

State and Federal Power

Recap

The Commerce Clause

Gonzales v. Raich

545 U.S. 1 (2005)

Exclusive State Power

United States v. Lopez

514 U.S. 549 (1995)

Exercise:

Congress has passed a law banning potluck suppers that do not include corn as a dish.

Would-be potluckers from the state of Oregon have sued U.S. government, arguing that the law is unconstitutional because it is beyond Congress's authority under Art. I § 8 of the federal constitution.

The case makes its way to the U.S. Supreme Court. You are Supreme Court justices. One half of the class will write the opinion upholding the law. The other half of the class will write the opinion finding the law unconstitutional.

Exercise:

Congress has passed a law identical to one ruled unconstitutional in *Lopez*, criminalizing gun possession in school zones.

A criminal defendant is appealing his conviction under the federal law, arguing that the law is unconstitutional because it is beyond Congress's authority under Art. I § 8 of the federal constitution.

The case makes its way to the U.S. Supreme Court. You are Supreme Court justices. One half of the class will write the opinion upholding the law. The other half of the class will write the opinion finding the law unconstitutional.

Exercise:

Consider the following hypothetical federal laws:

Criminalization of shoplifting.

Criminalization of murder.

Criminalization of abortion.

Ban on gay marriage.

Spending Power, Briefly

NFIB v. Sebelius

567 U.S. 519 (2012)

Anti-commandeering principle

Printz v. United States

521 U.S. 898 (1997)

Other important cases:

New York v. United States (1992)

Murphy v. NCAA (2018)

In-Class Exercise: Background checks

You are a congressional staffer tasked with rewriting the Brady Act background check provisions to be constitutional. The goal is to have a law that requires everyone purchasing a handgun in the United States to be subject to a background check.

Brainstorm some options. The more constitutionally valid legislative options, the better.

Federal Limitations on State Power

Excerpt from Article VI:

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution

Federal Limitations on State Power

U.S. Term Limits Inc. v. Thornton

514 U.S. 779 (1995)

Article I. §2 cl. 2 of U.S. Constitution

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Article I. §3 cl. 3 of U.S. Constitution

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

Amendment 73 to Arkansas State Constitution

(a) Any person having been elected to three or more terms as a member of the United States House of Representatives from Arkansas shall not be certified as a candidate and shall not be eligible to have his/her name placed on the ballot for election to the United States House of Representatives from Arkansas.

(b) Any person having been elected to two or more terms as a member of the United States Senate from Arkansas shall not be certified as a candidate and shall not be eligible to have his/her name placed on the ballot for election to the United States Senate from Arkansas.

10th Amendment U.S. Constitution

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Federal Limitations on State Power

Gregory v. Ashcroft

501 U.S. 452 (1991)

Age Discrimination in Employment Act (Federal Law)

Makes it unlawful for an “employer” “to discharge any individual” who is at least 40 years old “because of such individual’s age.” The term “employer” is defined to include “a State or political subdivision of a State,” but exempts as “employees” persons appointed “at the policymaking level.”

