

Sec. 9—Powers Denied to Congress

Cl. 5—Export Duties

packages of tobacco intended for export in order to prevent fraud was held not to be forbidden as a tax on exports.¹⁸⁷⁹

Clause 6. No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.

THE “NO PREFERENCE” CLAUSE

The no-preference clause was designed to prevent preferences between ports because of their location in different states. Discriminations between individual ports are not prohibited. Acting under the Commerce Clause, Congress may do many things that benefit particular ports and that incidentally result to the disadvantage of other ports in the same or neighboring states. It may establish ports of entry, erect and operate lighthouses, improve rivers and harbors, and provide structures for the convenient and economical handling of traffic.¹⁸⁸⁰ A rate order of the Interstate Commerce Commission that allowed an additional charge to be made for ferrying traffic across the Mississippi to cities on the east bank of the river was sustained over the objection that it gave an unconstitutional preference to ports in Texas.¹⁸⁸¹ Although there were a few early intimations that this clause was applicable to the states as well as to Congress,¹⁸⁸² the Supreme Court declared emphatically in 1886 that state legislation was unaffected by it.¹⁸⁸³ After more than a century, the Court confirmed, over the objection that this clause was offended,

sen not to present that argument. Principles of *stare decisis* thus cautioned observance of the earlier case. *Id.* at 854–55. The dissenters argued that the issue had been presented and should be decided by overruling the earlier case. *Id.* at 863 (Justices Kennedy and Ginsburg dissenting).

¹⁸⁷⁹ *Pace v. Burgess*, 92 U.S. 372 (1876); *Turpin v. Burgess*, 117 U.S. 504, 505 (1886).

¹⁸⁸⁰ *Louisiana PSC v. Texas & N.O. R.R.*, 284 U.S. 125, 131 (1931); *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421, 433 (1856); *South Carolina v. Georgia*, 93 U.S. 4 (1876). In *Williams v. United States*, 255 U.S. 336 (1921), the argument that an act of Congress which prohibited interstate transportation of liquor into states whose laws prohibited manufacture or sale of liquor for beverage purposes was repugnant to this clause was rejected.

¹⁸⁸¹ *Louisiana PSC v. Texas & N.O. R.R.*, 284 U.S. 125, 132 (1931).

¹⁸⁸² *Passenger Cases (Smith v. Turner)*, 48 U.S. (7 How.) 282, 414 (1849) (opinion of Justice Wayne); *cf. Cooley v. Board of Wardens*, 53 U.S. (12 How.) 299, 314 (1851).

¹⁸⁸³ *Morgan v. Louisiana*, 118 U.S. 455, 467 (1886). *See also Munn v. Illinois*, 94 U.S. 113, 135 (1877); *Johnson v. Chicago & Pacific Elevator Co.*, 119 U.S. 388, 400 (1886).