Federal/State Plant Quarantines and the Constitutional Rules of Engagement

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Framework for Discussion

- How does the Constitution allocate power as between the federal government and the states?
- How has the Supreme Court interpreted the limitations on the exercise of such power?

Key Constitutional Principles

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

Interstate Commerce Clause

- The Constitution reserves to Congress the power “to regulate Commerce . . . among the several States.”
  Art. 1 Sec. 8 Para 3.

Supreme Court interpretation:
- includes the power to pre-empt state law (express or implied) by the enactment of federal law.
- denies the States the power unjustifiably to discriminate against or burden the interstate flow of articles of commerce (“negative” or “dormant” commerce clause) even if Congress has not enacted a pre-emptive federal law.
**Federal Pre-emption**

- **Express Pre-emption:** Congress passes a law that is within its constitutional reserved powers that expressly pre-empts State law.

- **Implied Pre-emption:** State law enters a field of regulation reserved exclusively for the federal government or state law conflicts with federal law.

**Federal Pre-emption**

- Conflict may arise because:
  - impossible to comply with both federal and state law or
  - state law stands "as an obstacle to the accomplishment of the full purposes and objectives of Congress."

- Presumption that the traditional police powers of the state and local governments are not displaced unless that is the clear intent of Congress.

**Interference with Interstate Commerce Limits on State Law**

- **Supreme Court interpretation:**
  - a state law that directly regulates or discriminates against interstate commerce or which has that effect is per se invalid; examples include:
    - laws prohibiting import of goods from other states
    - laws imposing taxes on out-of-state goods
    - laws prohibiting export to other states
    - laws erecting barriers to out-of-state competition
  - possible exception if state demonstrates:
    - law serves legitimate local purpose
    - that could not be served as well by reasonable nondiscriminatory means

- Excessive burden compared to benefits = violation.

**Current Standard**

- **Current standard:**
  - Under the Commerce Clause, Congress may regulate the channels of interstate commerce, persons or things in interstate commerce, and those activities that substantially affect interstate commerce.
  - *Wolurk v. Filburn:* "activity" includes production of wheat on one's own farm for one's own consumption.
  - *NFIB v. Sibelius:* "activity" does not include non-participation in commerce (i.e. failure to purchase health insurance) (Roberts).

**S. Ct. Plant Quarantine Analysis**

- 1824: Quarantine laws "are considered as flowing from the acknowledged power of a State . . . to provide for the health of its citizens." *Gibbons v. Ogden.*

- 1913: "Quarantine regulations are essential measures of protection which the states are free to adopt when they do not come into conflict with Federal action. . . . [The] power of states to take steps to prevent the introduction or spread of disease . . . is beyond question." *Minnesota Rate Cases.*

“It is a serious thing to paralyze the efforts of a state to protect her people against impending calamity, and leave them to the slow charity of a far-off and perhaps supine federal bureau.” (dissent). 

1986: Maine ban on import of live baitfish to protect Maine fisheries against parasites upheld. *Maine v. Taylor* (Commerce Clause significantly limits ability of states to regulate or otherwise burden interstate commerce but, it does not elevate free trade above all other values).


- Federal government role: prevention, detection, control, or eradication of plant pests or noxious weeds in interstate and foreign commerce.
- **Express Pre-emption**
  - no regulation of foreign commerce by states;
  - no regulation of interstate commerce if the Secretary has issued a regulation or order except for:
    - Prohibitions or restrictions on movement that are consistent with and do not exceed Secretary’s regulation or order; or
    - Additional prohibitions or restrictions based on special local need as supported by sound scientific data or thorough risk assessment.

**Special Local Need Criteria**

- Data from scientifically sound detection survey of absence of plant pest or distribution if present.
- If not present, risk analysis showing possibility of entry/establishment.
- Quantitative estimates of potential harm to environment or natural resources of State.
- Demonstration of particular vulnerability to harm.
- Proposed additional prohibitions or restrictions, demonstration of necessity and adequacy.
- Approval by APHIS after public notice and comment.

**CANGC v. Kentucky (2004)**

- California nurseries challenge Kentucky order that banned all California nursery plants from entering Kentucky for fear of spreading sudden oak death.
- No ban on plants originating from Oregon or Washington where sudden oak death also present.
- Case resolved by consent order: Kentucky agreed that quarantine was pre-empted and agreed to permanent injunction.

**CANGC v. South Carolina (D.S.C. 2010)**

- California nurseries challenge S.C. legislation imposing additional requirements on import of plants regulated under federal sudden oak death quarantine.
- Requirements include state phytosanitary certificates that California does not issue.
- No USDA approved special local need.
- South Carolina requirement was withdrawn.
### Does Federal Authority Extend to Intrastate Movement?

- Domestic quarantine regulations for SOD and gypsy moth provide for quarantine of portions of a state if the State has adopted and is enforcing intrastate movement regulations.

### The King Amendment- H.R. 2462

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

### Application to Plant Quarantines

- Standards or conditions on production or manufacture?
- Or measures to protect health and natural resources?
- Federal law requires federal approval of special local needs requirements.

### Questions?

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