solicitor General, Mr. Stanley Reed, in arguing National Labor Relations Board v. Jones & Laughlin Steel Corp., stated: "It is not necessary that the *Carter case* should be overruled, if this act is upheld. Nor is it necessary to think that if we can go this far in protecting commerce from obstructions because of the power to regulate strikes with intent or with the necessary effect of obstructing commerce, that we need open the door to go further into control of wages or hours or conditions of labor. It may well be that wages or hours or conditions of labor, as such, are beyond the power of Congress, because to interfere with them would be a violation of the due-process clause; or we may say that wages and hours are so distinct and separate from interstate commerce that they do not have a direct effect upon it under any circumstances, while here the rights of labor which are protected fit directly into labor conditions which result directly in interferences and obstructions to interstate commerce." SEN. DOC. No. 52, 75th Cong., 1st Sess. (1937) 128.

This separate opinion was concurred in by Mr. Justice Stone.

Fundamentally the same arguments are pressed upon us in the instant case. These arguments, based upon the Congressional findings and declaration of policy, allege further that existence of substandard labor conditions leads to labor disputes burdening and obstructing commerce, constitutes an unfair method of competition in commerce and interferes with the orderly and fair marketing of goods. While we may take judicial knowledge of the fact that labor disputes often involve controversy over appropriate wage scales and hours of employment, we find nothing in the attempted regulation of minimum wages which would have even a perceptible tendency to eliminate the causes of such disputes.

As we said in *National Labor Relations Board v. Jones & Laughlin Corp., supra:*

"Experience has abundantly demonstrated that the recognition of the right of employees to self-organization and to have representatives of their own choosing for the purpose of collective bargaining is often an essential condition of industrial peace. Refusal to confer and negotiate has been one of the most prolific causes of strife. This is such an outstanding fact in the history of labor disturbances that it is a proper subject of judicial notice and requires no citation of instances. . . ."

The purpose of the statute then before us was to diminish the number of such disputes by affording definite protection to labor's acknowledged right to organize. The whole machinery of that Act was geared to the accomplishment of that purpose. The existence of the evil found evidentiary support in the statutory plan enacted to meet it.

The Fair Labor Standards Act is in no way comparable, and we are not bound by a mere legislative declaration not effectuated in the slightest degree by the statutory provisions which follow. This statute is neither drafted nor designed to deal with labor disputes as such or to eliminate their cause. The statute before us purports to regulate basic minimum wages. It does not pretend to touch the levels usually involved in controversies between organized labor and employers.[3] Nor does it provide any machinery whatever for dealing with disputes over wage and hour standards which may lead to strikes. It does not prohibit unfair labor practices in individual instances when such practices are found to "affect" commerce. The theory of the statute is to protect the underprivileged; those to whom the benefits of collective bargaining have not yet been extended.[4] It proceeds on the general assumption that payment of less than twenty-five cents an hour directly burdens commerce, irrespective of the number of employees receiving less and regardless of the scale of wages paid above the minimum.

[3] Studies of the Department of Labor reveal that union agreements covering a substantial portion of the women's clothing industry provide generally for a 35-hour week; in some instances 37½ hours. This industry is cited as one instance "of an almost industry-wide prohibition of overtime work." See *Hours of Work in Collective Agreements* (1938) 46 MO. LAB. REV. 232.

Another survey discloses that average hourly earnings in this industry are $1.06 for men and $.56 for women. Average weekly earnings equal $35.52 for men and $17.41 for women. See *Women in Industry* (1938) 47 *id.* at 1272.

[4] In reporting S. 2475, which became the Fair Labor Standards Act of 1938, the Committee Report submitted by Senator Black pointed out that: "It is only those low-wage and long-working-hour industrial workers, who are helpless victims of their own bargaining weakness, that this bill seeks to assist to obtain a minimum wage." SEN. REP. No. 884, 75th Cong., 1st Sess. (1937).

The argument that low wages and long hours constitute an unfair method of competition in commerce has already been adequately answered by this Court in *Schechter Poultry Corp. v. United States, supra* and *Carter v. Carter Coal Co., supra.* While competition may be made unequal by differences in labor costs, that is not necessarily so. As we pointed out in the *Schechter* case, the cost of labor is merely one element in the final cost of articles competing in interstate markets. Payment of low wages and employment for excessive hours may affect competition in the labor market, but those unable to bear the greater cost of higher standards suffer most in bidding for the more skilled and efficient. Such practices affect commerce indirectly, if at all, only to the extent lower labor costs affect prices. It is common knowledge, however, that the impact of labor costs on prices is diluted not only by other and equally important elements of cost, but by factors relating to demand. To sustain this extension of federal authority requires more than a specious economic theory. The possible connection between low wages and the price the article will ultimately bring in the market place is too remote to be direct, and too speculative to be substantial. *Schechter Poultry Corp. v. United States, supra.*[5]

We must conclude, therefore, that the statute before us is invalid to the extent it seeks to compel Appellee to observe standards of wages and hours of employment with respect to its employees engaged in productive operations or occupations necessary thereto. While reluctant to deny effect to Section 12, pertaining to the employment of minors, we have concluded it likewise cannot survive the test we must apply.

Section 12 does not merely prohibit interstate commerce in goods produced with the labor of minors. The products of Appellee's establishment would be barred from commerce even though the minors employed performed duties having only a remote relationship to actual production. If they are employed "in or about the establishment," the output of that factory would be barred from the channels of interstate commerce.

The local nature of the regulation is even more apparent upon casual examination of Section 3, subsections (i) and (l). By defining goods to include "any part or ingredient," it is obvious that the prohibitions extend far beyond regulation of the manufacturer or dealer actually shipping a finished product in commerce. Furthermore, the authority vested in the Department of Labor by Section 3(l)(2) belies the claim that Section 12 is essentially a regulation of interstate commerce. It is local regulation pure and simple. While it has not been seriously contended that the employment of minors directly burdens or "affects" commerce, we think it obvious that any possible effect is too remote and insignificant to sanction federal regulation.[6] *Hammer v. Dagenhart, supra,* and *Schechter Poultry Corp. v. United States, supra.*

[5] Even economists disagree on the basic theories involved without considering provable results. *Cf.* King, *Wage Rates in the General Welfare,* and Douglas, *The Effect of Wage Increases Upon Employment* (1939) 29 AM. ECON. REV., 34 and 138 (No. 1, pt. 2). See also, Sargent, *Economic Hazards in the Fair Labor Standards, supra,* pp. 422-430.

[6] While current information seems to be lacking, we are told that in 1930 some 197,621 minors under 16 years of age were gainfully employed in non-agricultural occupations, but estimates vary as to the number in manufacturing or productive enterprise covered by this Act. Statistics recently published by the National Industrial Conference Board indicate that approximately 60,000 minors under 16 years of age are employed in manufacturing.

The Government nevertheless urges that we should still give effect to Section 15 and sustain those counts of the indictment based on alleged interstate shipment of goods produced in violation of Sections 6 and 7. The same contention is made with reference to Section 12 forbidding interstate traffic in goods produced by oppressive child labor. The apparent position of the Government is that these Sections stand alone and are clearly separable from those Sections having no application.

While we must heed the legislative declaration of separability expressed in Section 19, we cannot sanction imposition of these penalties when the standards upon which they are based have no application to Appellee. As we have previously stated, Sections 12 and 15 prohibit interstate traffic in goods produced in violation of Section 6 or 7 or with oppressive child labor defined in Section 3(l). We have found that these Sections can have no application to the business of Appellee. Consequently it cannot be said that the products of Appellee were produced in violation of any provision of the Fair Labor Standards Act. Since the shipment of its products was not within the prohibitions of Section 12 or 15, its status is no different than would exist if its operations were expressly exempted by the terms of the statute itself. We are not, therefore, required to consider the question of separability.

The Fifth Amendment and Due Process

Appellee has argued also that the statute before us infringes upon fundamental rights protected by the Fifth Amendment. In the briefs and arguments, the Fair Labor Standards Act has been distinguished from the minimum wage legislation sustained in *West Coast Hotel Co. v. Parrish,* 300 U. S. 379 (1937).

We are told that the statutory standards for minimum wages and maximum hours are arbitrarily fixed without reference to the necessities of health and without any consideration whatever of living costs, competition or other factors required under any similar state regulation thus far approved. Our attention has likewise been directed to Section 18 of the Act, interpreted to condemn downward adjustment of wages above the absolute minima imposed by the statute, or the lengthening of existing hours of work already lower than the statutory standard prescribed. It is argued with considerable force and merit that the statute is not truly a minimum wage regulation, but an attempt to regulate all wages.[7]

While we were impressed with the substance of such contentions, we are not now called upon to decide their worth. We have already concluded that the Fair Labor Standards Act can have no application to Appellee or its employees for the reason that regulation of their wages, hours or employment of minors cannot be sustained as a regulation of commerce. We will pass upon these further questions if and when they arise.

The decision of the District Court sustaining the demurrer to the indictment is hereby affirmed.

[7] See U. S. Department of Labor, Wage and Hour Division, Interpretative Bulletin No. 5, October 21, 1938.