

Sec. 10—Powers Denied to the States Cl. 3—Tonnage Duties and Interstate Compacts

it held that a state law forbidding the importation of intoxicating liquors into the state could not be sustained as an inspection law.²¹³⁸

Clause 3. No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

TONNAGE DUTIES

The purpose of the Tonnage Clause is “to ‘restrai[n] the states themselves from the exercise’ of the taxing power ‘injuriously to the interests of each other.’ . . . In writing the Tonnage Clause, the Framers recognized that, if ‘the states had been left free to tax the privilege of access by vessels to their harbors the prohibition [in Article I, § 10, clause 2] against duties on imports and exports could have been nullified by taxing the vessels transporting the merchandise.’”²¹³⁹ The prohibition against tonnage duties embraces all taxes and duties, regardless of their name or form, whether measured by the tonnage of the vessel or not, that, in effect, are charges for the privilege of entering, trading in, or lying in a port.²¹⁴⁰ The Tonnage Clause, however, does not ban all “taxes which fall on vessels that use a State’s port, harbor, or other waterways. Such a radical proposition would transform the Tonnage Clause from one that protects vessels, and their owners, from discrimination by seaboard States, to one that gives vessels preferential treatment vis-à-vis all other property, and its owners, in a seaboard State.”²¹⁴¹ But it does not extend to charges made by state authority, even if graduated accord-

²¹³⁸ *Bowman v. Chicago & Nw. Ry.*, 125 U.S. 465 (1888). The Twenty-first Amendment has had no effect on this principle. *Department of Revenue v. Beam Distillers*, 377 U.S. 341 (1964).

²¹³⁹ *Polar Tankers, Inc. v. City of Valdez, Alaska*, 557 U.S. ___, No. 08–310, slip op. at 3, 4 (2009).

²¹⁴⁰ *Clyde Mallory Lines v. Alabama*, 296 U.S. 261, 265 (1935); *Cannon v. City of New Orleans*, 87 U.S. (20 Wall.) 577, 581 (1874); *Transportation Co. v. Wheeling*, 99 U.S. 273, 283 (1879); *Polar Tankers, Inc. v. City of Valdez, Alaska*, 557 U.S. ___, No. 08–310 (2009).

²¹⁴¹ *Polar Tankers, Inc. v. City of Valdez, Alaska*, 557 U.S. ___, No. 08–310, slip op. at 6 (2009) (citation omitted).