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# State Sovereignty and the Interstate Commerce Clause

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# The King Amendment- H.R. 6083



- IN GENERAL. – The government of a State or locality therein shall not impose a standard or condition on the production or manufacture of any agricultural product sold or offered for sale in interstate commerce if –
  - (1) such production or manufacture occurs in another State; and
  - (2) the standard or condition is in addition to the standards and conditions applicable to such production or manufacture pursuant to –
    - (A) Federal law; and
    - (B) the laws of the State and locality in which such production or manufacture occurs

# Framework for Discussion



- How does the Constitution allocate power as between the federal government and the states?
- How has the Supreme Court interpreted the limitations on the exercise of such power?
- What are some examples of shared federal and state powers as they affect agricultural production?
- What is the legal framework against which to evaluate policy positions on respective sovereign roles on agricultural production practices?

# Key Constitutional Principles



- Federal Law is the Supreme Law of the Land
- State sovereign powers preserved except for those expressly reserved to the federal government in the Constitution
- Congress has the power to enact laws implementing these federal reserved powers
- Executive Branch has power to implement laws
- The Supreme Court decides whether laws are constitutional

# Interstate Commerce Clause



- The Constitution reserves to Congress the power “to regulate Commerce . . . among the several States.” Art. 1 Sec. 8 Para 3.
- Supreme Court interpretation:
  - includes the power to pre-empt state law (express or implied) by the enactment of federal law
  - also denies the States the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce (“negative” or “dormant” commerce clause) even if Congress has not enacted a pre-emptive federal law.

# Federal Pre-emption



- Express Pre-emption: Congress passes a law that is within its constitutional reserved powers that expressly pre-empts State law (Organic Foods Production Act ) (Federal Meat Inspection Act)
  - pre-existing state law may also be expressly preserved (CAA waiver of pre-emption for pre-existing state motor vehicle emission standards)
- Implied pre-emption: State law enters a field of regulation reserved exclusively for the federal government or state law conflicts with federal law

# Federal Pre-emption



- Conflict may arise because:
  - impossible to comply with both federal and state law or
  - state law stands “as an obstacle to the accomplishment of the full purposes and objectives of Congress.”
- Presumption that the traditional police powers of the state and local governments are not displaced unless that is the clear intent of Congress.

# Interference with Interstate Commerce Limits on State Law



- Supreme Court interpretation:
  - a state law that directly regulates or discriminates against interstate commerce or which has that effect is per se invalid; examples include
    - laws prohibiting import of goods from other states
    - laws imposing taxes on out-of-state goods
    - laws prohibiting export to other states
    - laws erecting barriers to out-of-state competition

# Interference with Interstate Commerce Limits on State Law



- A state law that is neutral and regulates evenhandedly is evaluated under a balancing test:
  - nature of the putative in-state benefits
  - burden the state law imposes on interstate commerce
  - whether the burden is “clearly excessive” in relation to state benefits
  - whether the state interests can be promoted as well with a lesser impact on interstate commerce.
- Excessive burden compared to benefits = violation.

# Examples of Application



- The Wine Case *Granholm v. Heald*, 125 S. Ct. 1885 (2005)
- The Cantaloupe Case *Pike v. Church*, 90 S.Ct. 844((1970)
- The Plastic Milk Jug Ban Case, *Minnesota v. Clover Leaf Creamery Company*, 101 S. Ct. 715 (1980)

# Granholm v. Heald



- Issue: Can Michigan and New York prohibit or condition direct shipment of wine to in-state consumers in ways that differ from those applied to shipment from in-state wineries?
- State Interest Asserted: Prevent shipment to minors and ensure ability to collect taxes
- Ruling: Both laws unconstitutional under the commerce clause for discrimination against out-of-state wineries.

# Pike v. Church



- Issue: Can Arizona apply its state packaging requirements for cantaloupes (“closed standard containers approved by state supervisor”) to prohibit shipment of loose cantaloupes to California for packaging at nearest facility?
- State Interest Asserted: Promote and preserve the reputation of Arizona growers by prohibiting deceptive packaging
- Ruling: Burden excessive, unconstitutional

# Minn. v. Clover Leaf Creamery



- Issue: Can Minnesota ban retail sale of milk in plastic nonreturnable, nonrefillable jugs?
- State Interest Asserted: Promote conservation and ease solid waste disposal problems
- Ruling: Does not violate the Commerce Clause
  - regulates evenhandedly by prohibiting all milk retailers from selling products in plastic jugs, without regard to whether the milk, the containers, or the sellers are from outside the State.

# Some Generalizations



- There are thousands of decisions interpreting the Commerce Clause (as of 1900, the Supreme Court had considered 1600 such cases).
- Prior to 1900, agricultural production standards as well as manufacturing activity, etc. were considered matters of local state jurisdiction that did not violate the Commerce Clause (no direct effect)
- Post-1900 test evolves to one based on economic activity.

# Some Generalizations



- Current standard:
  - Under the Commerce Clause, Congress may regulate the channels of interstate commerce, persons or things in interstate commerce, and those activities that substantially affect interstate commerce.
    - *Wickard v. Filburn*: “activity” includes production of wheat on one’s own farm for one’s own consumption
    - *NFIB v. Sibelius*: “activity” does not include non-participation in commerce (i.e. failure to purchase health insurance) (Roberts)
  - The “police power” is the general power of governing, possessed by the States but not by the Federal government.

# Federal Laws Regulating Agricultural Production



- The Organic Food Production Act
- The Animal Welfare Act (does not apply to farm animals)
- The Animal Health Protection Act;
  - applies to “prevention, detection, control, and eradication of diseases and pests of animals”;
  - “pest” defined as disease-causing organisms or similar articles
  - Express preservation of State authority to regulate intrastate (establish state specific phytosanitary regulations) with provision for federal intrastate action after review and consultation with Governor or appropriate state animal health official.

# Federal Laws Regulating Agricultural Production



- The Plant Protection Act
  - limited to “prevention, detection, control and eradication of plant pests and noxious weeds”
- FIFRA
  - pre-empts state authority to require labeling or packaging in addition to or different from federal requirements
  - States authorized to regulate sale or use but only if regulation does not permit any federally prohibited sale or use
  - limited authorization for special local uses approved by EPA.

# Federal Laws Regulating Agricultural Production



- Federal Meat Inspection Act
  - Pre-empts State authority to require any labeling of meat and meat products that are different from or inconsistent with federal labeling standards
  
- Federal Egg Inspection Act

# Federal Laws Regulating Agricultural Production Activity



- FFDCCA Production Practices (proposed food safety rules for growing, harvesting, packing and holding of produce)
  - worker training, health and hygiene
  - agricultural water standards
  - biological soil amendment standards
  - domesticated and wild animals
  - Equipment, tools and buildings

# Animal Welfare Standards



- No current Federal law or regulation for farm animals (i.e. no express or implied pre-emption to date)
- King amendment pre-empts state authority but does not create independent Federal regulatory authority
- Constitutional analysis
  - Is this subject one of reserved federal power or state police power?
  - If state police power, what are the permissible limits of state regulation of production practices in other states?



# Questions?



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