

CASEBRIEFS

The Understanding Video Lecture Series™

**Separation of Powers and intro
to Congressional Powers**

Branches of Government

- Judicial
 - The courts
 - Has the power to overturn laws
- Legislative
 - Congress
 - Creates laws
- Executive
 - President and agencies

Federalism

- States
 - States, counties, cities, school boards, etc
- Federal
 - Congress and the executive

Power is split between the two.

The 10th Amendment

- Text of Tenth Amendment: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”
- Meaning: Feds have limited enumerated powers; if you can't ID a source for congressional action X, presume it's beyond Congress's const'l powers.

States CAN Unless.....

- So this means that states (or counties, cities, etc) CAN act UNLESS.....

Federal Gov't Can NOT act UNLESS

- Start with the presumption that the federal gov't is NOT allowed to act UNLESS we find a source of power.....

Congress's Powers

- Regulate commerce
- Declare war
- Create lower courts and executive offices
- Tax and spend for general welfare
- Make rules for the military
- Do what's "necessary & proper" for implementation of other powers

(cont. on next slide)

Congress's Powers (cont.)

- Advise and consent to presidential appointments
- Ratify treaties
- Impeach President or federal officers
- Regulate federal properties & enclaves
- Administer the District of Columbia
- Grant Patents
- Implement the Reconstruction Amdmts

General Welfare

- NO power to act for the “general welfare” – this is left to the states

Tax and Spend

- Art. I, Sec. 8: Congress has power to “lay and collect taxes ... to pay the debts and provide for the ... general welfare.” Colloquially, the power to “tax and spend for the General Welfare.”

Minors and Smoking

Responding to growing concern about cigarette smoking by minors and seeking to reduce the long-term health costs from smoking-related diseases, Congress enacted a statute that addressed the problem in several ways. One provision focused on federal economic development grants, which were awarded to states to promote and assist small businesses in urban areas. Under this provision, the grants would be reduced by 10% for any state that fails to require businesses engaged in the sale of cigarettes to take specified precautions to avoid sales to minors, including checking drivers' licenses or photo ID cards. The state of Raleigh, which has a lucrative tobacco industry and receives several million dollars under the federal grant program, challenged the constitutionality of the provision in federal district court.

Should the court uphold the federal provision?

Congress has the power

- The Issue is whether the provision is constitutional. Article I, Section 8 provides Congress with its spending power for the common defense and general welfare of the United States. While Congress may not force states to enact laws, under these spending powers, Congress can require states to comply with specific conditions in order to qualify for federal funds. Here, Congress is conditioning grants of money to the states based on the condition that they take more stringent measures in the sale of tobacco to minors. That is a valid exercise of Congressional Spending Power, therefore the provision is constitutional.

Necessary and Proper

- Congress may “make all Laws which shall be necessary and proper for carrying into Execution [its other powers and those of other federal branches.]”
- Not a separate ground; it’s an implementation power that facilitates other specifically granted powers.

Mortgage Lending

Congress passes a law chartering the “Home Mortgage Lending Institution of the United States.” (Note that Const. does not list bank chartering or stock issuing as Art. I power of Congress.)

(a) Is this law const’l?

(b) Is the “Necessary & Proper” Clause relevant?

Answer

- (a) Yes.
- (b) Yes. *McCulloch v. Maryland* said that bank chartering is rationally related to and helps advance other enumerated powers, e.g., coining money, regulating commerce, etc., and that the N & P Clause reinforces Congress's power to implement these other provisions through rational measures.

Other Enumerated Powers

- Banks
- Coin Money
- US Postal Service

Federal Immunity from State Power

Rule of immunity: States may not directly tax or regulate the federal government, or federal entities.

Doctors and Drugs

- Congress passes a law prohibiting doctors from prescribing certain anti-depressant drugs on the ground that such procedures endanger the health and welfare of American patients. Is this valid as an exercise of Congress's power to "protect the General Welfare"?

NO such thing as “General Welfare” for Congress

- No. Although there may be other grounds for Congress to enact the law (e.g., the Commerce Clause), there is no indep. power to protect the “general welfare”, just a power to “tax and spend for the general welfare.” So Congress could use its tax-and-spend power to refuse to pay for these drugs (i.e., in Medicare, etc.), but can’t just ban them as bad for general welfare.

Taxing Tobacco

Congress passes a heavy tax on all tobacco products. Congress uses all the tax receipts to promote an anti-smoking ad campaign, making clear that the federal government thinks people should stop using tobacco. P challenges law on grounds that “Congress can’t use taxing power where main purpose is to regulate?” Valid claim by P?

It's an Ok Tax!

- No. So long as Congress's action takes the form of a tax, fact that Congress's motive was mainly to regulate won't matter.



Refining Oil

- Congress passes a tax on oil refinement, and subject oil refined in Louisiana to a higher rate per gallon than that applied to oil refined in the rest of the country, finding that this differential treatment is in the General Welfare. Since Congress is taxing here, is this ok?

Not an ok tax

- No. There's a separate requirement in the Constitution that taxes be geographically neutral. Article I says that "all Duties, Imposts and Excises shall be Uniform throughout the United States." Since this is a direct tax on a product, it's an "excise," so it has to bear the same % rate throughout the U.S.

Another taxing hypo

- Maryland imposes a tax on sales that occur within the state's boundaries. The state law tax as written applies to all persons and entities who sell any good other than fresh food. The federal government rents space within the state that it uses as a U.S. Post Office, where it sells, among other things, postage stamps. The State attempts to apply its generally applicable sales tax to the sale of stamps. Can the State do this?

Not an ok tax

- No. States may not directly tax validly operating federal entities.



FBI and Tax

Maryland imposes an income tax on persons who earn income within the State. The income tax is collected from the individual persons who earn the income, not the persons or entities who pay the salary or commission. The FBI has a field office in Baltimore at which scores of federal agents are employed and earn income. Can Maryland collect income tax from these federal employees?

Answer

Yes, generally applicable taxes may ordinarily be applied to federal employees as distinguished from federal entities.

Same rule applies to federal contractors: They may be subjected to non-discriminatory state regulation that doesn't impair any federal interest.

Supremacy Clause

Art. IV, Cl. 2: Constitution and laws of the U.S. are “the supreme Law of the Land.” This is the Supremacy Clause: the federal constitution, and all federal laws, take priority over inconsistent state laws.

Mere Federal Power to Act Doesn't Preempt

In general, the mere presence of federal power to act doesn't prevent states from also acting in the same sphere.

Two Kinds of Federal Preemption

1. “Conflict” preemption: State laws can’t conflict with valid federal regulations
2. “Field” preemption: States must respect congressional wish that area remain unregulated.

Two Kinds of Federal Preemption (cont.)

- “Field” preemption: States must respect congressional wish that area remain unregulated.

Example: Congress makes clear it wants all Internet transactions to be tax-free for 5 years. State may not impose any taxes during this period.

“Sounds Fishy”

Nevada grants an exclusive license to a local company, AaCo, to operate a commercial fishing boat on the part of Lake Tahoe that falls on the Nevada side of the state line with California. A competing fishing boat owner, BeeCo, obtains a federal permit to operate its fishing boat in same part of the Lake. AaCo sues to prohibit BeeCo from interfering with AaCo’s state-conferred monopoly. Will AaCo win?

Federal Acts Take Priority

Answer : No. AaCo's state-granted license must give way, because it conflicts with a validly issued federal permit. The federal permit prevails by virtue of the Supremacy Clause, which makes the Constitution *and* all valid federal laws (and executive actions) the Supreme Law of the Land.

“Even more Fishy”

The same Nevada-conferred license to AaCo, but this time the competing fishing boat owner, BeeCo, does not have a federal permit to operate. Does the fact that Congress *could have* issued the permit (but did not) to BeeCo invalidate the Nevada license to AaCo?

Fed silence doesn't preempt

No. The fact that the feds could have issued an exclusive license to BeeCo – a license that would have nullified AaCo's state-issued license – doesn't make the state license invalid where the feds didn't in fact act. The mere presence of federal power to act doesn't prevent states from also acting in the same sphere.

Sulfur Regulation

Congress says to states: “Pass regulations keeping sulfur content of navigable water in your state to less than 1 part per million. If you don’t, private parties may sue you for harm done by the sulfur even if pollution is privately generated.”

Is the statute constitutional?

A bit tricky...but not ok

- No. Congress could likely regulate the *producers* of pollution. But Congress cannot regulate states for their failure to regulate. Such a regulation of states would *not* be part of a “generally applicable law” – it would impermissibly single out state government for special duties and burdens. Congress can’t “commandeer” state lawmaking processes, and when it does, it’s violated the ***Tenth Amendment***.