

State Constitutional Law

Limited Federal Powers

Why take state constitutional law?

Topics for State Constitutional Law

<http://bit.ly/4jIeodB>



State and Federal Power

Enumerated Federal Powers

United States Constitution Art. 1 § 8

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Major powers of federal government:

- Taxes
- Defense
- Regulate interstate commerce
- Make laws necessary and proper for carrying out other enumerated powers

What do state constitutions' description of state powers look like?

The Commerce Clause

Gonzales v. Raich

545 U.S. 1 (2005)

Important prior cases:

Wickard v. Filburn (1942)

United States v. Morrison (1994)

United States v. Lopez (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.