

**CONSTITUTIONAL LAW I // LITTLE // SPRING 2009 // GRADE: B+**

**JUDICIAL POWER**

<u>Topic</u>	<u>Case Name</u>	<u>Year</u>	<u>Facts</u>	<u>Holding</u>	<u>Majority Opinion</u>	<u>Dissenting Opinion(s)</u>	<u>Concurring Opinion(s)</u>	<u>Significance</u>
Theories of Constitutional Interpretation	DC v. Heller	2008	D.C. council enacted law imposing lots of restrictions on handguns (banned from homes, have to be unloaded or have triggerlocks on them, etc). Challenged as violation of 2nd A.	D.C. statute infringes too much on 2nd A rt to keep and bear arms. It's an individual rt that's related to self-defense, doesn't have to be connected to service in the militia.	Scalia (duh)	Stevens (joined by Souter, Ginsburg, Breyer): Guns for militia purposes only, otherwise founders would have expressly addressed self-defense. Breyer: Contemp. logic & policy concerns should allow DC ban		tbd...
<b>Judicial Review</b>								
	Marbury v. Madison	1803	Defeated incumbent prez Adams appointed Mar Justice of Peace. Mad (sec of state) refuses to deliver Mar's commission. Mar wants S.Ct. to order writ of mandamus to compel Mad to deliver commission.	Judiciary Act of 1789 which gives S.Ct. orig jxdn over petitions for writs of mandamus is unconstitutional. Art. III, sec.2 grants S.Ct. orig. jxdn in specific cases (involving ambassadors, public ministers or consuls, and when a state is a party). Otherwise S.Ct. has app. jxdn. Congress doesn't have power to change ct's orig. jxdn.	John Marshall (joined by Paterson, Chase, and Washington)	n/a		Established principle of judicial review: The Const. is law and it is the province and duty of the judiciary to declare what the law is. If a statute conflicts w/Const., then Const. trumps. If two laws conflict, then ct must decide which law to apply.
<b>Judicial Review of State &amp; Local Actions</b>								
Expansion of Jurisdiction	McCulloch v. Maryland	1819	MD tried to impose tax on US Bank.	Congress has power to make a bank (bc it has power to tax and spend), so MD can't tax it, bc power to tax = power to destroy.	John Marshall	n/a		Expansively defined scope of Congress's powers and limited ability of states to interfere w/fed activities.
	Martin v. Hunter's Lessee	1816	After Rev. War, states confiscated land belonging to Brits and sold to Americans. VA sold Martin's land to Hunter. Martin claimed title under Brit-US treaty protecting Brit rts to own land in US. Hunter argued VA sold him land before treaty went into effect.	Treaty controlling, so land goes to Martin.	Joseph Story (joined by Washington, Johnson, Livingston, Todd, Duvall); Concurrence by Johnson	n/a		Affirmed S.Ct.'s jxdn to review state ct decisions on fed law. Important to ensure uniformity in interpretation of fed law and the Const grants the authority (S.Ct. has app jxdn in "all other cases") **Now state cts insulate their opinions by writing that it applies only to STATE law.
	Cohens v. Virginia	1821	D.C. law allowed sale of		John Marshall			Reaffirmed authority

			lottery tax. Cohen bros started selling the tax in VA, violating VA law.					of S.Ct. to review st.ct. judgments on federal/constitutional issues.  Reaffirmed Martin in context of review of state crim proceedings.  St. cts. can't be trusted to adequately protect fed rts bc many st. judges depend on legislature (for jobs, salaries).
	Cooper v. Aaron	1958	AK refused to comply w/Brown v. Board and enacted state laws upholding continued segregation.	Supremacy Clause of Art. VI made Const. supreme law of land. Marbury gave S.Ct. power of judicial review. So, Brown v. Board is binding on all states. AK can't just ignore it.	Earl Warren (joined by Black, Frankfurter, Douglas, Burton, Clark, Harlan, Brennan, Whittaker)...Concurrence by Frankfurter	n/a		S.Ct. decisions binding on all states!
Limitations on Jurisdiction	Ex Parte McCordle	1869	McCordle arrested for libel during Reconstruction. Sought writ of habeas in fed ct and was denied. Appealed to S.Ct pursuant to a Congressional statute that gave ct app jxdn over such cases. While case pending, Congress repealed that act which gave ct jxdn.	Dismissed suit, bc Congress's repeal of act divested it of jxdn over the case.				Congress successfully restrict ct's jxdn to hear a habeas case under exceptions power, but holding narrow.
	Ex Parte Yerger	1869	Congress again tried to restrict Ct's jxdn to hear a habeas writ.	Ct heard the case under its appellate jxdn over habeas cases.				Congress can't completely restrict ct's jxdn on a topic, must leave at least one path open for the case to reach fed cts.
	US v. Klein	1871	After Civil War, Congress passed act removing court's jurisdiction from pending pardon case under Exceptions Clause.	Unconstitutional, bc Congress using exceptions power to manipulate the result in a pending case. Violation of separation of powers.				Congress can't use exceptions power to restrict ct's jxdn in such a way that would direct outcomes in their favor.
	Boumediene	2008	Congressional act suspended habeas rights of Gitmo prisoners.	Unconstitutional. Congress can only do so if they offer a meaningful substitute that still allows prisoners to challenge their sentences.				
Role of Natural Law in	Calder v. Bull	1798	Conn legislature ordered new trial in a will contest,	Ex post facto applies only to criminal cases, not civil.	Chase, joined by Ellsworth, Wilson,			Ct can strike down a law if it violates

Constitution			overruling earlier ct ruling.		Cushing, Paterson			"natural law," i.e. ideas of justice that preexist American society and thus implied in Const.
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## JUSTICIABILITY

<u>Topic</u>	<u>Case Name</u>	<u>Year</u>	<u>Facts</u>	<u>Holding</u>	<u>Majority Opinion</u>	<u>Dissenting Opinion(s)</u>	<u>Concurring Opinion(s)</u>	<u>Significance</u>
<b>Political Question</b>								
Reapportionment	Baker v. Carr	1962	1901 standard → state General Assembly was allocated by number of voters in each county  1961 → districts changed a lot due to substantial population growth  Voters claimed that their voting power was unconstitutionally diluted	Reapportionment of state voting districts is not a political question.	Brennan	Frankfurter (Harlan) → suggested political questions (1) war or foreign affairs (2) structure and organization of political institutions (3)		Reapportionment cases falling under Equal Protection Clause are not political questions.  Six tests for finding political question.
Gerrymandering	Vieth v. Jubelirer	2004						
	Bush v. Gore	2000						
<b>Constitutional Standing</b>								
	Allen v. Wright		Parents of black students filed class action challenging IRS for not denying tax-exempt status to private, discriminatory schools.	No standing  No injury → parents do not care about economic injury to government  No injury → no abstract stigmatic injury (only sufficient when personally denied equal protection)  Injury → children's diminish ability to receive education in racially integrated school  No causation → link between IRS standards and school discrimination is too tenuous; injury is from independent action of school and not government  No redressability → school won't necessarily desegregate if tax-exempt status changes	O'Connor	Brennan → direct causal relationship where inability to receive education in desegregated school is linked to tax-exempt status  Stevens (Blackmun) → purpose of standing is to measure claimant's stake in outcome		
	Lujan v. Defenders of Wildlife	1992	Animal lovers challenge new interpretation of Endangered Species Act that applies it only to domestic actions. Seek	No standing  No injury → "some day" intentions to observe animals are not imminent	Scalia	Blackmun (O'Connor) → No diff bw "substantive" and "procedural" standing.	Kennedy (Souter) →  Stevens → Respondents have standing, but doesn't matter bc the	Non-economic injury (sufficient for injury-in-fact)  Stevens concurring

			injunction requiring application abroad as well.  ESA → regulated that no funding to projects that harm animals	No redressability → funding agencies are not bound by the federal regulation. Foreign govts may not abide.			regulation doesn't apply to activity in foreign countries.	opinion (narrowest) becomes majority in EPA
	Massachusetts v. EPA	2007	States sued EPA to force them to regulate greenhouse gases	Standing  Injury → sovereign state as landowner of property suffers injury from rising water levels (widespread BUT concrete)  Causation → EPA's refusal to regulate is linked to rising water levels (insignificant contribution)  Redressability → incremental benefit (reduction in harm)	Stevens	Roberts (Scalia, Thomas, Alito) →		Widespread + concrete injury (sufficient for injury-in-fact)  Insignificant contribution to injury (sufficient for causation)  Reduction in harm (sufficient for redressability)
<b>Prudential Standing</b>								
No "generalized" injuries	US v. Richardson	1974	CIA Act of 1949 → allowed CIA to keep its expenditures secret.  Taxpayer challenged it as violation of art. I, section 9, clause 7, which requires publication of all public expenditures.	No standing.  No injury → Taxpayer suffers "generalized grievance" common to all members of public. Not specific or concrete.			Powell → Function of courts to protect constitutional rights of individuals against discriminatory government action. Not to double-check all Congressional actions.	No standing for taxpayers' generalized injuries.  If taxpayers want to challenge a statute, they should use democratic means (political forum, polls) and not overburden courts.
	Elk Grove v. Newdow	2004	P was father of girl who attended school that recited Pledge of Allegiance. P challenged "under God" as religious indoctrination in violation of 1 <sup>st</sup> A.	No standing  No "third-party" interests → P was non-custodial parent and CA case law doesn't allow parent to dictate what others might say to his child.	Stevens	Rehnquist, O'Connor, Thomas		Court avoided the issue to avoid a ruling that would be divide the nation and be a political catastrophe for the court.  P probably had standing, but court could use "prudential" reasons to decline hearing the case.
<b>Ripeness</b>								
	Laird v. Tatum	1972						P has been harmed or faces imminent threat of harm
	Poe v. Ullman	1961						

	Griswold v. Connecticut	1965					
<b>Mootness</b>							
	Roe v. Wade	1973	Roe wasn't pregnant by the time case came to the ct.	Not moot.			EXCEPTION → "Capable of repetition, yet evading review"

## COMMERCE CLAUSE

<u>Topic</u>	<u>Case Name</u>	<u>Year</u>	<u>Facts</u>	<u>Holding</u>	<u>Majority Opinion</u>	<u>Dissenting Opinion(s)</u>	<u>Concurring Opinion(s)</u>	<u>Significance</u>
<b>Commerce Power Before 1887</b>								
Steamboats	*Gibbons v. Ogden	1824	NY granted F+L exclusive rt to operate steamboats in NY waters and they licensed Ogden. Gibbons started operating competing ferry service bw NY and NJ under license granted by fed law. Ogden obtained injunction against Gibbons in NY ct.	Reversed NY ct. Fed law preempts NY license, so Gibbons has rt to operate his ferry. NY monopoly an impermissible restriction of interstate commerce. Congress may regulate when the commerce has interstate effects, even if the commerce occurs within a State.	John Marshall, joined by Washington, Todd, Duvall, Story		Johnson	Established that Commerce Clause granted Congress power to regulate interstate commerce.  Broad interpretation of commerce (any phase of business, incl. navigation).
<b>Commerce Power from 1887 to 1937 (Narrow Definition of "Commerce" to Constrain Congress + Inconsistent Rulings)</b>								
Manufacturing	U.S. v. E.C. Knight	1895	Congress tried to use Sherman Antitrust Act (1890) to block Am. Sugar Refining Co. from buying competing refineries (gaining control over 98% of industry).	Act does not reach Manufacturing isn't commerce  Effect on commerce only "indirect" and "incidental"	Fuller, joined by Brewer, Brown, Field, Gray, Shiras, White, Peckham	Harlan		Congress narrowly defined commerce to preserve states' zone of activities (this trend lasted until 1937).  "Commerce" means movement.
Lottery Tickets Morals	*Champion v. Ames (Lottery Case)	1903	Fed Lottery Act of 1895 prohibited interstate shipment of lottery tix.	Act upheld.  Interstate sale of lottery ticket can be regulated.  Commerce Power can be used to achieve other goals → plenary power	Harlan, joined by Brown, White, McKenna, Holmes	Fuller, joined by Brewer, Shiras, Peckham → gives Congress general police power		Law probably upheld b/c of its moral significance.  Contradicts → Hammer v. Dagenhart.
RR Intrastate Rates	Houston RR (Shreveport Rate Cases)	1914	Interstate Commerce Commission set intrastate RR rates.	Regulation of intrastate rates upheld.  Intrastate transactions of interstate carriers → controlled  Direct impact on interstate commerce	Hughes	Lurton, Pitney		Congress can regulate intrastate commerce if it has a DIRECT effect on interstate commerce.
Production Morals	*Hammer v. Dagenhart (Child Labor Case)	1918	Response to concern over child labor conditions  Law enacted prohibiting shipment in interstate commerce of goods that were produced in factories employing children < 14 or 14-16 who worked >	Act does not reach Production is not commerce  Congress cannot regulate child labor laws → up to states (police power)	Day, joined by White, Pitney, Van Devanter, McReynolds	Holmes, joined by McKenna, Brandeis, Clarke		Ct more inclined to uphold economic regulations rather than moral regulations  Contradicts → Champion v. Ames

			8hrs/day or > 6days/week.  Didn't want to leave it to states bc they had problems regulating and remaining competitive. If they regulated, they feared commerce would move to neighboring state that didn't regulate.					
Stockyards "Stream of Commerce"	Stafford v. Wallace	1922	Packers and Stockyards Act of 1921 authorized Sec of Commerce to regulate stockyards w/livestock.	Act is upheld  Stockyards are part of stream of commerce → cannot be separated from commerce	Taft			Stockyards count as interstate commerce.
Labor Strike Intent to affect interstate commerce	Coronado Coal v. United Mine Workers	1925	Sherman act applied to local strike against mine operators	Even though act of persons involved are local, strike is designed to restrain or control interstate commerce (strikers' intent)  Strike → interstate commerce purpose				Intent to restrain or control supply in interstate commerce → interstate commerce
RR Pension Systems	RR Retirement Board v. Alton RR Co.	1935	Railroad Retirement Act of 1934 provided pension system for RR workers.	Act was struck down.  Congress does not have power to establish pension plan → too remote  Social welfare of workers → goal is not related to interstate commerce				Inconsistent application of "stream of commerce" approach  RR → interstate commerce? (sometimes)
Production - Labor Laws Direct/Indirect Effects Distinction	Schechter Poultry Corp. v. US (Sick Chickens Case)	1935	As part of New Deal, Pres could approve "codes of fair competition." NYC adopted Live Poultry Code. Aimed to ensure quality poultry. Buyers didn't have to buy whole coop (inc. sick chickens). Also regulated employment-wages, hrs, no child labor, etc.	Code unconstitutional bc not a sufficiently direct relationship to interstate commerce.  Even though chickens coming from other states, the code was only regulating operation of businesses in NY.  Indirect effect → up to states	Hughes, joined by Van Devanter, McReynolds, Brandeis, Sutherland, Butler, Roberts		Cardozo, joined by Stone	Ct reinforced distinction bw direct and indirect effects on interstate commerce to preserve our constitutional system. In reality, diff to draw distinction.
Production - Labor Laws	Carter v. Carter Coal Co.	1936	Bituminous Coal Conservation Act of 1935 declared production of coal directly affected interstate commerce. Established local coal boards to determine pxs, hiring, wages, hrs, etc.	Act unconstitutional bc Congress can't regulate wages, hrs. All that constitutes intercourse for purposes of production, not of trade, so it's not commerce.	Sutherland, joined by Butler, McReynolds, Roberts, Van Devanter	Cardozo, joined by Brandeis, Stone	Hughes	Again adopting narrow defn of commerce bc believed Const. requires a rigid zone of activities to be left to the states and ct must protect that

								zone.
<b>Commerce Power from 1937 to 1995 (Not One Federal Law Struck Down as Exceeding Scope of Commerce Power)</b>								
	West Coast Hotel v. Parrish	1937						“switch in time that saved nine”
Production - Labor Laws  Intrastate Activities → Close and Substantial Relationship	NLRB v. Jones & Laughlin	1937	Nat'l Labor Relations Act gave workers more rights. Jones a huge steel biz- huge engine of commerce, owns all parts of commercial chain. NLRB Act supposed to be applied when there was an effect on commerce.	Act upheld.  Nationwide industry → too big to ignore  Congress's power is plenary.	Hughes, joined by Brandeis, Stone, Roberts, Cardozo	McReynolds, joined by Van Devanter, Sutherland, Butler		Production can be commerce.  When intrastate activities have close and substantial relationship to interstate commerce, Congress can regulate.
Production- Labor Laws- Manufacture	US v. Darby	1941	Fair Labor Standards Act of 1938 prohibited shipment in interstate commerce of goods made by employees paid less than min wage.	Act upheld.	Stone, joined by unanimous			Manufacture is commerce.  Overruled Hammer v. Dagenhart, upheld Champion v. Ames. Dismissed 10th A as limitation.
Wheat  Cumulative / Aggregate Effect	*Wickard v. Filburn	1942	Agricultural Adjustment Act- sec of agric set quota for wheat production and gave each farmer an allotment.	Upheld Act and regulation of homegrown wheat (intrastate wheat) bc of the cumulative effect of that wheat on nat'l market and interstate commerce.	Jackson, joined by Stone, Roberts, Black, Reed, Frankfurter, Douglas, Murphy, Byrnes			Ct no longer relied on distinctions such as commerce v. production, direct v. indirect effect.  New test: Substantial effect on interstate commerce?
Civil Rts – Morals  Interstate Travel	*Heart of Atlanta Motel v. US	1964	Title II of Civil Rts Act prohibited discrimination by places of public accommodation. Motel refused blacks.	Upheld Act bc discrimination in hotels impedes interstate travel.	Clark, joined by Warren, Douglas, Harlan, Brennan, Stewart, White, Goldberg		Black, Douglas, Goldberg	Expanded Congress's commerce power to ensure something outside economic regulation, i.e. an end to discrimination.
Civil Rts - Morals	Katzenbach v. McClung	1964	Local BBQ joint in AL won't serve blacks and challenges Civil Rts Act.	Since 46% of meat purchased annually came from out of state, Congress could regulate the BBQ joint. Discrimination by restaurants cumulatively has an impact on interstate commerce.	Clark, joined by Warren, Harlan, Brennan, Stewart, White		Douglas, Goldberg, Black	Substantial effect.
Labor Laws	Maryland v. Wirtz	1968	Fair Labor Standards Act regulated wages and hours of employees engaged in commerce.	Upheld Act. Even though it regulates intrastate commerce, it has an aggregate affect on interstate commerce.	Harlan, joined by Warren, Black, Brennan, White	Douglas, Stewart		Using idea of aggregate effect, ct can justify almost anything as interstate commerce.
Criminal Statute  Class of	Perez v. US	1971	D convicted of violating Title II of Consumer Credit Protection Act,	Ct upheld fed law against D, bc rational for Congress to believe that intrastate loan	Douglas, joined by Burger, Black, Harlan, Brennan, White,	Stewart		All Congress needs to show is a rational belief that the

Activities			which prohibited loan sharking activities. He argued his business operated only in NY, so it's purely intrastate commerce.	sharking has suff effect on interstate commerce.  Class of Activities Test → once in class, doesn't matter if part in class is trivial is non-interstate	Marshall, Blackmun			prohibited activities would have substantial effect on interstate commerce, even if they're intrastate.
<b>Commerce Power from 1995 to Present</b>								
Criminal Statute	*US v. Lopez	1995	Gun-Free School Zones Act of 1990 makes it an offense to have a gun within 1000 ft of school. Govt argued guns in schools would inhibit education, hurting US workforce and economy.	Struck down bc relationship to interstate commerce too tangential and uncertain.  Possessing a gun → non-economic activity + non-commercial  Should be left to the states' police power	Rehnquist, joined by O'Connor, Kennedy, Scalia, Thomas	Stevens, Souter, Ginsburg, Breyer → commercial vs. non-commercial sounds like direct vs. indirect effect		First time ct struck down commerce clause since 1936.
Civil	US v. Morrison	2000	Violence Against Women Act allowed victims of gender-motivated violence to sue in fed cts.	Struck down civil dmgs provision. Congress can't regulate noneconomic activity just b/c cumulatively it has a substantial effect on interstate commerce.	Rehnquist, joined by O'Connor, Scalia, Kennedy, Thomas	Souter, Stevens, Ginsburg, Breyer	Thomas	Goes further than Lopez in limiting scope of Congress to regulate based on findings of "substantial effect" on interstate commerce.
Weed + Wickard	*Gonzalez v. Raich	2005	D caught growing marijuana for medicinal purposes under CA law but charged w/violating fed law. Challenged Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 as overstepping commerce power, because the pot grown locally and only used for medical purposes, so no effect on interstate commerce.	Because of high demand, locally grown pot will probably still be drawn into the interstate market of marijuana and thus have a substantial effect on it and the govt's effort to prohibit it, so the federal government can regulate (and prohibit) such consumption.  Court rejected the Wickard distinctions → irrelevant	Stevens, joined by Kennedy, Souter, Ginsburg, Breyer	O'Connor, Rehnquist, Thomas → no evidence that homegrown weed users constitute in aggregate sizeable enough class to have discernable impact on national market	Scalia → Congressional prohibition was constitutionally permissible as necessary and proper means of executing power to regulate interstate commerce in marijuana  Necessary and Property Clause might impose greater limits on congressional power than Court's analysis did	Ct still relies on Wickard to uphold commerce power over intrastate activities that could have a "substantial effect" on interstate commerce, even after its decisions in Lopez and Morrison.

**(ECONOMIC) SUBSTANTIVE DUE PROCESS**

<u>Topic</u>	<u>Case Name</u>	<u>Year</u>	<u>Facts</u>	<u>Holding</u>	<u>Majority Opinion</u>	<u>Dissenting Opinion(s)</u>	<u>Concurring Opinion(s)</u>	<u>Significance</u>
<b>Pre-Lochner Era (before 1905)</b>								
	Calder v. Bull							
	Fletcher v. Peck	1810		State legislature cannot rescind land grants to individuals who bought in good faith				
	Wynehamer	1856	Statute → prohibited use or possession of liquor owned prior to enactment of statute	Statute was unconstitutional because [ ]				
	Dred Scott	1857	Slave went to free state with owner	Congress cannot prohibit slavery (deprive slaveowner's property) in the free territories				
	Slaughterhouse Cases	1873						
	**Munn	1877	State law → fixed maximum charges for grain-storage warehouses  Warehouse businesses had monopoly on storage.	Law was constitutional because gov't can regulate if private property is "affected with a public interest."				"Affected with a Public Interest" Test → whether business is charged with public use
	Railroad Commission Cases	1886						
	Southern Pacific Railroad	1886						
	Mugler	1887						
	Minnesota Rate Case							
	Allegeyer	1897	State statute → prohibited individuals from issuing insurance on property in state with companies that had not been admitted to do business in state	Statute was unconstitutional because	Peckham (Unanimous)			"Liberty of K" is implicit in Amendment XIV
<b>Lochner Era (1905 to 1934)</b>								
	**Lochner v. New York	1905	State statute → prohibited bakery employees from working more than 60 hours a week or 10 hours a day	Statute was unconstitutional because right to sell one's labor is part of right to freedom of K. States cannot interfere unless necessary or reasonable to protect the public health or employee's health.	Peckham	Harlan (White, Day) → State is acting within its police power by protecting employees' health. Bakers work in terrible conditions.  Holmes → Judicial activism. No liberty of K in Amendment XIV.		Symbol for judicial activism, intervention, or abuse.
Maximum Hour	Muller v. Oregon (overruled in Adkins)	1908	State statute → prohibited women in laundries from working more than ten	Statute was constitutional because legislation was necessary to protect women				One of the exceptions during Lochner Era (but distinguished on

			hours a day.	since their “physical structure” put them at disadvantage in workplace.				grounds that women were different so required special legislation)
Maximum Hour	Bunting v. Oregon	1917	State statute → prohibited factory workers of both sexes from working more than ten hours a day	Statute was constitutional				One of the exceptions during Lochner Era (should have overruled Lochner)
Yellow Dog K	Adair	1908	Fed. Statute → prohibited employers from requiring employees to agree not to join union	Statute was unconstitutional because outside of gov’t power to force someone to retain personal services of another				
Yellow Dog K	Coppage	1915	State Statute → prohibited employers from requiring employees to agree not to join union	Statute was unconstitutional because outside of police power to compensate for unequal bargaining power.				
Minimum Wage	**Adkins v. Children’s Hospital  (overruled in West Coast Hotel)	1923	Statute → set minimum wage rates for women	Statute was unconstitutional because it infringed on liberty of K. Women’s “physical difference” is not relevant in minimum wage cases (only maximum hour).				
Price Regulation	[Multiple cases after Munn]	1914 to 1921	Statutes → regulated prices on fire insurance, rental housing	Statutes were constitutional because broad definition of “affected with a public interest”				
Price Regulation	[Multiple cases after Munn]	1927 to 1929	Statutes → regulated prices on gasoline, employment agencies, and theatre tickets	Statutes were unconstitutional because narrow definition of “affected with a public interest”				
Business Entry	New State Ice v. Liebmann	1932	Statute → prohibited any person from manufacturing ice without obtaining certificate	Statute was unconstitutional because legislature cannot create regulations restricting new businesses from entering into markets affected with a public interest.				
<b>Post-Lochner Era (after 1934)</b>								
Price Regulation	**Nebbia v. New York	1934	State statute → fixed maximum and minimum retail prices on milk.  Reason for statute → Dairy producers received milk prices that were far lower than production costs. Production and distribution of milk was big industry in state.	Statute was constitutional because state can adopt any economic policy that it reasonably deems to protect public welfare and can enforce that policy through appropriate legislation.	Roberts	McReynolds (Van Devanter, Sutherland, Butler) → statute is “not regulation but management, control, dictation”  Four Justices nicknamed “Four Horsemen” b/c of rejected New Deal regulations.		End of the Lochner Era.  SC recognized that the courts have no power to strike down legislation enacted for the public welfare.
	**West Coast Hotel v. Parrish  (overrules Atkins)	1937	State statute → set minimum wage rates for women	Constitutional bc statute was regulation that reasonably relates to its subject and is adopted to protect public	Hughes (5-4)	Sutherland (Van Devanter, McReynolds, Butler)		No freedom of K in Const. Only protection of liberty. Reasonable reg.

				welfare, health and safety of groups, or vulnerable groups (women).				adopted in interests of the community is due process.
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## “DORMANT” COMMERCE CLAUSE

<u>Topic</u>	<u>Case Name</u>	<u>Year</u>	<u>Facts</u>	<u>Holding</u>	<u>Majority Opinion</u>	<u>Dissenting Opinion(s)</u>	<u>Concurring Opinion(s)</u>	<u>Significance</u>
<b>Criticism of the Dormant Commerce Clause</b>								
Scalia’s View of DCC (inexistent)	Tyler Pipe Industries v. Washington State	1987				Scalia → supports use of Privileges and Immunities Clause over Dormant Commerce Clause		No such thing as Dormant Commerce Clause - no textual basis in Constitution. If Congress silent in certain fields of interstate commerce, then it shouldn't automatically be interpreted as a prohibition of regulation. Congressional silence is simply silence.
Thomas’s View of DCC (unworkable)	United Haulers	2007					Thomas → switched from Carbone, no longer believing it was correctly decided	Dormant Commerce Clause has no basis in Constitution and has become unworkable in practice.
<b>Other Doctrines Limiting the States</b>								
Preemption Doctrine	In re Raher	1891	Wilson Act → Imported liquor will be subject to local laws, not exempt even if it remains in originally packaging (overruling previous S.Ct. decision). Rahrer convicted for selling liquor against Kansas law. Argued he should be exempt since liquor in orig. packaging.	Upheld act as constitutional exercise of Congress’s exclusive power to regulate interstate commerce.				Created Preemption Doctrine. Congress can preempt the field as long as it’s regulating interstate commerce. Its statutes prevail over conflicting state laws bc of supremacy clause.
	Pennsylvania v. Nelson	1956	Pennsylvania Sediton Act → prohibited advocating for overthrow of fed govt by force and violence.	Struck down bc already preempted by the federal Smith Act.				Congress can “occupy the field” and thus preempt state laws.
	Farmers Educational & Cooperative Union v. WDAY	1959	Fed Communications Act → req’d broadcasters to carry some political speeches w/o censoring them.	FCA occupied the field and thus immunized broadcasters from liability under state libel laws.				Field Preemption.
	Crosby v. National Foreign Trade Council	2000	Mass statute → barred state govt from conducting business w/Burma to protest their human rights abuses.	Struck down bc already preempted by fed statute delegating broad power to Pres to impose sanctions on Burma. State statute messes				

				up the purpose of the fed statute.				
Market Participant Exception	Hughes v. Alexandria Scrap	1976	Md created program to reduce # of abandoned cars in the state. Bought junk cars, paid "bounty" for Md cars and req'd more stringent documentation from out-of-state processors of junk cars than in-state processors.	Upheld. Nothing in Commerce Clause prohibits a State from participating in the mkt and exercising the rt to favor its citizens over others.	Powell, joined by Burger, Stewart, Blackmun, Rehnquist, Stevens	Brennan, joined by White, Marshall		Created Market Participant Doctrine.
	Reeves v. Stake	1980	SD owned cement company charged less to in-state purchasers than out-of-state purchasers.	Upheld, bc SD acting clearly as a market participant, so it can choose to favor in-state purchasers.				Upheld state action, bc it's a market participant.
	S. Central Timber v. Wunnicke	1984	Alaska req'd buyers of state-owned timber to process it in-state before shipping it out of state.	Struck down. Can't impose conditions on the interstate timber mkt, just bc it owns the timber.				Put a limit on Mkt Participant Doctrine. State can only impose burden on commerce within the mkt in which it is a participant, but can't regulate outside.
Privileges & Immunities	United Bldg & Construction Trades Council v. Camden	1984	NJ statute allowed cities to adopt affirmative action plans. Camden passed ordinance requiring all city projects to employ at least 40% Camden residents.	Struck down as violation of P&I clause. Out-of-state resident's interest in employment on public works contract is fundamental to promotion of interstate harmony, therefore protected by P&I.	Rehnquist			P&I's purpose to promote unity of the nation. States can only discriminate against citizens of other states if they have a "substantial reason" for it (ex. unemployment, population decline, etc.)
	NH v. Piper	1985	Statute limited bar admission to local residents.	Struck down as violation of P&I clause. There's a rt to work and pursue your profession. Allowing such laws would balkanize economy of work. Nat'l economy demands mobility. Now no residency req't for state bars.				
Equal Protection	Met Life Ins. v. Ward	1985	Al placed 1% tax on local ins companies and 3-4% tax on out-of-state companies, which could be lowered if they invested substantially in Al. Ct ruled in earlier case that ins Ks not commerce.	Struck down. Ct can't apply dormant commerce clause bc ins K's are not commerce, so says state's purpose of encouraging formation of new ins companies in Al is impermissible violation of Eq Protection Clause.				Eq Protection Clause requires statutes have a valid purpose to discriminate against out-of-state commerce. Usually applies to discrimination against corporations. Not a very rigorous standard.

Theory								
Trucks	S.C. St Highway Dept v. Barnwell	1938	SC law prohibited big trucks on its highways. (trucks > 90" in width and weight > 20,000lbs.) Facially neutral, but in effect excluded 85-90% of trucks used in interstate transport.	Upheld. Deference given to state highway regulations to determine the safety benefits of the statute.				Deference given to local authorities to determine local safety needs. Court's role just to ensure there's a <u>rational basis</u> for the statute.
Facial / Intentional Discrimination								
	H.P. Hood & Sons	1949						Economic protectionism by states is per se invalid.
Milk	Dean Milk Co. v. Madison	1951	Madison adopted city ordinance that prohibited sale of milk that wasn't bottled at an approved plant within 5 miles of the city. Purpose to ensure all milk bottled under sanitary conditions. Effect - prevented sale of any milk from Ill and other parts of Wisc.	Struck down. Discriminates for a legit purpose - health and safety. But they could use less discriminatory <u>alternatives</u> (send inspectors to Ill or rely on inspections by fed authorities).				Facially discriminatory statutes with a legitimate purpose will be struck down if the purpose could be met with a less discriminatory measure.
Waste - Natural resources  Pike Test	Philadelphia v. NJ (p.236)	1978	Law prohibits import of out-of-state waste in order to protect NJ landfills (limited resource), the environment, and tax payers' \$.	Struck down as facially discriminatory. NJ has legit concerns, but no legit reason to discriminate bw their garbage and out-of-state garbage. It's all equally bad. The burden outweighs the benefits.	Stewart	Rehnquist, joined by Burger		<b>Pike Test:</b> Is the statute <u>protectionist</u> OR does it effectuate <u>legitimate</u> local public interest with only <u>incidental</u> effects upon interstate commerce?
Natural resources  Reciprocity Requirements	Sporhase v. Nebraska	1982	Statute prohibited withdrawing groundwater from Nebraska wells if the water was to be used in a state that didn't grant reciprocal rts to withdraw and transport water to Nebraska.	Struck down. Reciprocity req't is unjust response to another state's unreasonable burden on commerce.				No reciprocity statutes. If one state has a problem with another state's trade barriers, it should challenge in courts, not retaliate with discriminatory laws.
Natural resources	Maine v. Taylor	1986	Maine statute prohibited importation of live baitfish.	Upheld, bc 1) state showed statute served legit local purpose (protecting Maine's wild fish population) and 2) purpose could not be served by available nondiscriminatory means (some possibility of developing other means too abstract t count as a valid alternative) and 3) impediments to complete success are not grounds for	Blackmun			Discriminatory law upheld bc state met burden of proving 1) law serves legit local purpose and 2) no other nondiscriminatory means of serving the purpose are available.

				preventing state from using its best efforts to limit an environmental risk (fish could swim into Maine naturally).				
Compensating Use Taxes - Waste	Oregon Waste Systems	1994	OR law placed higher surcharge on disposal of out-of-state waste than waste generated in state.	Struck down as discriminatory, bc it doesn't impose costs on "substantially equivalent events." Imposing a tax to offset the general taxes that out-of-staters avoid (like income tax) is not equivalent.	Thomas	Rehnquist		(Compare <i>Henneford</i> ) "Compensating use tax" only upheld if it is imposed on substantially equivalent events in-state and out-of-state.
Waste - Natural Resources	United Haulers v. Oneida	2007	Same flow control ordinances like in Carbone, but the waste-processing facility here owned by a public agency.	Upheld. Should be treated diff than Carbone bc govt has the responsibility of protecting health, safety and welfare of its citizens, unlike private enterprise. ?????	Roberts	Alito, joined by Stevens, Kennedy	Thomas	Since the facility is state-owned, the ordinance is okay. Distinguished from Carbone. ????
<b>Facially Neutral Discrimination</b>								
RR	Southern Pacific Co. v. Arizona	1945	State law limited length of train cars, arguing that longer trains are more dangerous.	Struck down bc safety benefits not enough to justify the burden of extra costs on out-of-staters.	Stone	Black		In contrast to <i>Barnwell</i> (deference to local authorities), ct examined evidence of safety benefits and found they did not justify the burden on interstate commerce.
Trucks	Bibb v. Navajo Freight Lines	1959	Ill law req'd all trucks in state to use curved mudguards to prevent spatter and enhance road safety.	Struck down bc of substantial burden imposed on interstate commerce. Straight mudguards legal in 45 other states and curved mudguards illegal in one other state. Trucks would have to avoid Ill or change mudguards at border. No safety benefit.				Rare case where local safety measures that are nondiscriminatory place an unconstitutional burden on interstate commerce.
	Hunt v. Wash Apple Commission	1977	N.C. law req'd all apples (in-state and out-of-state) to only bear a U.S grade. Wash sued bc its apple-grading system more stringent than NC's, yet it's forced to comply in order to continue doing business.	Struck down bc the law had a discriminatory effect on the sale of Wash apples and burdened the interstate sale of them.				Facially neutral law, but with discriminatory effect.
Natural resources	Exxon v. Md	1978	Md law prohibited producer/refiner of petroleum products from operating retail service station in the state. Basically banned out-of-	Upheld bc almost all oil coming from out-of-state, so it's not benefitting local actors at expense of out-of-staters.				Facially neutral, but harmed out-of-state oil companies and favored local businesses. Upheld bc it does not (1)

			state oil companies from owning service stations in Md to benefit local businesses.	????????????				discriminate against interstate independent dealers (2) prohibit flow of interstate goods (3) place added costs on them (4) or distinguish bw in-state and out-of-state retailers.
Trucks	Kassel	1981	Iowa law banned 65' double trailers.	Struck down, bc Iowa didn't provide persuasive evidence to show 65' trucks less safe than 55' singles.				Safety benefits don't outweigh the burden on interstate commerce.
Waste - Natural resources	C&A Carbone v. Clarkstown	1994	City ordinance req'd all nonhazardous solid waste to be deposited a transfer station. Applied equally to in-state and out-of-state companies.	Struck down bc allows only the <u>favored local operator</u> to process the town's waste.  No less discriminatory because in-state processors are also covered by prohibition.	Kennedy	Souter, joined by Rehnquist and Blackmun	O'Connor	Facially neutral law can be found discriminatory if there is proof of a discriminatory impact.
Taxes	Henneford v. Silas Mason Co.	1937	Wash adopted a 2% sales tax on state goods and 2% "compensating use tax" on goods purchased in other states for the "privilege of using" them in Wash.	Upheld, bc designed to promote equality.	Cardozo			Neutral compensating use tax ok bc sale and use are "substantially equivalent taxable events" ( <i>OR Waste</i> ).
Use Taxes	National Bellas Hess v. Dept of Revenue	1967	States taxing out-of-state mail-order sellers who had neither outlets nor sales reps in state.	Struck down. Requiring sellers to collect the use taxes imposed unconstitutional burden on interstate commerce.				Reaffirmed in <i>Quill</i> .
Milk Tax + Subsidy	West Lynn Creamery v. Healy	1994	Mass imposed tax on all milk dealers. All \$ went into a fund to pay subsidies to in-state dairy farmers. Argued the non-discriminatory tax + local subsidy program combines two lawful regulations, so it should be constitutional.	Struck down. Tax neutral, but effect discriminatory (essentially refunding the taxes paid by in-staters).	Stevens	Rehnquist, joined by Blackmun	Scalia, joined by Thomas	Facially neutral tax struck down bc of discriminatory effect. Generally, subsidies from general revenues ok, but subsidies from industry-specific taxes impermissible. Maybe bc it's less visible to citizens.
Taxes	Commonwealth Edison v. Montana	1981	Montana put severance tax on coal. 90% of coal shipped out of state, so tax burden primarily borne by utilities and citizens in other states.	Upheld. The tax is computed at the same rate regardless of final destination of the coal, so it's not discriminatory. Tax burden based on amt of coal consumed, not according to any distinction bw in-state and out-of-state consumers.			TEST: (1) Tax must be applied to an activity w/substantial nexus w/the taxing state (2) must be fairly apportioned (3) must not discriminate against interstate commerce (4) must be fairly related to services provide by the state.	Facially neutral tax law has disparate impact on out-of-staters, but applied evenly, so not discriminatory.

Taxes	Quill Corp v. North Dakota	1992	ND put sales tax on everything sold in-state and everything bought by mail out of state.	Struck down. Should be left to Congress to decide when and to what extent States may burden interstate mail-order concerns with a duty to collect use taxes.	Stevens		Scalia, joined by Kennedy and Thomas	Only Congress can decide the extent to which St may burden interstate mail-order companies w/duty to collect use taxes.
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## CONGRESSIONAL POWERS

Topic	Case Name	Year	Facts	Holding	Majority Opinion	Dissenting Opinion(s)	Concurring Opinion(s)	Significance
<b>The Taxing Power</b>								
"Necessary and Proper"	McCulloch v. Maryland	1819						"the power to tax involves the power to destroy"
	US v. Doremus	1919	Harrison Act → required anyone involved in production, importation, or distribution of opium- or coca leaf-based products to register IRS and pay special tax	Act was constitutional because Congress may enact legislation as long as it has some reasonable relation to the taxing power conferred by Constitution.				Reasonable relation "test"
	Bailey v. Drexel Furniture  (Abandoned in Kahriger)	1922	Child Labor Act → imposed tax on companies who shipped interstate commerce goods made by child laborers	Act was unconstitutional because tax was used as a penalty (tax has characteristics of regulation and punishment).				Principle later abandoned because all taxes have some regulatory effect.
	US v. Kahriger	1953	Revenue Act of 1951 → required anyone in the business of accepting bets (AKA gambling) to pay occupational tax	Act was constitutional because [ ]				
<b>The Spending Power</b>								
Inducement vs. Coercion	US v. Butler  (No longer in force)	1936	Agricultural Adjustment Act → imposed tax on processors of agricultural commodities and used tax revenue to subsidize farmers who agreed to restrict production	Congress has broad scope of spending power. It is not limited to achieving one of enumerated powers under Article I.	Roberts	Stone →		Last case in which SC struck down an Act by Congress that went beyond Spending Clause power.  Court adopts the
Inducement vs. Coercion	Steward Machine v. Davis	1937	Federal unemployment provisions of Social Security Act → imposed tax on employers BUT would give them tax credit if employers contributed to state unemployment fund.	Provisions are constitutional because every tax is in some way regulatory.	Cardozo	(McReynolds, Sutherland, Van Devanter, Butler)		
Inducement vs. Coercion	South Dakota v. Dole	1987	Federal statute → withheld federal funds for highways from states that did not prohibit purchase of alcohol by those under 21. Only a 5% reduction.	Statute is constitutional.  It served "the general welfare" by preventing DUIs and highway fatalities/injuries. Different drinking ages in different states would create incentive for young people to drive to other states to get alcohol.	Rehnquist	O'Connor → minimum drinking age is not related to interstate highway construction		SIDE NOTE: Congress used spending power b/c Amendment XXI gave States broad power to regulate alcoholic beverages.

				It is not coercive because only a 5% reduction in funding.				
Enforcement of Conditional Spending	Sabri v. US	2004	Federal statute → made it a crime to bribe state or local official of entity that receives > \$10K in federal funds	Statute was constitutional because under Necessary and Proper Clause, Congress has power to make sure that taxpayer dollars are being used for the general welfare and not for private gain.				
Statutory Interpretation of (Unambiguous) Conditions	Arlington Central v. Murphy	2006	IDEA → provides attorneys fees to parents who are successful in suing school districts who fail to provide appropriate services to disabled students	Parents allowed to recover attorney fees BUT not allowed to recover expert fees because statute's wording is unambiguous.	Alito			
War Powers								
Conditional Spending + War Power	Rumsfeld v. FAIR	2006	Solomon Amendment → withheld federal funds from higher education institutions that deny military recruiters same access to campuses and students as other employers	Amendment was constitutional because war powers are broad and sweeping. Congress's authority includes requiring campus access for military recruiters (even without using conditions).  BUT Congress used conditional spending power to indirectly secure campus access for military recruiters and universities had choice to forgo federal funds.	Roberts (unanimous)			War Powers
Suspension of Habeas Corpus	Ex parte Bollman	1807		Legislative branch's job (not executive branch) to suspend habeas corpus.				
Scope of War Power	Hirabayashi v. US	1943		War powers extend to every phase of national defense				
Limitation on War Power	US v. Robel	1968		War powers cannot be used to extent that it will deprive people of constitutional rights.				
Scope of War Power	Woods v. Cloyd W. Miller	1948	Housing and Rent Act → froze rents at wartime levels  Act enacted in 1947.  President declared hostilities terminated on 12/01/1946.	Act was constitutional because war power does not necessarily end with cessation of hostilities.				
	Boumediene							

## CIVIL RIGHTS ENFORCEMENT POWER

<u>Topic</u>	<u>Case Name</u>	<u>Year</u>	<u>Facts</u>	<u>Holding</u>	<u>Majority Opinion</u>	<u>Dissenting Opinion(s)</u>	<u>Concurring Opinion(s)</u>	<u>Significance</u>
<b>Amendment XV, Section 2</b>								
Complex or "Creative" Remedies	South Carolina v. Katzenbach	1966	<p>Voting Rights Act of 1965 → allowed AG and Dir of Census to strike down literary tests or other devices in districts where voting rate &lt; 50%.</p> <p>Preclearance Process → district couldn't adopt any new standards or procedures w/o "preclearance" from federal authorities.</p>	<p>Act was upheld.</p> <p>Congress can enforce legislation to remedy racial discrimination in voting practices.</p> <p>Remedies = Enforcement Power (providing remedy is similar to creating a new cause of action)</p>	Warren			<p>Authority for complex remedies (for proven violations of Amendment XV).</p> <p>Complex Remedies → violation occurs before remedy</p>
Preventive or "Prophylactic" Remedies	City of Rome v. US	1980	<p>Voting Rights Act (again) → required rejecting proposed changes that had discriminatory effects on voting practices even if no discriminatory purpose</p> <p>Challenge → Amendment XV only prohibits purposeful discrimination, not discriminatory effect.</p>	<p>Preclearance provisions of Act were upheld.</p> <p>Congress can remedy a situation before a violation occurs as a "preventive" measure if there's a risk of future purposeful discrimination (discriminatory effect).</p>	Marshall	Rehnquist, joined by Stewart → Congress lacked power to "remedy" nonexistent violation absent a showing of purposeful discrimination		<p>Authority for preventive or "prophylactic" remedies.</p> <p>Preventive Remedies → "remedy" occurs before "violation"</p>
<b>Amendment XIV, Section 5</b>								
Broad Scope of Section 5 Enforcement Power	Katzenbach v. Morgan	1966	<p>Lassiter → fairly administered literacy requirement does not violate Am. XIV or XV</p> <p>Section 4(e) of Voting Rights Act → barred any district from requiring people to pass English literacy test in order to vote.</p> <p>Provision → designed to enfranchise Puerto Rican immigrants in NY.</p>	<p>Provision was upheld.</p> <p>Court doesn't need to determine that the state law violated the 14th A. Congress in better position to evaluate any evidence of discrimination and make appropriate legislation. If they have a plausible basis, then that's beyond court's review.</p>	Brennan	Harlan, joined by Stewart → Majority reads Section 5 as giving Congress power to define substantive scope of Amendment XIV. It is not up to Congress to interpret the Amendment.		<p>Broad Scope of Enforcement Power → SC dominated by liberals in favor of granting deference to Congress on civil right issues</p>
Narrow Scope of Section 5 Enforcement Power	City of Boerne v. Flores	1997	<p>Smith → SC changed test on how to deal with religious freedom.</p> <p>Religious Freedom Restoration Act → prohibited gov't from</p>	<p>Act was unconstitutional.</p> <p>Congress is limited to enforcing civil rights (not constitutions a violation of right).</p>	Kennedy	O'Connor, joined by Breyer and Souter	Stevens	<p>Narrow Scope of Enforcement Power</p> <p>"congruence" → whether remedy is good fit</p>

			substantially burdening a person's exercise of religion.  Catholic Archbishop sued city council under RFRA after they denied him a permit to expand his church.  Congress enacted RFRA in response to Smith to restore pre-Smith test.	Section 5 Enforcement Power Requirements (1) Congress is limited to legislation that prevent or remedy violations of rights recognized by S.Ct. (2) Remedial legislation must be narrowly tailored – “proportionate” and “congruent” – to the constitutional violation.				“proportionate” → how serious is threat of violation
<b>Amendment XIII, Section 2</b>								
Private and State Conduct	The Civil Rights Cases	1883						Amendment XIII applies to both private conduct and state conduct.
Badges, incidents, vestiges, and consequences of slavery	Jones v. Alfred Mayer	1968	42 USC 1982 → provided that citizens of any race have property rights.  Housing complex refused to sell houses to black people.	Statute interpreted to bar private racial discrimination in the sale of property.  Congress has power rationally to determine the badges and incidents of slavery.	Stewart			Defined discriminatory housing as a badge of slavery.
	Memphis v. Greene	1981	42 USC 1982 → used to challenge city's decision to close a road connecting a black neighborhood to a white neighborhood.	Statute cannot support the challenge because labeling the street closure a vestige of slavery is too attenuated.				Limit on Congress's ability to define badges and incidents of slavery if the connection is too attenuated.
Amendment XIV	US v. Morrison	2000	Violence Against Women Act created a civil remedy provision which would give a private right of action for rape victims to sue in federal courts. Their complaint that justice system biased against them, denying them equal protection of the laws.	Not congruent and proportional.  Act doesn't target discrimination by state actors, but rather individuals who committed criminal acts motivated by gender bias.		Breyer → relation between remedy and violation → creation of federal remedy to substitute for constitutionally inadequate state remedies		Congruence and proportionality between injury to be prevented or remedied and the means adopted to that end
<b>Amendment XI</b>								
Before Adoption of Amendment XI	Chisholm v. Georgia	1793	South Carolina citizen sought to recover debt owed for materials supplied to Georgia during Revolutionary War	Federal courts had jurisdiction to hear cases brought by citizens against states (no state sovereign immunity)				Congress adopted Amendment XI in response to SC's ruling in Chisholm
	Hans v. Louisiana	1890	Amendment XI → States have sovereign immunity from suits brought by citizens of different states					States have sovereign immunity from suits brought by citizens of different states AND

			Amendment XI → not explicit on citizens of same state					same state  States' sovereign immunity existed at time that Constitution was adopted
	Fitzgerald v. Bitzer	1976	Amendment XIV → adopted in 1868  Amendment XI → adopted in 1798	Civil rights enforcement power trumps States' sovereign immunity since XIV came after XI in time and XIV was enacted specifically to limit the States' powers ("No State shall")				Civil rights enforcement power through Section 5 of Amendment XIV overrides states sovereign Immunity under Amendment XI
	Seminole Tribe v. Florida	1996	Article I powers → adopted in 1789  Amendment XI → adopted in 1798	Congress can't authorize private suits against unconsenting states to force them to comply with regulations made under Commerce Clause.				Article I powers (Commerce Clause) do not trump States' sovereign immunity.
	Alden v. Maine	1999		Congress can't override state immunity by forcing them to participate in suits by individuals seeking damages for violation of a federal statute.				Messes w/Congress's ability to enforce commerce powers by taking away its tools of enforcement.
	Kimel v. Florida Board of Regents	2000	Age Discrimination in Employment Act → Extended to state employers under commerce power. Can Congress authorize damages remedy under section 5 power?	No. Congress's remedy to age discrimination disproportionate. States can discriminate based on age as long as difference in treatment <i>rational</i> . This remedy goes too far. Also, not prophylactic bc Congress failed to show pattern of unconstitutional discrimination.	O'Connor			Even if Congress has power to create legislation under commerce clause, it can only enforce it if the remedy is proportional to the discrimination in accords w/section 5 power.
	Florida Prepaid v. College Savings Bank	1999	Patent and Plant Variety Protection Remedy Clarification Act → To guarantee enforcement of patent protection under due process clause of 14 <sup>th</sup> A (patents = property).	Unconstitutional. Congress didn't show states engaged in patent infringement, so the section 5 remedy was disproportionate.				
	Board of Trustees v. Garrett	2001	Americans with Disabilities Act → State employers can't discriminate against disabled.		Rehnquist			
	Nevada v. Hibbs	2003						
	Tennessee v. Lane	2004						

## FEDERALISM-BASED LIMITATION ON CONGRESSIONAL POWER

<u>Topic</u>	<u>Case Name</u>	<u>Year</u>	<u>Facts</u>	<u>Holding</u>	<u>Majority Opinion</u>	<u>Dissenting Opinion(s)</u>	<u>Concurring Opinion(s)</u>	<u>Significance</u>
<b>Federalism and the Treaty Power</b>								
Treaty Power vs. State Sovereignty	Missouri v. Holland	1920	Migratory Bird Treaty Act → treaty b/w England and US that prohibited killing, capture or sale of birds.	Treaty is constitutional because treaties made by federal government override any state concerns about treaties.	Holmes	(Van Devanter, Pitney)		Treaties cannot be challenged as violating Amendment X and infringing state sovereignty. States and people have delegated power to federal government to make treaties.
Treaty Power vs. Constitution	Reid v. Covert	1957	Civilian wife killed serviceman husband in England. Civilian was convicted by military tribunal.	Civilian cannot be tried in military courts because Constitution requires trial by jury for civilians.				Treaties cannot violate the Constitution.  All powers delegated to Congress (treaty power) are limited by the Constitution (Bill of Rights).
Legal Effect of International Treaties	Medellin v. Texas	2008		Treaty is not binding domestic law UNLESS Congress enacts legislation implementing the treaty OR the treaty is self-executing.  Self-executing if treaty says how terms will be carried out in detail (but Congress can still further legislate)	Roberts	Breyer (Souter, Ginsburg) →	Stevens →	Authority for state sovereignty in treaty situations.
<b>Modern Revival of Amendment X → Federalism-Based Restraints on Federal Regulation of State and Local Governments</b>								
(Supposed) Death Knell of Federalism	US v. Darby  (overruled Dagenhart)	1941	FLSA → prohibited shipment of goods in interstate commerce made by employees who were paid less than minimum wage or worked more than maximum hours prescribed	Act was constitutional because regulating employment conditions was within the scope of Congress's power under Commerce Clause.  Amendment X cannot be used to challenge federal laws as long as law is within scope of Congress's power.				Amendment X "states but a truism that all is retained which has not been surrendered."
(Supposed) Rebirth of State Sovereignty	National League of Cities (NLC) v. Usery  (overruled in Garcia)	1976	Provisions of FLSA → imposed minimum wage and overtime standards on state employers	Statute as applied to state and local employees was unconstitutional because it interfered with traditional state and local functions (setting wages and hours of state employees).				"Traditional Government Functions" Test

				Wages and hours of state employees affected interstate commerce BUT Amendment X bars Congress from enforcing FLSA against states "in areas of traditional government functions."  Amendment X violation.				
	Hodel v. Virginia Surface Mining Association	1981	Act → regulated the operation of strip mines requiring that strip mine operators return area to "approximate original contour" (which made it very expensive for them)	Act was constitutional because it did not affect "the State as a State." It did not regulate matters of state sovereignty, but regulated private conduct.  No Amendment X violation.				Congress violates Amendment X when it regulates "the States as States."  Congress cannot commandeer States by directly compelling them to enact and enforce federal regulatory program. [??]
	United Transportation Union v. Long Island Railroad	1982	Provisions of Railway Labor Act → collective bargaining	Act as applied to state-owned Long Island Railroad was constitutional.  No Amendment X violation.				[??]
	FERC v. Mississippi	1982	PURPA → required state utility commissions to consider FERC proposals	State commissions could be required to enforce federal standards.  Congress (with power to preempt state regulation) could adopt less intrusive scheme of PURPA.  No Amendment X violation.				[??]
	EEOC v. Wyoming	1983	ADEA → applied to state employers	Act was constitutional because act did not impair states' abilities to structure integral operations in traditional government functions.  No Amendment X violation.				[??]
	Garcia v. San Antonio Metro  (overrules National League of Cities)	1983	FLSA → set minimum wage levels for state employees.	Act was constitutional because regulating employment conditions was within the scope of Congress's power under Commerce Clause.  No Amendment X violation.	Blackmun (who switched and joined 4 dissenters in NLC)	Power (Burger, Rehnquist, O'Connor) → political process does not work and will not protect the states. Framers did not know about lobbyists, interests groups, and the media.		"Traditional Government Functions" Test was unworkable.  States retained sovereign authority only to extent that Constitution has not divested them of their

						O'Connor (Rehnquist, Powell) → state sovereignty will only exist if federal government can control itself		original powers and transferred those powers to federal government.
	South Carolina v. Baker	1988	Tax reform statute → removed exemption from federal taxes of income from certain state bonds	Statute was constitutional because it was only regulating state activity.  No Amendment X violation.				Limitations on Congress are structural (not substantive). States' protection comes from national political process (not the courts).
	Gregory v. Ashcroft	1991	ADEA → barred state employers from adopting mandatory retirement policies but exempted "appointees on a policymaking level"	ADEA did not apply to state's mandatory retirement provisions affecting appointed state judges because ADEA lacked clear statement				"Clear Statement" Rule → federal law will apply to important state government activities only if it is clearly stated that law was meant to apply
Anti-Commandeering (Inapplicable to Judicial Functions)	Testa v. Katt	1947						State courts required to hear cases brought under federal law (even if States rather allocate resources differently)
Anti-Commandeering Principle (Legislative Functions)	New York v. US	1992	"take title" provision of Act → required states that did not meet federal standards to take title of radioactive waste and be liable for damages	Provision was unconstitutional because each choice coerced the state into regulating according to federal standards. State was acting as administrative agency for federal government.  Amendment X violation.	O'Connor → NOT saying that Congress cannot do this, JUST that Congress cannot do this in this particular way	White (Blackmun, Stevens) →	Stevens (concurring in part + dissenting in part) →	Anti-Commandeering Principle → Congress cannot commandeer the legislative processes of States  Commerce Clause allows Congress to regulate interstate commerce directly BUT NOT to regulate state governments' regulation of interstate commerce.  Two Alternatives: (1) Conditional grants of federal funds (2) Cooperative Federalism → states have choice to either (a) regulate activity according to federal standards or (b) have state law pre-empted by federal regulation

Amendment X + Scope of State Power	US Term Limits v. Thornton	1995	State Amendment → imposed term limits on federal officials	Amendment was unconstitutional because the power to regulate federal-related term limits never existed.	Stevens	Thomas (Rehnquist, O'Connor, Scalia) → States can exercise all powers that Constitution does not withhold from them. When Constitution is silent, federal government lacks power and States have that power.		States cannot exercise any new powers. It can only exercise those powers reserved to it at time Constitution was drafted.
Anti-Commandeering (Executive Functions)	Printz v. US	1997	Brady Act → established national background check for guns and required state officers (local sheriffs) to conduct background checks using own resources	Act was unconstitutional because Congress would be commandeering a core executive state government function (law enforcement).	Scalia	Stevens (Souter, Ginsburg, Breyer) → Congress can delegate to executive officers at local/state level based on Constitution, early history, SC decisions, and structure of federal government	Thomas → Amendment II barred Congress from regulating "purely intrastate sale or possession of firearms"	Anti-Commandeering Principle → Congress cannot commandeer the executive processes of States
	Reno v. Condon	2000	DPPA → prohibited state officials (DMVs) from distributing personal information about drivers	Act was constitutional because act forces state officials to refrain from taking action (NOT affirmative act).	Rehnquist (unanimous)			Distinguish from Printz → Reno involves non-core state government function (DMV vs. law enforcement) + making administrative (vs. policy) decisions
Amendment X + Statutory Interpretation	Gonzalez v. Oregon	2006	CSA → regulated distribution of drugs  State Act → exempted doctors from liability for prescribing drugs for assisted suicides  AG's interpretation of CSA → using drugs for assisted suicide is unlawful under CSA	AG's interpretation was not permissible because regulation of medical practice was traditional police power of States. CSA presumed state regulation of medical practice.	Stevens	Scalia (Roberts, Thomas) → federal government can use commerce clause to regulate interstate commerce for purpose of protecting public morality (such as prevent assisted suicides)  Thomas → majority is relying on principles rejected in Raich		Regulation of medical practice is traditional state police power BUT federal government can set uniform national standards for medical practice if it wanted.

## SEPARATION OF POWERS / CHECKS AND BALANCES

<u>Topic</u>	<u>Case Name</u>	<u>Year</u>	<u>Facts</u>	<u>Holding</u>	<u>Majority Opinion</u>	<u>Dissenting Opinion(s)</u>	<u>Concurring Opinion(s)</u>	<u>Significance</u>
<b>Presidential Powers in Domestic Affairs</b>								
Executive Orders  (Presidential Seizure)	Youngstown v. Sawyer (Steel Seizure Case)	1952	President issued executive order to seize steel mills that threatened to strike during Korean conflict and keep them running.	Unconstitutional use of executive order.  President's power must come from Article II of Constitution or Act of Congress.  Here, Congress was silent and no statute applied and no constitutional basis for such an order. President was not executing laws, not making them.	Black		Frankfurter  Jackson → Zones of Presidential Authority (1) Congressional Approval – Pres power at max. (2) Congress Silent – Pres power will depend on circumstances (3) Congressional Disapproval – Pres under high scrutiny, can only act if Congress's laws unconstitutional.	President's power must come from Article II of Constitution or Act of Congress.  Jackson's Zones of Presidential Authority
Executive Order  Congressional Silence	Dames & Moore v. Regan	1981	President Carter entered into executive agreement to take back hostages.  President Reagan issued executive order ratifying agreement, suspending all Tribunal claims, and providing that all claims have no legal effect.	President was authorized to suspend all claims.  History → Congress has implicitly approved Presidential practice of claim settlement by executive agreement.	Rehnquist			Past long-continued practice by President known to and acquiesced in by Congress may be considered executive power.  Adopts Jackson's concurring opinion as majority
Appointment and Removal Power  "Purely Executive"	Myers v. US (p.430)	1926	Statute → postmasters shall be appointed and removed by President w/ advice and consent of Senate.  President Wilson tried to remove Myers before his term expired.	Removal was lawful because statute was unconstitutional limitation on President's removal power under Article II  (1) Act of removal was executive in nature, so it must be performed by President (2) President must "take care" all laws faithfully executed, not his subordinates (3) Article II vests executive power in President, not subordinate officials	Taft			Removal power is distinctly executive in nature, so reserved for President.  Broad interpretation. Limited by later cases to just executive branch.
Appointment and Removal Power  "Quasi-Legislative" Independent Agencies	Humphrey's Executor v. US	1935	Statute → members of FTC could be removed by President for inefficiency, neglect of duty, or malfeasance in office.  FDR removed Humphrey because Article II, as	Removal was unlawful.  Myers → "purely executive officers" who performed executive functions and had no duty related to legislative or judicial power.	(unanimous) → anti-New Deal court wanted to reduce FDR's power			Distinguished from <i>Myers</i> and limited its scope.  Recognized congressional power to create independent

			interpreted in <i>Myers</i> , let him (no limitation on removal power).	FTC was an administrative body created by Congress to perform legislative or judicial functions. FTC is not part of executive branch, so can't be controlled by President.				agencies free from presidential removal power. → "Quasi-Legislative" and "Quasi-Judicial" bodies.
"Quasi-Judicial" Independent Agencies	Wiener v. US	1958	Statute → created War Claims Commission and was silent on question of removal.	Commission's adjudicatory nature implied a limitation on President's power to remove.				
Appointment and Removal Power  "Officer of the United States"	Buckley v. Valeo	1976	Fed Election Campaign Act → created commission to govern federal elections, etc.  Members were appointed by President pro tempore, Speaker, and President.  Duties include investigate, maintain records, make rules governing elections, impose sanctions	Violation of Article II Appointments Clause.  "Officer of the US" is any appointee exercising significant authority and must be appointed in Article II manner.  Violation of art. II appointments clause. Anyone exercising this kind of power is an "officer of the US" so must be appointed in art. II manner.	(unanimous)			Impermissible delegation of appointment power to Congress.  Confusing and highly criticized.
Appointment and Removal Power  Separation of Powers	Bowsher v. Synar	1986	Gramm-Rudman-Hollings Act → Set max allowable deficit for each of following 5 yrs.  Comptroller General (agent of legislature) in charge of the process.  CG was nominated by President but picked from list created by Congress and could only be removed by impeachment or joint resolution of Congress.	Act was unconstitutional.  CG is agent of legislature because CG can be removed by method other than impeachment. CG charged with execution of laws.  Unconstitutional delegation of executive removal power to legislature.  Once Congress grants executive power, it cannot retain any of it. It can only remove an officer charged with execution of the laws by impeachment.	Burger	White	Stevens, Marshall	Legislative can delegate legislative power to the executive, but executive can't delegate executive power to the legislature.  If Congress delegates executive power to an official, then it loses removal authority over that officer (except impeachment)
Appointment and Removal Power  Separation of Powers	Morrison v. Olson	1988	Ethics of Gov't Act → allows for appointment of an "independent counsel" to prosecute gov't officials for fed crimes.  IC is removed by impeachment or upon showing of "good cause" by AG.	"Good cause" removal provision is valid.  Provision still allows Executive (through AG) to retain authority over the counsel and does not interfere with President's duty to ensure faithful execution of the laws.	Rehnquist	Scalia → Constitution grants exclusive executive power to President. Can't give any executive powers to other officers.  Majority's limitation on President's removal power so long as he can still accomplish his		Throws out "purely executive" vs. "quasi-" test.  New test → whether removal restrictions impede President's constitutional duties (Executive Power + Faithfully Execute)

				Reduces AG/Executive power, but still leaves means of controlling the officer.		constitutional role opens doors for any restrictions.		
Appointment and Removal Power  Separation of Powers	Mistretta v. US	1989	Act → created Sentencing Commission as independent commission within judicial branch to create mandatory sentencing guidelines  Members appointed by President.	“Twilight” area ( <i>Youngstown</i> ) → where functions of various branches merge  Courts do not normally exercise executive or administrative duties of non-judicial nature. BUT Congress can delegate non-judicial functions to Judiciary if related to its central mission (sentencing guidelines are considered rules of procedure)	Blackmun	Scalia → Court screwing up separation of powers and subsequently minimizing political accountability.		Very different from <i>Chadha</i> . → But acceptable because Congress needs to address problems of today creatively
Presidential Immunity	US v. Nixon	1974	Watergate scandal. Nixon sued for evidence in criminal proceeding. He resists as a matter of public interest.	Court forces Nixon to comply. Recognizes executive privilege, but limits it. Must weigh countervailing interests. President only immune if he’s protecting military, diplomatic, or sensitive national security secrets.	Burger			Executive privilege not absolute. Nothing in Constitution immunizes President from judicial process.
	Mississippi v. Johnson	1867	Miss brought suit to enjoin President’s enforcement of the Reconstruction laws.	Court doesn’t have the power to issue an injunction against the President. Too difficult to enforce, better to use impeachment.				President immune from injunctive relief.
	Nixon v. Fitzgerald	1982	Nixon’s staff brought suit on basis that he had been discharged from govt position bc he exercised his rt to freedom of speech.	President immune from an action for damages. Sheer prominence of his office would make him an easy target for civil damages and would duties running the govt.	Powell (5-4)			President immune from civil damages.
	Harlow v. Fitzgerald	1982						No presidential immunity for presidential aides.
Impeachment	Clinton v. Jones	1997						President not immune from suits for conduct prior to entering office.
	Cheney v. US Dist. Ct.	2004	Public interest orgs sought to gain disclosure of the activities of Energy Policy Task Force. Cheney (chair) sought writ of mandamus to prevent discovery.	Remanded, but allowed use of executive privilege to bar discovery.  Distinguished from <i>Nixon</i> , bc civil subpoena less urgent than criminal subpoena. Narrow subpoena order diff than broad discovery	Kennedy	Thomas, Scalia  Ginsburg, joined by Souter	Stevens	Easier to invoke executive privilege in civil suits than criminal suits ??

				request.  Instead of invoking exec privilege, lower court should ask whether permitting discovery would constitute unwarranted impairment of another branch in the performance of its constitutional duties.				
Presidential Powers + Foreign Affairs								
Treaties  Article II, Section 2  Article VI, Section 6	Whitney v. Robertson	1888						Self-executing treaty and act of legislation are both "Supreme laws of the Land"  If two are inconsistent, the most recent one will trump the other.
	Head Money Cases	1884						Later act of Congress can repeal treaty (although repeal may violate international law)
Self-Executing Treaty	Medellin v. Texas	2006						President does not have power to declare that a treaty is self-executing
	Goldwater v. Carter	1979	Carter rescinded treaty w/Taiwan as part of agreement with China. Goldwater sued, contending that Senate must approve rescission of a treaty.	Court dismissed case as a nonjusticiable political question.				Basically allows President to get away with rescinding treaties without Congressional approval and without fear of judicial invalidation.
Executive Agreements  Article I, Section 10	Dames & Moore v. Regan	1981						Longstanding practice establish that President has power to reach binding executive agreements with foreign countries.
	Garamendi	2003		President's executive agreement between US and Germany preempted CA statute because agreement's approach conflicted with statute.				Executive agreements preempt state laws under the Supremacy Clause.
President's Inherent Power in Foreign Affairs	US v. Curtiss-Wright	1936	Congress delegated power to President to restrict arm sales to warring Latin American nations.	Joint resolution was constitutional delegation of power to President	Sutherland	McReynolds		Reasoning behind holding highly criticized, but idea that President has

				<p>Fed government has more power in foreign affairs than domestic by virtue of being a sovereign nation</p> <p>President is “sole organ” of nation in international relation → Power to speak or listen as representative of nation, power to negotiate, knows conditions in foreign countries, has confidential sources of information, can maintain secrecy</p>				some greater inherent powers in area of foreign policy has been upheld.
War Powers	The Prize Cases	1863	Lincoln ordered blockade of southern ports after succession of the southern states.	<p>Upheld blockade.</p> <p>Congress did not have power to declare war against State(s)</p> <p>President can use militia, military and navy in case of invasion by foreign nations and to suppress insurrection by the states. He can respond to a threat without waiting for legislative authority.</p>	Grier	Nelson, joined by Taney, Catron, and Clifford → No reason for President to be able to act w/o legislative authority. Congress can respond fast enough w/ war powers if necessary.		As Commander in Chief, President can use armed forces to respond to an invasion or to suppress insurrection w/o Congress.
(Enemy Combatants) US Citizen	Hamdi v. Rumsfeld	2004	<p>Authorization of Use of Military Force Resolution (AUMF) → authorized indefinite detention of US citizen arrested in Afghanistan as an “enemy combatant”</p> <p>Hamdi’s father filed habeas corpus petition.</p>	<p>President is authorized to detain due to act of Congress (AUMF) → “use all necessary and appropriate force against [terrorists]”</p> <p>Citizen-Detainee’s Due Process Rights → fair notice of factual basis for “enemy combatant” status, fair opportunity to rebut factual assertion before neutral decision maker</p> <p>Writ of Habeas Corpus → allows judicial branch to play necessary role as check on executive’s discretion in detentions</p>	O’Connor, joined by Rehnquist, Kennedy, Breyer	<p>Souter, joined by Ginsburg (dissent in part, concur in judgment) → Hamdi is being illegally detained in violation of AUMF and maybe Geneva Convention (holding Hamdi incommunicado when he qualifies as prisoner of war)</p> <p>Possible exception → President can detain citizen if fear that he is imminent threat to safety of nation and people (but Hamdi has been locked up for 2 years)</p>	<p>Scalia, joined by Stevens (dissent) → President does not have power to detain since only Congress has Suspension Clause power</p> <p>Thomas (dissent) → Court lacks expertise and capacity to question federal government’s decision (detention within war powers)</p>	President can detain US citizens as enemy combatants on US soil, but must offer them some due process rights.
(Enemy Combatants) US Citizen	Rumsfeld v. Padilla	2004	President used commander in chief authority and AUMF (Authorization of Use of Force Resolution) to detain US citizen as an enemy combatant.	<p>Court dismissed on jurisdictional grounds, but agreed that citizen enemy combatants still deserve due process rights.</p> <p>Passive Virtue of the Court</p>	Rehnquist (5-4)	Stevens, joined by Souter, Ginsburg, Breyer		Reasserted Hamdi holding re: due process rights for American enemy combatants.

			Padilla filed habeas corpus petition.					
(Enemy Combatants) Gitmo	Rasul v. Bush	2004		Federal court has habeas corpus jurisdiction to review legality and conditions of confinement of detainees	Kennedy (6-3)			Gitmo detainees (enemy combatants) have right to have habeas corpus petitions heard in federal court.
(Enemy Combatants)	Boumediene v. Bush	2008	Military Commissions Act (2006) → stripped federal courts of jurisdiction over habeas corpus writs from Gitmo detainees.	MCA was struck down as violation of Suspension Clause (Congress can only suspend habeas in cases of rebellion or invasion).				Congress can only suspend habeas corpus under Suspension Clause or if it offers an adequate substitute to petitioners-enemy combatants to challenge their imprisonment.
(Military Tribunals) US citizen	Ex parte Milligan	1866	US citizen (not enemy combatant) convicted of conspiracy against US by a military tribunal on US soil	Conviction was invalidated  US citizen could not be tried by military tribunal when civilian courts were still operating (even in times of war) → no suspension of habeas corpus				
(Military Tribunals)	Ex parte Quirin	1942	FDR issued executive order to try Nazi saboteurs including US citizen (enemy combatants) who infiltrated US borders by military tribunal.	Conviction was upheld because they were enemy combatants and tribunal occurred during war (grave public danger).				President can create military tribunals during times of war for enemy combatants pursuant to commander in chief power, Constitution, and Congress's laws.
(Military Tribunals)	Hamdan v. Rumsfeld	2006	President issued order to try Hamdan in a military commission.	Struck down bc the military commission in structure and procedures violate the Uniform Code of Military Justice (UCMJ) and the Geneva Conventions. President hasn't shown congressional authorization or military necessity.				If President has power to create military commissions, they must abide by the laws of war.
Congressional Powers + Domestic Affairs								
Delegation of Powers	Panama Refining Co. v. Ryan	1935	National Industrial Recovery Act of 1933 (NIRA) created by FDR to ease Depression. One provision allowed President to prohibit transportation in interstate commerce of oil produced in violation of production quotas.	Struck down. NIRA authorizes President to prohibit transportation of "hot oil" whenever he chooses. Too much power.				Only two decisions to invalidate federal statutes on nondelegation grounds

	Schechter Poultry Corp. v. US	1935	Congress delegated power to industry representatives to enforce "live poultry code."	Struck down as invalid delegation of legislative authority.				
	Clinton v. City of NY	1998	Line Item Veto Act authorized President to "cancel in whole" any items of new spending or any "limited tax benefit."	Struck down. Statute authorized President to amend previously enacted legislation by repealing a portion of it. Constitution doesn't allow President to enact, amend, or repeal statutes.	Stevens (6-3)	Breyer → President not "repealing" or "amending" anything. Just executing power conferred upon him by Congress.  Scalia.		Maybe signals revival of nondelegation doctrine? Although doesn't expressly refer to it.
Legislative Veto	INS v. Chadha	1983	AG recommended suspension of Chadha's deportation. House made statute opposing granting residency to six aliens, including Chadha. Passed w/o Senate's approval or presenting it to President.	Congressional veto provision unconstitutional. The action overruled AG, affected Exec Branch officials and Chadha, thus it extended beyond legislative branch, taking on character of legislative action. All legislative action subject to bicameralism & presentment requirements of Art. I, section 7.	Burger	White → Legislative veto important tool for Congress to safely delegate powers while keeping a check on agencies. It's not making law through the veto.	Powell → Allowing Congress to decide the rights of specific persons exceeds the scope of its constitutional authority, bc there are no checks on it by other branches or procedural safeguards. No need to discuss validity of legislative vetoes.	Legislative veto unconstitutional.  Broad reach, but there are still other ways for Congress to control agencies.  Bicameralism
	Process Gas Consumers Group v. Consumers Energy Council	1983		Court affirmed a decision invalidating legislative veto as applied to certain Fed Energy Regulatory Commission regulations of natural gas pricing.				Invalidated a legislative veto on the authority of <i>Chadha</i> .

Congressional Powers + Foreign Affairs

## STATE ACTION

<u>Topic</u>	<u>Case Name</u>	<u>Year</u>	<u>Facts</u>	<u>Holding</u>	<u>Majority Opinion</u>	<u>Dissenting Opinion(s)</u>	<u>Concurring Opinion(s)</u>	<u>Significance</u>
State Action in Amendment XIV	The Civil Rights Cases	1883	Civil Rights Act of 1875 → made private persons who violated others' rights liable for civil damages and criminal penalties	Act was unconstitutional because Amendment XIV applies only to government conduct (not private).  No Amendment XIII violation. Refusal to serve person in public accommodation is a civil injury, not "badge of slavery."	Bradley	Harlan → majority's interpretation of Amendment XIV is too narrow.		Established Requirement for State Action  "It would be running the slavery argument into the ground to make it apply to every act of discrimination"
State Action in Amendment XIV	US v. Morrison	2000	Violence Against Women Act → created federal claim for gender-motivated violence	Act was unconstitutional because act made ordinary people the defendants, not state actors.				Reaffirmed holding in Civil Rights Cases.  Congress cannot reach private conduct under Section 5 of Amendment XIV.  Rejection of federalism idea that federal government can protect rights only when states fail to do so.
"Property" Interest	Castle Rock v. Gonzalez	2005	Town and police department failed to enforce restraining order against husband, which led to husband murdering wife's children.	No due process violation because wife had no property interest.  Restraining order creates entitlement to protection, but entitlement is not a "property" interest protected by due process (no monetary value).	Scalia			Restraining orders are not "property" interests given due process protection.
Pure Inaction (Failure to Protect or Prevent Personal Harm)	Deshaney v. Winnebago County	1989	State court awarded custody to son's father. Caseworkers received reports about father abusing son but did nothing to remove him.	No due process violation because State is not required to prevent child abuse from private actors, only protect from State.  Child was not in state agency's custody. State did not create the danger of abuse. State did not increase child's vulnerability to abuse.	Rehnquist	Brennan (Marshall, Blackmun) → State action occurred when State let citizens depend on social services to protect children.		State has no duty to prevent child abuse under Due Process Clause (no deprivation of child's liberty).

Pure Inaction (Statutory Enactment)	Flagg Brothers v. Brooks	1978	State UCC provision → allows warehouseman to enforce lien on goods in his possession by selling goods	No due process violation because no public official named as defendant and State UCC provision is not state action.  State refused to act (not acted) because provision explained situation where courts will not interfere with private sale.	Rehnquist	Stevens (White, Marshall) → State action occurred through statutory enactment. Majority's interpretation of "state action" is too narrow.		State's acquiescence or refusal to act found in statute enactment is not state action (no deprivation of property).
Joint Participation  Law Enforcement Action	Lugar v. Edmonson Oil	1982	L indebted to EO. EO filed for prejudgment attachment of L's property. State court issued writ of attachment, which was executed by county sheriff.	Due process violation because private actor's joint participation with state official constitutes state action.	White	Powell (Rehnquist, O'Connor) → unfair to make a private party a state actor just because sheriff was one		Distinguished from Flagg Brothers →
Discriminatory Voting Initiatives	Reitman v. Mulkey (Confusing Case)	1967	Proposition 14 → repealed various fair housing acts that prohibited racial discrimination through state constitutional amendment	Equal protection violation because state constitutional amendment was state action and it "encouraged" discrimination.	White	Harlan (Black, Clark, Stewart) → [????]		
School Regulation	NCAA v. Tarkanian	1988	NCAA investigated coach for violating rules. NCAA pressured school to remove coach.	No due process violation because NCAA was not a state actor.  School was state actor, but school's compliance with NCAA policies did not make NCAA a state actor. NCAA's policies were not shaped by State of Nevada.	Stevens			
School Regulation  Entwinement	Brentwood Academy v. Tennessee Secondary	2001	Private statewide association regulated interscholastic athletics among public and private schools.	Association was a state actor because membership made up of institutions within same state and many were public institutions.	Souter			Distinguished from Tarkanian → NCAA's members had no connection to State and not under State's law.  Entwinement of public institutions and officials makes private actor into state actor.
Judicial Action (Restrictive Covenant)	Shelley v. Kraemer	1948	Court enforced restrictive covenant that prohibited nonwhites from owning or occupying property (by injunction).	Equal protection violation because judicial enforcement of restrictive covenants by state courts and judicial officers is state action.	Vinson			
	Evans v. Newton	1966	Senator left will for whites-only park for city under control of Board.	Park could not be racially segregated again because park has become a public	Douglas			

			When park was desegregated, Board wanted city to be removed as trustee. City resigned and state court appointed private trustee.	facility regardless of private trustee appointment.  Park served “public function” and was “municipal” in character.				
No Judicial Action  (Self-Executing Reversion)	Evans v. Abney	1970	Since will could not be fulfilled, park reverted to heirs.	No equal protection violation because discrimination was eliminated when park was eliminated.	Black	Brennan → [???		
Symbiotic Relationship (Mutual Benefits)  Entwinement	Burton v. Wilmington Parking Authority	1961	Restaurant refused to serve food to black man. Restaurant is located in parking building that is owned by WPA, a State agency. Restaurant is WPA’s lessee and enjoyed WPA’s tax exemption.	Equal protection violation because WPA’s “large” involvement with restaurant was state action.  Mutual Benefits → Restaurant had convenient parking for customers. WPA got increased demand for parking facilities due to convenience.	Clark	Harlan (Whittaker) → [???	Stewart → State statute that allowed restaurant to refuse service to anyone who would be offensive to customers violates Amendment XIV	
Government Subsidies	Norwood v. Harrison	1973	Statutory program → state purchased books and lent them to students in public and private schools. Some private schools had racial discrimination policies.	No equal protection violation if State does not provide same assistance to private schools as public schools.  State has affirmative duty to avoid providing assistance to discriminatory private schools.	(unanimous)			
Government Subsidies	Gilmore v. City of Montgomery	1974	City allowed exclusive use of city-owned recreational facilities to private discriminatory schools.	Equal protection violation if City gives discriminatory private schools exclusive use of public recreational facilities.  City’s allowance of exclusive use was state action because it enhanced attractiveness of discriminatory schools by enabling them to offer complete athletic programs.	Blackmun			
Government Subsidies	Rendell-Baker v. Kohn	1982	Private school for problem students was regulated by public authorities and funded mostly from public funds (90%). Teachers were discharged for disagreeing with some school policies.	Discharging decision was not state action.  School was not influenced by state regulation.  School’s relationship with State was similar to contractor performing services for government.	Burger	Marshall (Brennan) → substantial nexus to be considered state action. State delegated statutory duty to educate children to school and school was regulated and received public funds.		School’s receipt of public funds is not basis for finding state action.

Government Acquiescence	San Francisco Arts v. US Olympic Committee	1987	Act → gave Committee exclusive right to use term "Olympic"  Committee → allowed certain groups to use "Olympic"  SF Arts → promoted "Gay Olympic Games"	Committee's selection of groups to use "Olympic" was not state action even if Congress granted charter to Committee.  Committee made independent decision. Federal government only failed to supervise committee's use of rights.  All corporations act under corporate charters granted by the government  All enforceable rights in trademarks are created by some governmental act.	Powell	Brennan (Marshall) → Committee and government exist in symbiotic relationship with close financial and legislative link.		
Government "Coercion" and "Significant Encouragement"	Blum v. Yaretsky	1982	Medicaid regulations required nursing home to maintain different levels of care and transfer patients when necessary.  State-subsidized nursing homes made decisions to downgrade level of treatment for Medicaid patients.	No due process violation because State was not responsible for individual transfer decisions (no state action). Nursing homes made the decisions.				Extent of state regulations and size of state funding are not basis for finding regulation.  Test → "coercion" or "significant encouragement"
"State Actor"	Ex parte Virginia	1880	State judge discriminated against blacks in selecting juries in violation of state law	State judge was state actor even though state prohibited conduct. State judge was employed by state and acting under color of state law.				State judge is state actor (even though state prohibited conduct).
"State Actor"	Screws v. US	1945						State police officer is state actor (even though exceeded authority under state law)
"State Actor"	West v. Atkins	1988	Private physician was under contract with State to provide services to inmates	Private physician was state actor even though exercising independent medical judgment. Private physician was employed by State to fulfill State's constitutional obligations and acting under color of state law.	Blackmun			Private physician is state actor (even though exercised independent medical judgment).
"Government Actor"	Lebron v. National Railroad	1995	Amtrak was created by Congress and owned by US		Scalia			Amtrak was a government actor because it was created and

			Lebron wanted to use billboard space to attack Coors for supporting right-wing causes  Amtrak refused to rent billboard space to Lebron					organized under federal law for purpose of pursuing federal government objectives under direction and control of federal governmental appointees.
"State Actor"	Brentwood Academy v. Tennessee Secondary	2001			Souter			Statewide association is state actor because 84% of membership was public schools, represented by officials acting in official capacity to provide integral part of secondary public schooling
"State Actor"	Edmonson v. Leesville Concrete	1991	Private civil litigant used peremptory challenges (jury selection procedure) to exclude jurors based on race	Private civil litigant was state actor because he relied on overt, significant assistance of state officials (courts and judges) in peremptory challenges	Kennedy	O'Connor (Rehnquist, Scalia) → peremptory is entirely within discretion of litigant. Judge is not "encouraging" discrimination by excusing a juror based on unexplained request from litigant.		