

Teacher Guide

Commerce Clause Cases

Gibbons v. Ogden (1824)

Ogden received a license from New York to operate his steamboat exclusively in the waters off the coast of the state. But the United States Congress granted Gibbons a license to operate his steamboat between New Jersey and New York. Ogden sued Gibbons, arguing that New York had the same authority to regulate matters of interstate commerce as Congress. The Supreme Court ruled in favor of Gibbons because “Commerce” includes not only the trade of goods and transportation, but any intercourse between the states, and Congress has the power to “prescribe the rule by which commerce is to be governed,” and its rules trump any contradictory state laws.

Cooley v. Board of Wardens of the Port of Philadelphia (1851)

The Port of Philadelphia had a requirement that any ship entering that port had to take on a local pilot as it made its way into the port. Ship owners sued, arguing that they were engaged in interstate commerce and that the local law was inconsistent with the Commerce Clause. The Supreme Court disagreed, holding that the power to regulate commerce was concurrent. That is, both the federal government and the states had the authority to regulate commerce.

Hammer v. Dagenhart (1918)

Congress banned from interstate commerce any and all goods manufactured in factories that employed children under the age of 14. Dagenhart, whose two children worked, sued and argued that the law exceeded congressional Commerce Clause authority. The Supreme Court agreed with the father, ruling that Congress did not have the power to regulate the manufacture of a good simply because the good might be shipped in interstate commerce.

Carter v. Carter Coal Co. (1936)

Congress passed a law that set maximum hours and minimum wages for workers in coal mines. The law was challenged, and the Court ruled it was unconstitutional. The Supreme Court said that the law was regulating production, not commerce. Production was a purely local activity, even though the materials produced would be sold in interstate commerce. Although the conditions under which coal miners work might affect interstate commerce, that effect is too indirect to allow Congress to regulate it under the commerce power.

NLRB v. Jones & Laughlin (1937)

The National Labor Relations Act created a federal board charged with ensuring that private employers did not stop employees from forming labor unions. Jones & Laughlin Steel Company

fired employees who attempted to unionize and sued the National Labor Relations Board. The company argued that the law is unconstitutional when it regulates events that occur wholly within a state. The Supreme Court relaxed its earlier position, ruling that Congress has the authority to regulate even wholly intrastate activity if that activity might significantly affect interstate commerce, as the firing of employees would.

U.S. v. Darby (1941)

During the Great Depression, Congress companies that manufacture goods for use in interstate commerce to pay a minimum wage and have limited hours. A manufacturer who was charged with violating the law argued that the law was unconstitutional because it regulated the intrastate manufacture of goods, not commerce. The Supreme Court reversed its earlier decision and ruled that Congress can ban from interstate commerce goods that are harmful to the country, including goods made in a harmful way. Also, Congress has the authority to regulate the in-state manufacture of goods that may end up in interstate commerce. The Court also emphasized that it had no authority to question the “motive or purpose” that Congress had in mind – meaning that it’s not the Court’s role to judge the wisdom of a law, only whether the Congress had the power to pass the law.

Wickard v. Filburn (1942)

In an effort to increase wheat prices during the Great Depression, Congress passed a law limiting the amount of wheat that some farmers could grow. Farmer Filburn that he intended to use at least some of the wheat for personal consumption, and that Congress could not stop him from growing wheat that he did not intend to sell in because he was not selling the wheat or giving it away, and therefore not involved in interstate commerce. The Supreme Court ruled for the government, concluding that Congress can regulate intrastate activity that, in the aggregate, would substantially affect interstate commerce. The farmer’s decision to self-supply wheat meant that he would not buy wheat from the market. If many farmers did the same thing, they would substantially affect interstate commerce.

Heart of Atlanta Motel v. U.S. (1964)

Among other things, the Civil Rights Act of 1964 made racial discrimination in public places, including hotels, illegal. An Atlanta hotel refused to service black customers, sued the federal government, and argued that the law exceeded congressional Commerce Clause power. The Supreme Court ruled against the hotel, concluding that “commerce” includes travel from state to state, and that racial discrimination in hotels can affect travel from state to state. Congress can therefore prohibit discrimination in hotels because, in the aggregate, it affects interstate commerce.

Katzenbach v. McClung (1964)

The owner of a small, segregated, BBQ restaurant in Alabama argued that the Civil Rights Act was unconstitutional as applied to him. He said his business and customers were strictly local, and that

just because a substantial amount of his food moved in interstate commerce did not mean that Congress could regulate his restaurant under the Commerce Clause. The Supreme Court ruled that Congress could “protect and foster” interstate commerce by regulating the behavior of restaurants serving food which travels in interstate commerce. The Court wrote that Congress had “ample” reason to believe that discrimination at such restaurants burdens interstate commerce, in part because African-Americans avoid traveling to areas that include discriminatory restaurants.

U.S. v. Lopez (1995)

Congress passed a law making it a federal crime to carry guns within a school zone. Lopez, who was convicted of doing just that, challenged the law as unconstitutional. For the first time in decades, the Supreme Court ruled that Congress had exceeded its Commerce Clause authority. The Court struck down the law, writing that carrying a gun in a school zone is not an economic activity.

U.S. v. Morrison (2000)

Congress passed a law allowing the victims of gender-based harm to sue their attackers in federal court. When a female victim of alleged rape sued her attacker, he challenged that law as unconstitutional. The Supreme Court ruled that Congress exceeded its Commerce Clause authority. The violence against women addressed by the act is not an economic activity.

Gonzales v. Raich (2005)

Angel Raich grew and used marijuana at her home for medicinal purposes. She did not sell or trade the marijuana in interstate commerce, and California law allowed her activity. The federal government criminalized all uses of marijuana, and prosecuted Raich. She countered that the law, as applied to her, was unconstitutional. The Supreme Court upheld the federal government's authority to prosecute Raich for growing her own marijuana plants. The Court ruled that Congress can regulate non-economic, wholly intrastate activity if “failure to do so” might undermine a broader regulatory scheme. Homegrown marijuana might find its way into interstate commerce, which would disrupt Congress’s valid attempt to completely ban marijuana from interstate commerce.

Answers to Handout 3: Re-evaluation of the Laws

Law banning child labor: Yes, this law would be permitted under the Commerce Clause today. In *US v. Darby*, the Supreme Court ruled that Congress has the authority to regulate the in-state manufacture of goods that may end up in interstate commerce. Congress can ban from interstate commerce goods that are harmful to the country, including goods made in a harmful way.

Law limiting tomato growing: Yes, this law would probably be permitted under the Commerce Clause today. It is similar to the Court’s decision in *Wickard v. Filburn*, considered to be the most expansive ruling on the Commerce Clause. The *Wickard* decision remains in effect today and the Court cited the case in the 2005 ruling in *Gonzales v. Raich*.

Law banning guns in school zones: No, this law would not be permitted under the Commerce Clause today. The Supreme Court ruled on this law in *US v. Lopez* in 1995, saying that carrying guns in school zones was not an economic activity.

Additional Notes about the Commerce Clause

Congress sometimes achieves its aims through its “spending powers,” by placing conditions on the funds it allocates to the states. For example, in the mid-1980s, Congress conditioned federal highway monies on the states’ passage of laws setting the minimum drinking age at 21. Laws like these are typically allowed under Congress’s power to “lay and collect taxes...to pay the Debts and provide for the Common Defence and general Welfare of the United States,” rather than the Commerce Clause. While Congress might not be able to pass a law setting a minimum drinking age, states can do so.

Now and throughout American history, people have disagreed on the appropriate interpretation of the Commerce Clause. Some argue that an expansive interpretation of the Clause is necessary to empower the federal government to deal with complex, national problems. Others argue that the founders designed a federal government of limited powers and that broad interpretations of the Commerce Clause effectively destroy those limits. In 1937, when the Supreme Court made a dramatic shift from a narrow to an expansive interpretation of the Commerce Clause, the dissenting justices in the *Jones & Laughlin* case noted, “almost anything—marriage, birth, death—may in some fashion affect commerce.”

It’s important to note that there is a significant area of Commerce Clause jurisprudence that this lesson does not deal with. The Commerce Clause serves two functions: as a source of congressional authority, and as a limitation on state legislative power. The second function, referred to as the “dormant commerce clause” is implied by the Clause. The Supreme Court has held that, in many situations, the fact that the Constitution gives Congress the power to regulate interstate commerce has a collateral implication: the need to avoid state measures that unduly burden or discriminate against interstate commerce. Due to time constraints, this lesson plan focuses on the Commerce Clause as a source of congressional authority.

Use of Community Resource People

While Street Law typically advocates the integration of legal professionals and community resource people into classroom lessons, this material may pose particular challenges. It may be difficult for teachers to find a legal expert who specializes in this area of constitutional law, but still possesses the ability to make the material accessible to students. If you do invite a legal expert to join your class for this lesson, choose someone who you feel fits those criteria and share the lesson plan with them in advance.

**Modern Debate Over the Commerce Clause:
The Case of *United States v. Lopez* (1995)**

*Note to teachers: This case could be used as a mini-moot court to assess students understanding of the issues in *Gibbons v. Ogden*. Need instructions on how to conduct mini-moot court hearings? Go to www.landmarkcases.org to download instructions. The text below can be used as background for the case.*

In 1990, the U.S. Congress passed a major crime bill, which featured a section called the Gun-Free School Zones Act of 1990, forbidding "any individual knowingly to possess a firearm at a place that [he] knows . . . is a school zone," 18 U.S.C. 922(q)(1)(A). The act was passed amid concerns about violence, particularly gun violence, in the nation's schools.

When considering whether a new law should be passed, Congress not only has to consider whether the law is a good idea, but also whether the law is constitutional. When we say that the law is constitutional, we mean not only that the law itself is allowed by the U.S. Constitution, but also that Congress has the power to pass that law.

Most people certainly agreed that the Gun-Free School Zones Act of 1990 was a good idea. Guns in a school zone increase the likelihood that a young person will be seriously hurt or even killed. However, soon after the Gun-Free School Zones Act of 1990 was passed, there was a constitutional challenge to this law. On March 10, 1992, a twelfth-grade student named Lopez arrived at Edison High School in San Antonio, Texas with a concealed .38 caliber handgun and five bullets. After receiving an anonymous tip, school authorities confronted Lopez, who admitted that he was carrying the weapon. The next day, he was charged by federal prosecutors with violating the Gun-Free School Zones Act of 1990.

Lopez tried to get the case dismissed on the basis that the Gun-Free School Zones Act of 1990 violated the U.S. Constitution because Congress did not have the power under the Commerce Clause to pass such a law. The District Court denied his motion, stating that the Act was a constitutional exercise of Congress's power to regulate interstate commerce. Lopez was found guilty in the District Court and was sentenced to six months' imprisonment and two years of supervised release. The case was appealed to the Fifth Circuit Court of Appeals, which reversed the District Court's decision. The Court of Appeals held that the Gun-Free School Zones Act of 1990 was beyond Congress' power to regulate interstate commerce. The case was then appealed to the Supreme Court of the United States.

Considering Chief Justice Marshall's decision in the *Gibbons v. Ogden* case, as well as previous laws that have been passed relying on the Commerce Clause as their basis, what arguments could be made in favor of Lopez (the act is unconstitutional)? What arguments could be made in favor of the United States (the act is constitutional)?

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Excerpt From the Decision**

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS joined. KENNEDY filed a concurring opinion, in which O'CONNOR joined. THOMAS filed a concurring opinion. STEVENS and SOUTER filed dissenting opinions. BREYER filed a dissenting opinion, in which STEVENS, SOUTER, and GINSBURG joined.

We start with first principles. The Constitution creates a Federal Government of enumerated powers. See Art. I, Section 8. As James Madison wrote: "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite."

The Constitution delegates to Congress the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Art. I, Section 8, cl. 3. The Court, through Chief Justice Marshall, first defined the nature of Congress' commerce power in *Gibbons v. Ogden*, 9 Wheat. 1, 189-190 (1824):

"Commerce, undoubtedly, is traffic, but it is something more: it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse."

The commerce power "is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution." *Id.*, at 196. The *Gibbons* Court, however, acknowledged that limitations on the commerce power are inherent in the very language of the Commerce Clause.

"It is not intended to say that these words comprehend that commerce, which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States. Such a power would be inconvenient, and is certainly unnecessary.

"Comprehensive as the word 'among' is, it may very properly be restricted to that commerce which concerns more States than one. . . . The enumeration presupposes something not enumerated; and that something, if we regard the language, or the subject of the sentence, must be the exclusively internal commerce of a State." *Id.*, at 194-195.

Jones & Laughlin Steel [and other cases] ushered in an era of Commerce Clause jurisprudence that greatly expanded the previously defined authority of Congress under that Clause. In part, this was a recognition of the great changes that had occurred in the way business was carried on in this country. Enterprises that had once been local or at most regional in nature had become national in scope. But the doctrinal change also reflected a view that earlier Commerce Clause cases artificially had constrained the authority of Congress to regulate interstate commerce.

But even these modern-era precedents which have expanded congressional power under the Commerce Clause confirm that this power is subject to outer limits. In *Jones & Laughlin Steel*, the Court warned that the scope of the interstate commerce power "must be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government."

Gibbons v. Ogden

... [W]e have identified three broad categories of activity that Congress may regulate under its commerce power. First, Congress may regulate the use of the channels of interstate commerce. Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce i.e., those activities that substantially affect interstate commerce.

We now turn to consider the power of Congress, in the light of this framework, to enact [the Gun-Free School Zones Act of 1990]. The first two categories of authority may be quickly disposed of. Thus, if [the Act] is to be sustained, it must be under the third category as a regulation of an activity that substantially affects interstate commerce.

The Government's essential contention, *in fine*, is that we may determine here that [the Act] is valid because possession of a firearm in a local school zone does indeed substantially affect interstate commerce. The Government argues that possession of a firearm in a school zone may result in violent crime and that violent crime can be expected to affect the functioning of the national economy in two ways. First, the costs of violent crime are substantial, and, through the mechanism of insurance, those costs are spread throughout the population. Second, violent crime reduces the willingness of individuals to travel to areas within the country that are perceived to be unsafe. The Government also argues that the presence of guns in schools poses a substantial threat to the educational process by threatening the learning environment. A handicapped educational process, in turn, will result in a less productive citizenry. That, in turn, would have an adverse effect on the Nation's economic well-being. As a result, the Government argues that Congress could rationally have concluded that [the Act] substantially affects interstate commerce.

... Under the theories that the Government presents in support of [the Act], it is difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement or education where States historically have been sovereign. Thus, if we were to accept the Government's arguments, we are hard pressed to posit any activity by an individual that Congress is without power to regulate.

For instance, if Congress can, pursuant to its Commerce Clause power, regulate activities that adversely affect the learning environment, then, *a fortiori*, it also can regulate the educational process directly. Congress could determine that a school's curriculum has a "significant" effect on the extent of classroom learning. As a result, Congress could mandate a federal curriculum for local elementary and secondary schools because what is taught in local schools has a significant "effect on classroom learning" and that, in turn, has a substantial effect on interstate commerce.

... [This] rationale lacks any real limits because, depending on the level of generality, any activity can be looked upon as commercial. Under the dissent's rationale, Congress could just as easily look at child rearing as "fall[ing] on the commercial side of the line" because it provides a "valuable service - namely, to equip [children] with the skills they need to survive in life and, more specifically, in the workplace." ... We do not doubt that Congress has authority under the Commerce Clause to regulate numerous commercial activities that substantially affect interstate commerce and also affect the educational process. That authority, though broad, does not include the authority to regulate each and every aspect of local schools.

... The possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce. Respondent was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce.

To uphold the Government's contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States.

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Questions to consider:

1. Justice Rehnquist cites three important first principles on which the decision in this case is based. What are they?
2. Justice Rehnquist says that the Jones case ushered in an era where Congress's power has greatly expanded. According to Rehnquist, what accounts for this expansion of power?
3. What limits are there on Congress's authority, according to Rehnquist?
4. What argument does the United States make to support their case that the Gun-Free School Zones Act substantially affects interstate commerce? Would you characterize this argument as a strict or a loose interpretation of the Commerce Clause power?
5. In challenging the argument of the United States, Justice Rehnquist uses the slippery slope rationale. What does Justice Rehnquist contend? Do you agree or disagree? Explain.
6. If the Supreme Court of the United States doesn't uphold the Gun-Free School Zones Act, who still has the authority to pass laws restricting gun possession in school zones?