

Gibbons v. Ogden / What Does that Law Have to Do with Interstate Commerce?

Among the enumerated powers granted to Congress in Article I of the U.S. Constitution is the power to regulate interstate commerce. Article I, Section 8, Clause 3 is known as the Commerce Clause. Over time, legislators, lawyers, politicians, and businesspeople have argued over just what the commerce power means. For instance, it may be clear that the commerce power would give Congress the ability to make laws regarding transportation networks, such as train lines and highways, that cross state lines. However, would the commerce power give Congress the ability to establish regulations on the *production* of goods and services that may *eventually* cross state lines? These and other questions regarding the commerce power have been answered by numerous cases heard by the Supreme Court of the United States (see activity titled “[How Interpretation of the Commerce Power Has Changed Over Time](#)”). However, the question of what the Commerce Clause entitles Congress to do and legislate on is still a very open question.

Since the mid-1930s, Congress and the Supreme Court of the United States have tended to view the commerce power rather expansively. In other words, the commerce power is used to justify a wide range of powers and legislation, some of which have only a marginal link to interstate commerce. For an idea of how Congress views the link between its lawmaking and commerce, go to the [THOMAS Legislative Information section](#) of the Library of Congress website. Search for legislation by typing in the word “commerce.” You will find bills that have somehow been linked to commerce. Some of them might surprise you!

Directions: Below are short summaries of bills the 116th Congress was considering in 2019–2020 that have some connection to commerce. After reading the description of each bill, discuss with a group or partner the connection that legislation has to interstate commerce. Then rate that connection on a scale of 0–5. Note the reasons for your rating. Compare your ratings to those of other groups or pairs of students.

1. S.2030—State Cannabis Commerce Act

This bill prohibits the use of federal funds to prevent a state from implementing a law that authorizes certain marijuana-related activities.

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*No connection**Strong Connection*

Reasons for the rating: Student ratings on the strength of this connection to the Commerce Clause will vary. Student reasons for the rating will vary but may include that the buying and selling of marijuana is interstate commerce. Others might state this bill focuses on lawmaking and only states that the laws will authorize “certain marijuana-related activities” not expressly commerce.

2. H.R.2443—Firearms Interstate Commerce Reform Act

This bill removes certain restrictions on interstate firearms transactions.

Among other things, the bill does the following:

- permits a licensed firearms dealer to sell firearms at an out-of-state gun show, subject to compliance with state laws; and
- specifies the particular states in which a member of the armed forces, or his or her spouse, is a resident for purposes of federal firearms laws.

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No connection

Strong Connection

Reasons for the rating: Student ratings on the strength of this connection to the Commerce Clause will vary. Student reasons for the rating will vary but may include that the law expressly states that it applies to interstate firearms transactions.

3. H.R.6783—American Space Commerce Act of 2020

This bill allows a special allowance for bonus depreciation for qualified domestic space launch property and extends the termination of such allowance until the end of 2032. The bill defines qualified domestic space launch property as property placed in service before January 1, 2023, that is (1) a space transportation vehicle or payload that is launched from the United States, or (2) other property or equipment placed in service to facilitate a space launch from the United States.

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No connection

Strong Connection

Reasons for the rating: Student ratings on the strength of this connection to the Commerce Clause will vary. Student reasons for the rating will vary but may include that the law does not apply to interstate commerce because “launch property” may be within one state. Others might conclude that “launch property” includes “space transportation vehicle or payload” which may have been purchased in other states.

4. S.1768—Native Species Protection Act

This bill prohibits an intrastate species from being subject to (1) regulation governing the protection of endangered or threatened species, or (2) provisions of law under which regulatory authority is based on the power of Congress to regulate interstate commerce under the Commerce Clause.

An intrastate species is any species of plant or fish or wildlife that is found entirely within the borders of a single state and is not part of a national market for any commodity.

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*No connection**Strong Connection*

Reasons for the rating: Student ratings on the strength of this connection to the Commerce Clause will vary. Student reasons for the rating will vary but may include that the connection is low because the law specifies that the species is found entirely within the borders of a single state and not a part of a national market for any commodity. Others may fail to see how protecting species involves commerce at all. Others may feel that it does involve interstate commerce because it is impossible to know that plants, fish, or wildlife will stay within a border that they do not recognize.

5. H.R.6929—Advancing Facial Recognition Act

This bill requires the Department of Commerce to study and report on the impact of facial recognition on U.S. businesses conducting interstate commerce. Such study shall involve, among other things, (1) listing industry sectors that develop and use facial recognition technology and public-private partnerships focused on promoting the adoption and use of such technology, (2) establishing a list of federal agencies asserting jurisdiction over such industry sectors and entities, (3) assessing risks and trends in the marketplace and supply chain of facial recognition technology, and (4) identifying potential harms to individuals related to the use of such technology.

Commerce must report to Congress the results of such study and any recommendations to promote the adoption of facial recognition technology.

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*No connection**Strong Connection*

Reasons for the rating: Student ratings on the strength of this connection to the Commerce Clause will vary. Student reasons for the rating will vary but may include that the law stipulates it only applies to businesses conducting interstate commerce. Others might cite

that [conducting the study](#) on the use of facial recognition technology itself does not involve interstate commerce.

6. S.1779—Equal Access to Justice for Victims of Gun Violence Act

This bill removes limitations on the civil liability of gun manufacturers.

Specifically, the bill repeals the Protection of Lawful Commerce in Arms Act, which prohibits civil actions against a firearm or ammunition manufacturer, seller, importer, dealer, or trade association for damages resulting from the criminal or unlawful misuse of a firearm.

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No connection

Strong Connection

Reasons for the rating: [Student ratings on the strength of this connection to the Commerce Clause will vary.](#) Student reasons for the rating will vary but may include that the buying and selling of firearms involves interstate commerce. Others may state that [suing a firearm or ammunition manufacturer, seller, importer, dealer or trade association does not involve commerce.](#)

7. H.R.5845—Break Free from Plastic Pollution Act of 2020

The bill makes certain producers of products (e.g., packaging, paper, single-use products, beverage containers, or food service products) fiscally responsible for collecting, managing, and recycling or composting the products after consumer use. In addition, the bill establishes (1) minimum percentages of products that must be reused, recycled, or composted; and (2) an increasing percentage of recycled content that must be contained in beverage containers.

Beginning on January 1, 2022, the bill phases out a variety of single-use products, such as plastic utensils. The bill also sets forth provisions to encourage the reduction of single-use products, including by establishing programs to refund consumers for returning beverage containers and by establishing a tax on carryout bags.

The bill creates a temporary moratorium on new or expanded permits for facilities that manufacture plastics until regulations are updated to address pollution from the facilities.

The Environmental Protection Agency must publish guidelines for a national standardized labeling system for recycling and composting receptacles. Producers must include labels on their products that are easy to read and indicate whether the products are recyclable, compostable, or reusable.

Finally, the bill establishes limitations on the export of plastic waste to other countries.

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No connection

Strong Connection

Reasons for the rating: Student ratings on the strength of this connection to the Commerce Clause will vary. Student reasons for the rating will vary but may include the production and labeling of plastic goods involves interstate commerce. Others may cite that mandating levels of plastic to be reused, recycled, or composted does not involve interstate commerce.