The Environmental Commerce Clause (Excerpts)  
Christina A. Klein

State statutes including the Clean Air Act, the Clean Water Act, and the Resource Conservation and Recovery Act.

The Framers did not intend for the affirmative commerce clause to be a source of power for the Court to make decisions about the balance of power between federal and state government. Rather, the Framers intended for the states to make decisions about the balance of power between the state and federal governments. Furthermore, the states have a constitutional duty to protect and regulate activities within their borders. The commerce power relates to activities affecting more than one state and interstate commerce. State regulated activities affecting more than one state are consistent with the commerce power. In this case, the states have regulated activities affecting more than one state and therefore the activities are consistent with the commerce power.

Specifically the State law:

1. Protecting the Clean Air Act programs to reduce air pollution nationwide.
2. Establishing National Ambient Air Quality Standards (NAAQS) to protect public health and public welfare and to regulate emissions of hazardous air pollutants.

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Should a clean and healthy environment be a constitutional right?

“The natural resources of the nation are the heritage of present and future generations. The right of each person to clean and healthful air and water, and to the protection of the other natural resources of the nation, shall not be infringed upon by any person.”

—Proposed Amendment to the U.S. Constitution (1996)

With climate change and dependence on foreign oil high on the national agenda, environmental issues are being debated in Washington and across the country. Environmental concerns—and legislation to address them—are nothing new. From President Theodore Roosevelt’s conservation efforts to President Barack Obama’s policies for addressing global climate change, environmental issues have been at the forefront of presidential policy. Public concern for the environment established Earth Day in 1970, led to the passage of the Clean Air Act of 1970 and creation of the Environmental Protection Agency, an executive agency charged with safeguarding the natural environment.

The debate over the environment has grown evermore complex, involving issues of climate-change, economic trade-offs and policies such as “cap and trade,” a market-based plan to steadily reduce carbon dioxide and other greenhouse gas emissions. The debate over global climate change has called into question the effectiveness and necessity of existing environmental legislation.

One of the legacies of the environmental movement was to enshrine protection of the environment in the constitutions of several states, including Hawaii, Illinois, Pennsylvania, Massachusetts and Montana. But proposals to enact a federal constitutional amendment have never succeeded. Proponents of an amendment say it would have great symbolic value and lead to stronger environmental protection laws. Opponents say the Constitution already gives Congress the power it needs and that an amendment could divert resources from other social goods like a strong economy, quality healthcare and a good education.

Now it’s your turn to answer the question:

**Should a clean and healthy environment be a constitutional right?**

**YES**

- A constitutional amendment would increase the role of the federal government and help to control pollution that knows no state boundaries.
- A constitutional amendment would give Congress and the courts the clear authority to take strong action to protect the environment.
- Recognizing a clean and healthy environment as a constitutional right will help the economy by creating more business opportunities, which will increase the number of jobs.

**NO**

- A constitutional amendment would overturn the presumption in federal environmental statutes that the primary responsibility for environmental protection lies with the states.
- The Constitution’s Commerce Clause gives the federal and state governments all the authority needed to protect the environment.
- Recognizing a clean and healthy environment as a constitutional right will hurt the economy by increasing the cost of doing business and will result in the loss of jobs and a rise in consumer prices.
**THE ENVIRONMENTAL COMMERCE CLAUSE (Excerpts)**

The Environmental Commerce Clause (ECC) is a provision in the Constitution of the United States that states:

"...Congress shall have Power... to regulate Trade and Commerce with foreign Nations... among the several States... and with the Indian Tribes."

The ECC has been a matter of significant legal debate, particularly since the mid-20th century, when the U.S. Supreme Court began to apply the Commerce Clause to federal statutes and regulations designed to protect the environment.

**Clean Air Act (Excerpts)**

The Clean Air Act (CAA) is a federal law that empowers the Environmental Protection Agency (EPA) to regulate air pollution from stationary sources, such as factories and power plants. The CAA has been a source of much debate and litigation, particularly in cases involving climate change and greenhouse gas emissions.

**Cap and Trade**

Cap and trade is a market-based policy tool for regulating pollution. It involves setting a limit on the total amount of a pollutant that can be emitted, and allowing entities to trade allowances that they can use to emit pollutants.

**Global Climate Summit (Excerpts)**

President Obama delivered a speech at the Global Climate Summit in 2009, stating:

"...we must act now to confront the greatest challenge our planet has ever faced. We must draw on the ingenuity of science and the ingenuity of business, on the love of God and the love of country, to catalyze private sector efforts to build a clean energy future. We will invest in solar power, wind power, and next generation biofuels. We will partner with the states to find innovative ways to extend the reach of clean energy to more Americans. And we will give the world a vision of what a clean energy future can be."
The Environmental Commerce Clause (Excerpts)  

The Environmental Commerce Clause (b) provides a unique opportunity to address the question of whether a federal law that regulates commerce among the States acts to protect the public health and safety or to promote other governmental interests that are not entitled to commerce clause protection. The Commerce Clause has a four-part test that needs to be completed:  

1. The states involved must be determined to be part of a coordinated plan.  
2. The plan must have a significant effect on the interstate market.  
3. The states involved must have a shared interest in the regulation.  
4. The federal law must have been adopted to promote the state’s shared interest in the regulation.

Specifically, the law requires:  

• A state or local government must have a reason to believe that a federal or state statute is not in compliance with an environmental standard.  
• The state or local government must have the authority to issue an order or request that the federal or state statute be brought into compliance with the standard.  
• The state or local government must be able to obtain a court order to compel the federal or state statute to be brought into compliance with the standard.  
• The state or local government must be able to appeal the court order.  

Available online at: http://www.issues.gov/pros/
Furthermore, there is considerable historical evidence that the Framers did not intend for the affirmative commerce clause to be undisturbed by the courts. This is not a radical proposition.

The modern Court's shrinkage of federal and state legislative power under the commerce clause is ironic for its purported levels of government. The Court effectively treats the environment as neither commodity nor natural resource, thus frustrating both federal and state efforts to protect the environment from pollution and to regulate pollution to protect environmental quality. Such state efforts may have economic consequences for the free market and economic benefits for the regulating state, thus treading perilously close to the Court's expanding view of economic protectionism forbidden under the commerce clause.

The Environmental Commerce Clause (Excerpts)

The Environmental Commerce Clause (ECO) is a provision of the United States Constitution that deals with the regulation of commerce with foreign nations, and among the several States, and with the Indian Tribes. The Commerce Clause of the Constitution gives the federal government the power to regulate commerce. The Commerce Clause is one of the most important and controversial provisions of the Constitution, as it has been used to justify federal legislation on a wide range of issues, including environment, health, and safety.

The Framers of the Constitution believed that a strong central government was necessary to protect the United States from foreign powers and to promote economic development. The Commerce Clause was intended to give the federal government the power to regulate commerce, which was defined as the transportation of goods and services across state lines.

The Commerce Clause has been interpreted by the Supreme Court to include the power to regulate environmental regulations and to prevent states from interfering with interstate commerce. The Court has held that states may not regulate commerce in a way that hinders the flow of goods and services across state lines, and may not impose unreasonable burdens on interstate commerce.

The Commerce Clause has also been used to justify federal regulation of environmental issues. The Supreme Court has held that the federal government has the power to regulate environmental issues under the Commerce Clause, even if the issue is not specifically mentioned in the Constitution.

The Court has also held that states may not interfere with federal environmental regulations. For example, in the case of United States v. South Carolina (1977), the Supreme Court held that a state law prohibiting the transportation of waste across state lines to a site in another state for disposal violated the Commerce Clause.

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Congress itself has advanced the idea of “cooperative federalism,” a principle that forms the basis of numerous environmental laws. In appropriate cases, environmental regulation by one—or even both—sovereigns (i.e., federal and state) should be left to the states and federal governments, in accordance with the states’ interests. Such state efforts may have economic consequences for the free market and economic benefits for the regulating state, and they may be justified by the states’ interest in protecting the health and safety of their residents. However, the states may also be subject to federal environmental regulations. Thus, treading perilously close to the Court’s expanding view of economic protectionism forbidden under the commerce clause.

The Environmental Progress Act (EAEC) sought to address the growing concern over environmental protection and regulation. In 1978 and 2001 in the context of a commerce clause challenge.

1. **Standards** – a list of the regulations that must be met.
2. **Cap and Trade** – a market-based policy tool for protecting human health and the environment.
3. **Clean Air Act (CAA)** – an important law that provides for the regulation of air pollutants.
4. **Clean Water Act (CWA)** – a law that protects water quality and the aquatic environment.
5. **Resource Conservation and Recovery Act (RCRA)** – a law that deals with the management of hazardous waste.
6. **Solid Waste Disposal Act (SWDA)** – a law that regulates the disposal of solid waste.
7. ** السلسلة المادية** – a chain of regulations that must be met to protect the environment.

The guidelines presented below have been created to provide you with advice and ideas on how to both present your arguments and to walk in the steps of the founders and deliberate the future of our country.

The National Constitution Center is located in Philadelphia, just a few steps from Independence Hall, where the Constitution was drafted. It is a place where you can experience the story of the Constitution and the struggle for freedom in a way that is engaging and thought-provoking. The center includes a museum, an educational center, and a library.

Q: What evidence do you have to support your answer?

Q: What evidence would support their perspective?
The Environmental Commerce Clause

The Environmental Commerce Clause is a part of the United States Constitution. It grants Congress the power to regulate commerce with foreign nations, among the several states, and with the Indian tribes. The clause is found in Article I, Section 8, Clause 3 of the Constitution. It is important to note that this clause has been interpreted by the Supreme Court to include a Commerce Clause Power that has been used to expand federal regulatory power to protect the environment.

Specifically, the law states:

The Congress shall have Power To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

This clause has been used by the Supreme Court to justify federal regulation of certain economic activities that have an impact on interstate commerce or on the flow of commerce. For example, the Commerce Clause has been used to justify federal regulation of the interstate transportation of goods and services, as well as the regulation of certain industries that have an impact on interstate commerce, such as the oil and gas industry.

The Commerce Clause is often used as a basis for federal regulatory power over the environment because the environmental regulations have a significant impact on interstate commerce. For example, the Clean Air Act and the Clean Water Act are federal laws that have been used to regulate emissions and pollution from various industries, respectively.

In conclusion, the Commerce Clause has been an important tool for the federal government to regulate commerce and protect the environment. It has allowed the government to regulate certain economic activities that have an impact on interstate commerce, such as the oil and gas industry, and has been used to justify federal regulation of the environmental impacts of these activities.

[End of text]
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Federal environmental law may be particularly vulnerable to the Court's shrinking view of commerce clause authority because

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no amendment which may be made prior to the year one thousand eight hundred and eight

INVENTORY

• Significant, widespread, and guaranteed human health and environmental benefits;
• Incentives for early pollution reduction and innovations in control technologies;
• Regulatory certainty and flexibility for sources;
• Improved air quality, including the reduction of acid rain and regional haze;
• Increased energy efficiency and conservation, along with industry commitment to using energy resources more efficiently;
• Avoidance of premature mortality and morbidity benefits, and
• Efficient and environment-friendly industrial processes.

Available online at: http://www.scp Kommentare.org

The National Constitution Center is located in Philadelphia, just a few steps from Independence Hall, where the Constitution was born. It is a "living museum" that is designed to help visitors understand the Constitution on its own terms, and that inspires them to ask how its principles apply to the challenges we face today.

The Center’s programs are designed to encourage students to build compromise into their position.

Q: Why should a Cap and Trade policy be put in place?

Students will be able to evaluate multiple perspectives on the issues and determine what

Objectives

This research and deliberation activity is designed to encourage students to look at the

James R. May, Professor of Law; J. Michael Hogan, Ph.D; David N. Cassuto, Professor of Law; Author:

http://www.usc.edu/cotm/tdoc/tdoc3026.html

Should a clean and healthy environment be a constitutional right? Poster

Q: What values do you and those who support your perspective on climate change have in common?

students to use values that have previously been listed to support their answer.

Q: For those who have a different perspective, what could be the political, economic, or environmental consequences of doing what they have suggested?

Ask your students to use values that have previously been listed to support their answer.

Q: What values do you think both perspectives have in common?

Students should list political principles or standards which they believe influence this choice.

Students are to answer

Q: Why should a Cap and Trade policy to protect the environment be put in place?

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exclusive, nor for the Court, rather than the political process, to be the final arbiter of the balance between federal and state power. This is not a radical proposition. In appropriate cases, environmental regulation by one—or even both—sovereigns (i.e., federal and state) should be left to the states. There is nothing untoward about such an arrangement. Indeed, it is how the law should work. The modern Court’s shrinkage of federal and state legislative power under the commerce clause is ironic for its purported strength in this area. The Court was right to limit the commerce clause power when it had no alternative, but the Court’s reasoning—that states by their nature are undisturbed by the courts—conflicts with this premise. The Court, therefore, should be the arbiter of the political process in cases where it must decide the proper balance between federal and state power.

The modern Court’s interpretation of the commerce clause is ironic for its purported virtue. The modern Court has pushed state power back into private, economic matters outside the reach of the commerce clause. It should now look to the political process to balance federal and state power. In this way, it can live up to its own vision of the political process, and the vision of the framers, to determine the appropriate balance between federal and state power. The modern Court has failed to recognize its role in the political process, and the role of the political process, in determining the balance between federal and state power.

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