Classifying Arguments Activity

Gibbons v. Ogden (1824)

After reading the **background, facts, issues, constitutional provisions,** and **Supreme Court precedents,** read each of the arguments below. These arguments come from the briefs submitted by the parties in this case. If the argument supports the petitioner, Gibbons (license from the federal government), write **G** on the line after the argument. If the argument supports the respondent, Ogden (license from the state of New York), write **O** on the line after the argument. Work in your groups. When you have finished, determine which argument for each side is the most persuasive and be ready to give your reasons.

Arguments

1. Article I, Section 8 of the U.S. Constitution gives Congress the power to regulate commerce between states. Transportation from New Jersey to New York is a form of interstate commerce, so only Congress had the power to make laws controlling it. ________

2. Mere navigation or transportation of goods or people is not "interstate commerce" because nothing is being bought or sold. ________

3. The Constitution reserves to the states the authority to decide who may conduct business within the state's borders, including by granting exclusive licenses to operate in its waterways. ________

4. Navigation involving transportation of goods and people between states is interstate commerce, which Congress may regulate by giving people the right to conduct business across state borders and into a state. ________

5. The Supremacy Clause and *McCulloch v. Maryland* demonstrate that when state and federal laws conflict, the federal law is supreme, and the state law should be struck down. ________

6. Congressional power to regulate interstate commerce is a limited power that does not extend to navigation within a state's own territory, including its waterways. ________

Gibbons v. Ogden (1824)

Argued: February 5–9, 1824

Decided: March 2, 1824

Background

Before the current United States Constitution, the states were governed by the **Articles of Confederation**. The system of government created by the Articles of Confederation was short-lived in part because the federal government had very little power compared to the states. A major problem was that the states could pass laws that controlled **commerce**, or economic activity, outside of their borders. Many states did precisely that, creating self-serving and protectionist trade barriers between and among the states. This made trade between the states difficult and ineffective. The weak national government under the Articles of Confederation had no power to regulate interstate commerce or nullify protectionist state measures.

When the Constitution was written to replace the Articles of Confederation, the Framers were careful to make sure that this problem would not continue under the new system. To prevent this, they included the **Commerce Clause** in Article I, Section 8. This gives Congress the power to create laws governing interstate (and foreign) commerce. **Interstate commerce** refers to economic activity involving multiple states or their citizens. This differs from **intrastate commerce**, which occurs entirely within the borders of a single state. The Framers hoped that the Commerce Clause would strengthen the U.S. economy by allowing states to trade more efficiently.

In the early 19th century, the Constitution was still new and was largely untested. There were a lot of questions about which powers it gave to the three branches of the government, as well as to the states. Article VI, Clause 2 of the Constitution, known as the **Supremacy Clause**, says that when a state law conflicts with a federal law, the federal law prevails over the state law.

Facts

In 1808, the state of New York granted a license to Robert Livingston and Robert Fulton that gave them the sole right to operate boats on New York waterways for 30 years. That meant that no one other than Livingston, Fulton, and those who worked for them could operate boats in New York waters.

In 1815, Aaron Ogden bought a **franchise** from Livingston and Fulton. In selling a franchise, Livingston and Fulton allowed Ogden to operate boats in New York under their name in exchange for a fee and a percentage of his profits. Ogden's business made money by carrying goods between New York and New Jersey.

Thomas Gibbons, Ogden's former business partner, wanted to compete with Ogden. Gibbons obtained a license from the federal government, based on an act of Congress, to operate his boats in the same waters. His license allowed him to transport individuals between New York and New

Jersey. Ogden sued in a New York state court to stop Gibbons from using that route, arguing that the federal government lacked authority to interfere with New York state's control over access to its waterways. By contrast, Gibbons argued that transportation between New York and New Jersey met the definition of interstate commerce and should, therefore, be governed by the federal government, not New York. The New York state court found in favor of Ogden (who had the New York state license) and prohibited Gibbons (who had the federal license) from operating his boats on that route. Gibbons asked the Supreme Court of the United States to hear his case, and it agreed.

Issue

Does the Commerce Clause of the U.S. Constitution give Congress the power to regulate interstate navigation and to override any state laws that interfere with the interstate flow of persons and goods?

Constitutional Provisions and Supreme Court Precedents

- **Commerce Clause, Article I, Section 8 of the U.S. Constitution**

  Article I, Section 8 gives Congress the power "To regulate Commerce…among the several states."

- **Supremacy Clause, Article VI, Clause 2 of the U.S. Constitution**

  "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding."

- ***Marbury v. Madison* (1803)**

  Marbury v. Madison established the concept of **judicial review**, giving the federal courts the power to determine whether federal and state laws and executive orders are constitutional. If a court decides that a law conflicts with the U.S. Constitution, the law is said to be unconstitutional and will be struck down. *Marbury* greatly expanded the Supreme Court's powers, as it held that the Constitution is the supreme law of the land and that the Supreme Court has the final say in interpreting it.

- ***McCulloch v. Maryland* (1819)**

  This landmark case reaffirmed the supremacy of the U.S. Constitution and federal law. In particular it recognized the ability of the federal government to exercise implied powers, greatly expanding its authority to act for the general welfare of the nation. In their decision, the justices declared that "the constitution and the laws made in pursuance thereof are supreme; that they control the constitution and laws of the respective states and cannot be controlled by them." Therefore, Maryland was not allowed to tax a branch of the national bank because it burdened the function of constitutional laws passed by Congress.