Constitutional Law Outline

Power of Judicial Review

- **Marbury v. Madison** - §13 of the Judiciary Act was deemed unconstitutional b/c it expanded the reach of the SCt’s original jurisdiction than originally intended in the Constitution
  - Action arose under the Organic Act which created Marbury’s position as a justice of the peace
  - Effect – gave SCt the power of judicial review over all constitutional issues, not just those affecting the judicial branch
  - Does not set out SCt as the exclusive holder of power of judicial review

- Note – nothing in the Constitution creates the power of judicial review!
  - Power is supported by the Supremacy Clause

- People→Constitution→legislature

- **Must have statutory grant of appellate jurisdiction in addition to a constitutional grant (original jurisdiction is self-executing)**
  - All lower federal courts are created by statute and can only have jurisdiction over cases when granted such jurisdiction by statute

- **Cooper v. Aaron** – SCt is NOT the only voice of constitutional understanding
  - Decisions only bind the parties involved

- **Fletcher v. Peck** – SCt has power to review constitutionality of a state statute

- **Martin v. Hunter’s Lessee** – SCt has power to review state court decisions
  - Authority for appellate review of state court decisions granted by §25 of the Judiciary Act in three situations:
    - Where state decision is against the validity of a US statute or treaty
    - Where state decision upholds the validity of a state statute when the question is whether the statute is repugnant to the US Constitution
    - Where state decision is against the title, right, privilege claimed by a party under a question of construction of the US Constitution, treaty or statute
  - State court decisions on federal issues are subject to SCt review

- **Cohens v. Virginia** – dealt w/issue of exclusive categories of original and appellate jurisdiction (original jurisdiction b/c state was a party [but only construed to cover civil actions], appellate jurisdiction b/c case arose under federal law)
  - No judicial power conferred by constitution in controversies b/t a state and its own citizen – look to nature of question instead of nature of parties

- A case can be w/in Art III judicial power based on either the types of parties involved (i.e. diversity jurisdiction) or the type of question involved (i.e. federal question jurisdiction)

- SCt’s original jurisdiction is NOT exclusive

- SCt’s appellate jurisdiction is subject to congressional exceptions and regulations (i.e. §25 – only over state judgments invalidating federal laws, not those upholding such laws)
Ex Parte McCardle – Congress has near plenary power over SCt’s appellate jurisdiction – can regulate when there are different routes to get to the appellate jurisdiction
  - Congress repealed the act granting appellate jurisdiction before the decision was rendered – valid exercise of congressional power over judicial review
To limit power of court Congress can:
  - Add justices to court, reduce size of court, influence nomination process, limit judicial terms, cut off support services, impeach justices, Constitutional amendment

Federalism
- National gov’t is one of enumerated or delegated powers
- States have reserved or residual powers
- Just b/c an issue is of national concern is not a justification for exercising national power
- McCulloch v. Maryland – no enumerated power for Congress to create a bank
  - Use Necessary and Proper clause to allow Congress ample means to execute their enumerated powers – doesn’t require the means to be ‘absolutely’ necessary
  - Pretext holding – if Congress passes laws to accomplish ends not entrusted to it under the pretext of an enumerated power, SCt could invalidate it
  - Alternative check on legislative power – political intervention

COMMERCE POWER

Four question analysis
- What is the local activity regulated
- What is the local activity’s relation to IC
- How is this a means
- What is the commerce related end – must always be related to promoting, protecting, or regulating IC

Gibbons v. Ogden – sets out exception that national gov’t can regulate intrastate commerce that affects other states or when it is necessary to execute a general power of the gov’t

Powers granted to Congress under the Commerce clause
  - Power to regulate
    - Knight, Shreveport, Swift
    - RR Retirement Board v. Alton RR – Congress argued that it was regulating IC by requiring RR to establish pension plans
      - Invalidated – not related to efficiency of IC
      - Rejects stream of commerce and affecting commerce rationales
- **Carter v. Carter Coal** – statute tried to regulate prices, hours, and wages of coal miners – invalidated b/c of labor provisions
  - No general power to promote welfare of the nation
  - Not justified as an exercise of an enumerated power or through the necessary and proper clause
  - Activities sought to be regulated are production, NOT commerce
  - Dissent: price provisions were valid exercise of commerce power (Shreveport)

- **NLRB v. Jones & Laughlin Steel** – regulated unfair labor practices – discrimination based on union activities – valid

- **Wickard v. Filburn** – regulated amount of wheat a farmer could produce regardless of whether it was for IC or home consumption – valid

- **United States v. Lopez** – 3 categories of activities that Congress may regulate: use of IC channels, regulate and protect the instrumentalities of IC or persons or things in IC even though the threat may come from intrastate activities, and power to regulate those activities having a substantial relation to IC (sub categories: intrastate economic activities which the court has concluded substantially affect IC and activities which the statute requires a case by case inquiry of affecting IC)
  - Power to prohibit
  - Direct exercise of commerce power w/o necessary and proper clause
    - **Champion v. Ames** (lottery case) – majority doesn’t look at the whether the ultimate purpose of the statute is to regulate IC or regulate lotteries – valid
      - Dissent – points out that the statute is a means to an end which is not among Congress’s enumerated powers
    - **Hipolite Egg v. United States** – allowed confiscation of eggs once they passed out of IC b/c it was a means to prevent the interstate shipment - valid
    - **Hoke v. United States** (Mann Act) – prohibit interstate movement of women for immoral purposes – no enumerated police power but valid as a means of regulating IC - valid
    - **Hammer v. Dagenhart** (Child labor case) – prohibited interstate shipment of goods produced by child labor – invalid
      - Attempt to control manufacturing – should be up to States
      - Court was not examining motives of Congress but said that it exceeded its enumerated powers by trying to regulate unfair competition
      - Dissent – Congress has the power to prohibit and the exercise of a constitutional power cannot be invalidated b/c of an indirect effect on the states
      - Has been overturned in *Darby*
United States v. Darby – prohibited interstate shipment of goods produced by workers earning less than minimum wage and working more than a certain number of hours – valid
  • Direct use of commerce power – motive doesn’t matter
  • Repudiates Marshall’s pretext holding of McCulloch
United States v. Five Gambling Devices – prohibited IC of slot machines – only addressed statutory issue by holding that Congress only intended to reach the machines w/some cxn to IC
  • Did not address whether it would be constitutional to reach those machines w/no cxn to IC

Rationales for using commerce power to regulate intrastate commerce
  • Direct/Indirect effect distinction
    • United States v. Knight Co. – Congress can regulate intrastate activities which have a direct effect on IC
      • Manufacturing should be regulated by states – separate from commerce
    • Carter v. Carter Coal – don’t look at extent of local activity (one man business vs. large corp.), but to the relationship b/t local activity and IC
  • Affecting commerce approach (current approach)
    • Shreveport case – look to actual effects of local activity on IC
    • Exercise of Necessary and Proper clause coupled w/commerce power
    • NLRB v. Jones & Laughlin Steel Corp – opposite of Carter Coal – looked at effect on commerce, not source of injury
      • Test – close and substantial relationship to IC
      • Not allowing employees to unionize could cause a strike which would have an immediate effect on IC given the size of the corporation
      • Use of necessary and proper clause – can require collective bargaining to prevent disruption of IC
    • United States v. Darby – prohibiting employment at other than prescribed wages and hours – valid
      • Local activity relation to IC – low wages create unfair competition which disrupts IC
      • Prohibition is a means to accomplish the end of avoiding the use of IC to spread substandard labor conditions
    • Wickard v. Filburn – regulated wheat production
      • End – raise price of wheat in IC
      • Test – substantial economic effect
      • Statute cannot be invalidated if an individual instance would have a trivial effect – look to the aggregate
    • United States v. Sullivan – prohibits misbranding of drugs sold in intrastate commerce that originated in IC- valid
- Relation to IC – consumers may buy drugs that have not gone through IC on the assumption that intrastate manufacture drugs will be correctly labeled
  - **Perez v. United States** – prohibited loan sharking even if no cxn to IC – valid
    - Could view loan sharking as a aggregate activity that has an effect on IC – don’t look to individual instances (*Wickard*)
    - Too difficult to prove the affect on IC, so don’t require it
  - **United States v. Lopez** – prohibits activities dealing w/controlled substances w/o proof of affect on IC - valid
    - Too difficult to prove individual effect on IC
    - Local activity swells interstate traffic of controlled substances
  - **United States v. Scarborough** – gun possession by felons will swell amount of guns moving in IC
    - Means of prohibiting possession of firearms will reduce amount of firearms moving in IC (end)
  - **Maryland v. Wirtz** – Fair Labor Standards Act amendment extended to reach to all employees of an enterprise engaged in production of goods for IC - valid
    - Means to achieve goal that IC shall not be a vehicle for unfair competition – *Darby*
    - Can regulate wages and hours as means of preventing strikes which would disrupt IC – *Jones & Laughlin*
  - **Heart of Atlanta Motel v. United States** – test is whether the activity to be regulated is commerce affecting more than one state and has a real and substantial relation to the national interest
    - Dealing w/a non enumerated end (racial discrimination) but there is still a commerce related purpose
    - Concurring opinion – should have used 14th Amendment b/c now businesses can try and argue that they are a local activity which does not affect IC; extra element that the gov’t has to prove in litigation
  - **Katzenbach v. McClung** – Congress can regulate restaurants that serve food of which a substantial portion has moved in IC; only look to whether Congress had a rational basis
  - **United States v. Lopez** – regulated activity must *substantially* affect IC in order to be w/in Congress’ power to regulate; act which regulated possession of firearms in school zones is invalid
    - Majority takes a step towards classifying intrastate activities as economic/commercial and non-economic/non-commercial
    - First major limit of commerce power; court does not defer to Congress’ decision that there is a sufficient cxn to IC
  - **United States v. Morrison** – reaffirms economic/non-economic classification of intrastate activities; gender motivated violence is
non-economic and beyond congressional reach under commerce power

- 4 factors in decision
  - Is local activity an economic endeavor
  - Jurisdictional element – does statute set out an explicit need for a cxn b/t the particular local activity and IC
  - Whether there are formal findings as to the burdens the activity has on IC
  - Link b/t local activity and substantial effect on IC was attenuated

  - **Gonzales v. Raich** – upheld power to regulate marijuana produced and consumed locally for medicinal purposes
    - Economic activity – production of marijuana can swell the interstate market
    - Scalia – power to regulate non economic activities which are part of a larger regulatory scheme which would be undercut if not allowed to regulate a local activity
  - Stream of commerce theory
    - **Swift Co v. United States** (price fixing by meat dealers) – local activities are controllable b/c they are part of the stream of commerce
    - Sounds like a direct exercise of commerce power
    - Ended in **Jones & Laughlin**, possibly revived in **Reno v. Conditt**
  - Bootstrap
    - Need a prohibition on interstate shipment coupled w/regulation of some local activity as means of making effective that prohibition
    - **United States v. Darby** – second provision prohibited employment for other than prescribed wages and hours – valid
      - Means to accomplish the permitted of prohibiting interstate shipment of goods produced by such employees
      - Regulating local activity as a means of making effecting a prohibition of interstate shipment
    - **US v. Five Gambling Devices** – prohibited interstate shipment and required information reporting
      - Bootstrap rationale accepted by dissent only
  - Narrow statutory construction
    - **United States v. Five Gambling Devices** – held that Congress only intended to reach those slot machines which had moved in IC
    - **United States v. Bass** – imposed sanctions on any convicted felon who ‘receives, possesses or transports in IC or affecting commerce any firearm’
      - Held that the IC limitation applied to receipt, possession and transportation to avoid issue of whether it would constitutional to regulate receipt and possession w/no cxn to IC
- United States v. Scarborough – same statute as Bass; gov’t made a minimal attempt to show the firearm had once moved in IC

TAXING AND SPENDING POWERS
- Congress has the power to tax and spend for the general welfare
- Bailey v. Drexel Furniture – invalidated a law imposing a federal tax on profits of employers using child labor b/c the tax acted as a penalty
  - Tax was essentially the same as Hammer v. Dagenhart
  - Tax was being used to accomplish some non-enumerated end – ending child labor as opposed to raising revenue
- United States v. Kahriger – upheld an occupational tax – intended to penalize intrastate gambling
  - A federal tax does not become invalid simply b/c it discourages or deters the activities being taxed
  - Only invalidate the tax if there are penalty provisions which are extraneous to the tax need
- United States v. Butler – BAD LAW; invalidated tax on processing of certain agricultural commodities which would then be used to pay farmers who agreed to reduce their acreage
  - Court adopted Hamilton’s view that spending power is not limited to the other enumerated powers but did not follow through
- Steward Machine Co. v. Davis – upheld tax on employers who would then receive a credit if they paid into an approved state unemployment program
  - Neither employers nor state’s were being coerced by the tax/credit
  - Condition of grant must be related to one of the enumerated powers
- Helvering v. Davis – deference to Congress on deciding whether the spending power is used to promote the general welfare
- Oklahoma v. Civil Service Commission – upheld grant on the condition that no state official who takes part in political activities (i.e. running a campaign to be elected) can administer a program financed by any national funds
  - Condition must be reasonably adapted to the purpose of the funds

WAR POWER
- Woods v. Miller – upheld Congress’s power to regulate rent under the war power after the war ended
  - War power includes power to remedy evils arising from the war
  - Use of Necessary and Proper clause
- Hamilton v. Kentucky Distilleries – upheld Congress’s power to prohibit alcohol under the war power – want to ensure that grains are used to make food instead of alcohol
  - Suggestion of heightened judicial scrutiny if war power is invoked to do things which are only indirectly related to the war

TREATY POWER
- Missouri v. Holland – a federal statute enacted in compliance w/a treaty protecting migratory birds does not violate the Constitution
o If a treaty is valid under the Constitution, then the statute is valid as part of the Necessary and Proper Clause

**INTERGOVERNMENTAL IMMUNITY**

- **National Immunity from State Taxation**
  - **McCulloch v. Maryland** – invalidated state tax on national bank
    - No political check on the tax – affects people not represented in the state government
    - A state cannot be allowed to destroy that which the nat’l gov’t creates
  - **Collector v. Day** – 1871; salary of state judge was immune from federal income tax – BAD LAW, overruled in 1939
    - Period of time when the Court recognized derivative immunity
  - **Helvering v. Gerhardt** – upheld federal income tax in application to state employees of the NY Port Authority b/c the tax would not impede functions essential to the continued existence of the state
    - Reasons to read national taxing power broadly
      - Nat’l tax applies to everyone and all citizens are represented in nat’l legislature
      - Allowance of immunity for protection of state sovereignty is at the expense of sovereign power of nation to tax
    - 2 guiding principles
      - Immunity may exist for activities essential for the preservation of the state gov’t
      - Burden of the state not being allowed to pay lower wages (b/c wages would not be taxed) is not high enough to warrant immunity from national tax
  - **New York v. United States** – upheld federal tax on state sales of mineral water
    - Rejected proprietary/governmental dichotomy
    - New test – so long as Congress generally taxes a source of revenue not uniquely capable of being earned only by a state, the tax is not invalid merely b/c it incidentally falls on a state

- **State Immunity from National Taxation**
  - 3 types of national statutes and their effect
    - Nat’l laws which regulate private activity
      - Nat’l law displaces conflicting state law
    - Nat’l laws which regulate the States as States
      - Displace state policies, increase costs of state gov’t
    - Nat’l laws which require States to exercise State law authority over private activities
      - State has to enact a statute embodying nat’l standards, create an agency to administer standards, appropriate funds
  - Use of 10th Amendment as a barrier to national imposition against state autonomy
o **National League of Cities v. Usery** – BAD LAW; unconstitutional for Congress to regulate wages and hours of State employees
  - Protection of traditional, integral, or essential functions of state gov’t from national regulation

o **Hodel v. Virginia Surface Mining** – upheld nat’l regulatory scheme aimed at private sector rather than states
  - Articulated 3 prong test under NLC to invalidate congressional commerce power legislation over states
    - Statute must regulate ‘States as States’
    - Regulation must address matters which are indisputably attributes of state sovereignty
    - Must be apparent that State’s compliance w/federal law would impair their ability to structure integral operations in areas of traditional gov’tal functions
  - Failed first prong

o **United Transportation Union v. Long Island RR** – upheld federal law authorizing strikes while state law prohibited strikes by public employees
  - Failed 3rd prong – operating a RR is not a traditional gov’t function

o **FERC v. Mississippi** – upheld federal law which required States to consider national standards, procedures on how to consider the standards, and adjudicate disputes arising under the statute
  - Still gave the States a choice, albeit a difficult one – abide by federal law or give up regulation completely

o **EEOC v. Wyoming** – upheld extension of ADEA to state and local gov’ts
  - Failed 3rd prong – ADEA did not threaten states’ independence
  - Even if it didn’t fail the 3rd prong, statute could still be valid by using the balancing test

o **Garcia v. San Antonio Metropolitan Transit Authority** – overruled *National League of Cities*; states only retain sovereign authority to the extent that the Constitution has not divested their original powers and given them to Congress
  - Rejects the traditional (immune) vs. non-traditional (not immune) gov’t function dichotomy as unworkable
  - Structure of federal system of gov’t always each state to look out for it’s own interests

o **South Dakota v. Dole** – upheld federal statute withholding a grant of federal highway funds from a state which allows people under 21 to purchase alcohol
  - Condition is not coercive (only withheld 5% of funds) and did not induce the State to do anything unconstitutional
  - 10th Amendment only imposed a limit on regulation not conditions on federal grants
  - No violation of 21st Amendment either

o **New York v. United States** – upheld statute provision of conditional spending and cooperative federalism: offer choice of state regulation
according to nat’l standards or have state law preempted by federal regulation
  - Ok for Congress to encourages states, but not to compel them
  - State residents retain ultimate decision – state is held politically accountable for that decision
- Printz v. United States – invalidated federal law requiring State officers to administer/enforce a federal regulatory program
  - Ability of States to make their own policy decisions is essential to their independent nature
  - State autonomy limit
  - Separation of powers issue – law would have allowed the federal gov’t to expand its power by drafting the state officers
- Reno v. Condon – upheld federal law restricting the sale of personal information collected at the State DMV b/c the information is a ‘thing’ in IC and it does not violate the 10th Amendment b/c it regulates states as well as private individuals

DORMANT COMMERCE CLAUSE
- Early cases
  - Gibbons v. Ogden – state law was contrary to nat’l law, therefore the Court did not need to determine whether the statute was meant to regulation inter or intrastate commerce
  - Wilson v. Black Bird Creek Marsh – w/o conflict w/nat’l law, state law is upheld
  - Cooley v. Board of Wardens – implied understanding that the Commerce Clause was not an exclusive grant of power to the nat’l gov’t – since nat’l statute explicitly expressed an intent to allow states to regulate in this area, the state law is upheld
    - Some subjects are so nat’l in nature or would require one uniform system of regulation so that state regulation is precluded
- Transportation cases
  - South Carolina v. Barnwell – upheld state law regulating truck weight and width; judicial inquiry is whether state legislature acted w/in its province and whether the means are reasonably adapted to the ends
    - Commerce Clause only prohibits discrimination against IC
  - Southern Pacific v. Arizona – invalidated state law limiting number of train cars
    - Must balance the burden on IC against the relative weights of state and national interests
    - Not an effective means of accomplishing the safety goals b/c reducing length means there will be more trains – Court gave little deference to state legislature’s judgment on safety
    - When balancing – if the state regulation does achieve the safety end, the scale is only weighted on the nat’l side
- **Bibb v. Navajo Freight Lines** – invalidated state law requiring contour mudguards; substantial burden b/c trucker would have to shift cargo to a differently designed trailer to comply w/the different state regulations
  - Nothing on state’s side of balancing test b/c safety regulation is counter-productive
- **Kassel v. Consolidated Freightways** – invalidated state law which prohibited the use of certain large trucks b/c the state’s safety interest was illusory and the law significantly impaired IC
  - Less deference is given to state legislature’s judgment when the statute has a discriminatory effect
  - This statute had several exemptions which benefited the state’s residents

- **State barriers to incoming trade**
  - **Welton v. Missouri** – invalidated state law requiring licenses for peddlers of OOS goods – discriminated against IC
  - **Dean Milk Co. v. Madison** – invalidated city ordinance requiring that all milk sold in Madison be processed w/in 5 miles of Madison
    - Ordinance had a discriminatory effect on IC and safety ends could have been achieved by less discriminatory alternatives
  - **Philadelphia v. New Jersey** – all laws which facially discriminate against OOS commerce are forbidden protectionist regulations – rule of per se invalidity
  - **Baldwin v. Seelig** – invalidated state law prohibiting sales in NY of OOS milk unless it had been purchased for the same price required for milk purchased in NY
    - State cannot place itself in economic isolation
  - **Henneford v. Silas Mason** – upheld WA use tax on OOS goods; helped local retailers compete w/OOS sellers who would have been exempt from sales tax
    - Distinction from Seelig – only cancelled out one advantage of OOS seller (regulation of tax but not ultimate price)
  - **Breard v. Alexandria** – upheld local ordinance prohibiting door to door solicitation except by consent of occupants
  - **Great Atlantic & Pacific Tea v. Cottrell** – invalidated a MS statute which denied a LA milk producer the right to sell milk in MI solely b/c LA did not sign a reciprocity agreement
    - Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on IC are only incidental, it will be upheld unless the burden imposed on IC is clearly excessive in relation to the putative local benefits
    - The extent of the burden what will be tolerated will depend on the nature of the local interest and whether it could be promoted as well with a less impact on IC
    - Statute is counterproductive to health goals b/c it would allow lower quality milk from reciprocal states to be sold
Hunt v. WA State Apple Comm’n – invalidated NC statute requiring all closed containers coming into NC to bear no grade other than the USDA grade or standard
  - Hunt balancing test – when discrimination against IC is demonstrated, the burden falls on the state to justify the statute in terms of the local benefits flowing from the statute and the unavailability of non-discriminatory alternatives adequate to preserve the local interest at stake
  - State must prove (1) no non-discriminatory alternatives means available and (2) local benefits outweigh the discrimination

Exxon v. Governor of Maryland – upheld a MD statute prohibiting P/R from operating retail gas stations w/in the state b/c the statute does not discriminate against P/R in the sense that OOS gas can still flow freely into the state
  - Dissent: look at the retailers not the producers – even though the discrimination is not universal, the substantial portion of the burdens fall on OOS P/R and the benefits fall on IS P/R

Limiting access to OOS to local products and resources
  o Milk Control Board v. Eisenberg – upheld PA statute setting minimum prices for milk in application to a NY dealer who intended to ship the milk OOS
    - Distinguish from Baldwin: PA was only controlling milk prices in PA; in Baldwin, NY was effectively controlling the milk prices in other states
  o HP Hood v. Du Mond – invalidated NY statute allowing the denial of a license for additional facilities to acquire and ship milk in IC where the grounds of the denial were that such limitation upon IC will protect and advance local economic interests
    - Generally support state regulation in interest of health and safety but not when the state is actually trying to advance its own commercial interests
  o Cases where the court has condemned state restraints on export of natural resources
    - Pennsylvania v. West Virginia – restricted export of natural gas until all local demand was satisfied
    - Foster-Fountain Packing v. Haydel – no one may ship shrimp out of LA until they were de-headed and hulls were removed
    - Pike v. Bruce Church – no one could ship uncrated cantaloupes OOS from AZ
  o Philadelphia v. New Jersey – invalidated NJ statute which prohibited the importation of solid waste which was collected OOS
    - There must a be reason for the discrimination aside from the fact the article is coming from OOS
    - Virtually per se rule of invalidity where state legislation effects simple economic protectionism
Hughes v. Oklahoma – invalidated statute prohibiting exportation of minnows taken for OK waters
  ▪ Facially discriminatory
  ▪ Failed to use less discriminatory alternatives

Minnesota v. Clover Leaf Creamery – upheld MN statute which banned the retail sale of milk in plastic nonreturnable containers
  ▪ MN firms which manufactured plastic containers were adversely affected and there were OOS firms that manufactured paperboard
  ▪ Alternatives are more burdensome or less likely to be effective
  ▪ Just b/c the statute causes some business to shift from OOS to IS companies it is not per se invalid

CTS Corp v. Dynamics – upheld IN statute requiring that purchaser can only acquire voting rights if approved by the existing shareholders
  ▪ Apply Pike test – statute applies even-handedly and to the extent that it affects IC, it is outweighed by the state’s interest in protecting shareholders of IN corporations
  ▪ No problem of inconsistent regulation b/c companies can only be incorporated in one state

Maine v. Taylor – upheld ME statute prohibiting the importation of live baitfish; statute is facially discriminatory but is not per se invalid
  ▪ Hunt test: state must show (1) the statute serves a legitimate local purpose and (2) that this purpose could not be served as well by available non-discriminatory means
  ▪ Rule of per se invalidity is not applied b/t statute is not simple economic protectionism – has a legitimate environmental purpose

  • Market Participation exception
  ▪ South-Central Timber v. Wunnicke – invalidated AK provision requiring the partial process of timber bought in AK to be w/in the state before being shipped elsewhere
    ▪ General rule: if state is acting as a market participant then the Dormant Commerce Clause places no restrictions on its activities
    ▪ AK was acting as more than just the seller of timber – tried to control the timber after the sale
  ▪ Hughes v. Alexandria Scrap – upheld MD program offering a bounty for abandoned MD cars
  ▪ Reeves v. Stake – upheld SD policy of restricting sale from state owned cement plant to state residents before supplying to OOS
  ▪ White v. MA Council of Construction – upheld Boston order requiring construction contracts funded in part by city funds to have at least 50% city residents on the work force

PRIVILEGES AND IMMUNITIES CLAUSE
  • Corfield v. Coryell – upheld a NJ statute which restricted access to state’s shellfish grounds to NJ residents only
    ▪ Analysis: certain interests are fundamental rights and are protected
• **Toomer v. Witsell** – invalided SC law imposing differential license fees on IS vs. OOS shrimp boats
  o Analysis: (1) whether there is a substantial reason for the discrimination beyond the fact of OOS residency; and (2) whether the degree of discrimination bears a close relation to that reason
• **Baldwin v. Montana Fish and Game** – upheld a MN statute imposing higher fees to OOS residents for elk hunting licenses
  o P&I clause only applies to those basic and essential activities, interference w/which would frustrate the purposes of the formation of the nation
• **Hicklin v. Orbeck** – invalidated an AK law requiring that residents be preferred over nonresidents in certain jobs
  o Followed Toomer analysis: nonresidents were not a peculiar source of evil and there was no reasonable relation b/t the discrimination and the evil they supposedly represented
• **United Building v. Camden** – court combines Corfield and Toomer analyses
  o (1) is the interest advanced by the litigant a P&I actually protected
    ▪ Interest in gov’t work is not a constitutionally protected liberty
  o (2) whether there is a substantial reason for the discrimination apart from the nonresidency and then whether that reason has a close relation to the purposes of the discriminatory statute/ordinance
• **New Hampshire v. Piper** – invalidated NH rule limited bar admission to state residents
  o Uses Camden analysis AND looks to whether there are less restrictive alternatives

**PREEMPTION ANALYSIS**

• When a state law stands as an obstacle to the accomplishment and execution of the full powers and objectives of Congress, the state law is preempted
  o Is there an actual conflict?
  o Has Congress so completely occupied a field of regulation so as to preclude any state regulation?
• **Perez v. Campbell** – invalided AZ law b/c of conflict w/nat’l bankruptcy law
• **PG&E v. State Energy** – upheld CA law imposing a moratorium on the certification of nuclear energy plants b/c federal law expressly carved out an area where states were to retain authority to regulate economic concerns
• **Crosby v. National Foreign Trade Council** – invalidated MA law restricting agencies from purchasing goods from companies doing business w/Burma b/c it blunts the consequences of Presidential action, exceeds the specific range of sanctions intended by Congress, and compromises ability of President to speak for the Nation as one entity