

Question 5

The National Highway Transportation and Safety Administration (NHTSA), a federal agency, after appropriate hearings and investigation, made the following finding of fact: “The NHTSA finds that, while motor vehicle radar detectors have some beneficial purpose in keeping drivers alert to the speed of their vehicles, most are used to avoid highway speed-control traps and lawful apprehension by law enforcement officials for violations of speed-control laws.” On the basis of this finding, the NHTSA promulgated regulations banning the use of radar detectors in trucks with a gross weight of five tons or more on all roads and highways within the United States.

State X subsequently enacted a statute prohibiting the use of radar detectors in any motor vehicle on any road or highway within State X. The State X Highway Department (Department) enforces the statute.

The American Car Association (ACA) is an association comprised of automobile motorists residing throughout the United States. One of ACA’s purposes is to promote free and unimpeded automobile travel. ACA has received numerous complaints about the State X statute from its members who drive vehicles there.

In response to such complaints, ACA has filed suit against the Department in federal district court in State X, seeking a declaration that the State X statute is invalid under the Commerce Clause and the Supremacy Clause of the United States Constitution. The Department has moved to dismiss ACA’s complaint on the ground that ACA lacks standing.

1. How should the court rule on the Department’s motion to dismiss on the ground of ACA’s lack of standing? Discuss.
2. On the assumption that ACA has standing, how should the court decide ACA’s claim that the State X statute is invalid under the Commerce Clause and the Supremacy Clause of the United States Constitution? Discuss.

Answer A to Question 5

5)

1. ACA's Standing

Organizational Standing

An organization may bring suit on behalf of its members if it can establish the following:

1. It's [sic] members have suffered an injury in fact;
2. The injury is related to the organization's purposes; and
3. The court can grant relief without the presence of the individual members who have suffered the injury.

Injury in Fact

The requirement that the members have suffered an injury in fact ensures that the federal courts are only hearing real and live claims and controversies. In order to establish an injury where a statute is challenged based on its unconstitutionality, either the statute must have been enforced against someone or the failure to rule the statute invalid before enforcement must work an extreme hardship to the complaining individual.

Here, there is no evidence that the statute has been enforced against any of the ACA members. Though the State X Highway Department enforces the statute, the facts do not indicate that the department has enforced the statute against any of the ACA members. The facts do state that ACA has received numerous complaints about the statute from State X members who drive in State X where the statute is being enacted. Because there has been no actual enforcement of the statute, in order to obtain pre-enforcement review, the ACA must show that its members are going to be put to an extreme hardship if they are not granted a judgment on the constitutionality of the statute.

The hardship faced by the members if they are forced to continue acting under this statute until it is enforced is relatively light.

It is likely that the court will find that this case is not ripe for review because there is no evidence that the statute has been enforced against the ACA members. Furthermore, the hardship the members will suffer if they are not given pre-enforcement review does not rise to the level of extreme hardship to justify a premature ruling by the federal court.

Injury Related to Organization's Purposes

If the court does find the members of ACA have suffered an injury, ACA must next establish that this injury is related to the purpose of the organization. Here, the injury would be that the drivers are forced to drive without radar detectors. The stated purpose of the ACA is to promote free and unimpeded automobile travel. ACA will have no problem showing that the statute prohibiting drivers from utilizing radar detectors is related to free and unimpeded automobile travel. Not having a radar detector can rationally be viewed as being an impediment to free driving. Thus, the injury is related to the association's purpose.

Presence of Individuals is Unnecessary to Grant Effective Relief

ACA must show that it can bring suit challenging the statute and that the court can grant relief to remedy the injury suffered by its members without the individual presence of the members in the lawsuit. Here, the relief ACA is seeking is a declaration that the statute is invalid. If they are seeking injunctive relief, to keep the Department from enforcing the statute, then the presence of the members would not be necessary to fashion this relief. If the ACA is seeking an injunction this relief would be an effective means to remedy the injury suffered by the drivers. If, however, the association is seeking money damages because of the infringement of some free driving right, then they would need the presence of the drivers in the suit to grant this relief.

11th Amendment

State may also challenge the suit brought by ACA on grounds of the 11th Amendment. The 11th Amendment prohibits cases in federal courts against the states. Here, ACA is bringing an action against State X Department in the federal court. The ACA's suit might not be barred because they are seeking to have the statute ruled unconstitutional and are most likely seeking an injunction prohibiting further enforcement of it. It is unlikely that the 11th Amendment will bar this suit against the Department for a declaration of unconstitutionality.

Conclusion

The court will most likely find that ACA lacks organizational standing because its members have not suffered an injury in fact. There is no evidence the statute has been enforced against the members and the "hardship" suffered by the members is not sufficient to warrant pre-enforcement review. The case should be dismissed for lack of standing.

2.

Validity of State X Statute under Commerce Clause

Preemption

Where the federal government preempts a field, the state may not regulate it. Preemption can take place either expressly by the Legislature stating so in a statute, by the pervasive presence of the federal government in the certain field, or by a federal statute conflicts [sic] with a state statute directly or indirectly.

There is no evidence that the NHTSA intended to preempt the field of radar detector legislation. In the statute, they stated that its purpose was to allow apprehension of speeders by law enforcement officials and assumedly, for the protection of drivers. There is no express preemption of the field. The regulation by the federal government in this area does not seem to be so pervasive so as to imply that the federal government has preempted the field (as is the case with the FCC). This statute appears from the facts to be the only statute related to speed control devices.

The federal statute is limited to large trucks. It prohibits radar control devices in trucks over a certain weight. The state statute is more regulatory than the federal statute- it prohibits such devices in all vehicles. More extensive regulation granting more protection serves the purpose of the federal statute, it does not conflict with it.

Dormant Commerce Clause/Negative Implications of the Commerce Clause

A state may not regulate interstate commerce in a way that is discriminatory against interstate commerce or in a way that unduly burdens interstate commerce. Here, the statute does not discriminate against interstate commerce. The statute prohibits all drivers from using these radar control devices- it does not just prohibit out-of-state drivers from using these devices. Because the law does not discriminate against interstate commerce, to be invalid, ACA must show that the regulation places an undue burden on interstate commerce.

In order for state law that regulates either the channels, instrumentalities or those things that, in their aggregate, have a substantial affect [sic] on interstate commerce, the state must show that the non-economic state interest outweighs any burden on interstate commerce. Here, the interest is not economic. The interest of the state is presumably for the safety of drivers on the State X roads and highways. Speed devices like radar detectors arguably aid drivers in evading the laws that the state will argue were designed to protect drivers.

The safety of drivers on State X roads and highways is a legitimate, important state interest. This interest must outweigh the burden on interstate commerce by the prohibition

on speed control devices. The only burden suffered by interstate commerce is that interstate drivers will be subject to different rules. In other states, they might be permitted to use radar detectors, but in State X, they will not be able to. This might potentially create a substantial likelihood that drivers traveling on interstate highways, traveling between states, will be more likely to unknowingly violate this rule. In order to remedy this problem, the State could post signs at or near its borders that radar detectors are prohibited in State X. Once a driver knows of this prohibition, the driver can put the radar detector away or turn it off. The statute does not prohibit the possession of one within the state, but only the use of one.

Conclusion.

The prohibition of radar detectors in State X in any vehicle traveling on a road or highway within the state serves an important, non-economic state interest. This interest outweighs any burden placed on interstate commerce. The statute will not violate the Dormant Commerce Clause.

Supremacy Clause

The statutes, treaties, and Constitution of the United States are supreme. Where a state law conflicts with either federal statutes, regulations, or the federal Constitution, the state law is invalid.

In order for ACA to prove that the state law violates the Supremacy clause, it must show that the State X law either directly conflicts with the federal law, or frustrates or impedes the objectives and purposes of the federal law. Here, the State X law only regulates more vehicles than does the federal statute which is limited to trucks over a certain weight.

A state may regulate more extensively than a federal statute so long as this does not frustrate the objective of the federal statute. A state may not, however, pass a law that excludes conduct that is included in a federal law. Thus, for example, the State X statute could not read that trucks with a gross weight of five tons or more are exempt from the radar detector ban. This would expressly contradict the federal statute. Here, the State X law does not expressly conflict with the federal statute nor does it impede or frustrate the objective of the federal statute. The federal statute objective and the state statute objective are the same- both statutes aim to prevent drivers from evading law enforcement officials for violations of speed-control laws. The State X statute only prohibits more vehicles from using such devices--- it extends the protections the federal statute desired even further.

Conclusion

This law will not be invalid under the Supremacy Clause. It neither expressly contradicts nor frustrates or impedes the purposes of the federal statute.

Answer B to Question 5

5)

I. The Court should Deny the Department's Motion to Dismiss for ACA's lack of standing

A. Preliminary Jurisdictional and Venue Issues

Personal jurisdiction in State X is appropriate here, given that the subject action is to challenge the validity of a statute of State X. The Federal District Court for State X has jurisdiction because the ACA is raising a federal question: namely, whether or not the State X statute violates the United States Constitution as to either or both of [sic] the Commerce Clause and the Supremacy Clause. Venue in the Federal District Court for State X presumes that State X is a single-district state, and thus there is not a multiplicity of federal district courts from which to choose.

B. ACA has standing

The Federal courts have jurisdiction to hear cases and controversies. This means that there must be an actual dispute, not a hypothetical or moot question, and that the parties to the action are, respectively, the injured party and the party liable for the injuries.

Although the ACA itself has not suffered an actual injury, the Courts have, since the Sierra Club case, set forth a clear standard by which unincorporated associations can sue on behalf of their members and be found to have standing. There are three components that must be met: first, the purpose of the lawsuit must be directly related to the purpose of the association; second, individual members of the association would have the standing to bring the action on their own individuals['] behalves; third, the participation of individual members of the association is not required to prosecute the action. Each of these will be explored in turn.

i. The Purpose of the ACA

As noted in the facts, the ACA is an association comprised of automobile motorists residing throughout the United States. Among ACA's organizational purposes is the promotion of free and unimpeded automobile travel. Such an organization is clearly one that is concerned with a State that has adopted and enforced a statute that imposes different rules on drivers as they cross from state to state.

ii. The Standing of Individual Members

Also, as noted, members of the ACA have complained to the ACA about the relevant statute. We cannot determine, from the facts provided, whether any member of

the ACA has actually been cited for use of a radar detector in violation of the statute, nor can we determine whether ACA members have been cited for speeding based on being “clocked” by police-operated radar that would have been detected with the lawful use of radar detectors. However, a person with a reasonable basis for challenging a criminal statute is not required to first commit the crime and be convicted thereof before challenging the validity of the statute. On this basis, individual members of the ACA who own radar detectors and would use them when driving in State X would clearly have standing to sue; assuming that such persons exist, the next element of the standing analysis is satisfied.

iii. The participation of individual members

The final element of associational standing analysis is whether the individual members themselves are required to participate in the action. Here, the ACA is mounting a broad-based challenge to the statute; their claim is not tied to the enforceability of the statute against a particular person or in a particular set of circumstances. In these conditions, the ACA is fully capable of proceeding with its case absent the active involvement of any particular person or representative plaintiff.

Thus, the requirements of associational standing have been met, and the Court should deny the Department’s motion to dismiss for lack of standing.

II. The Court should Uphold the validity of the Statute.

The ACA has identified two bases for its challenge of the constitutionality of the relevant State X statute: the Commerce Clause and the Supremacy Clause. Each will be discussed in turn.

A. The Commerce Clause.

Under the United States Constitution, Congress has the power to regulate interstate commerce. However, individual states, as separate sovereigns, have their own individual police powers to regulate conduct within the boundary of the state. The interplay between these two provisions - often conflicting provisions - requires in part of a fact-based analysis.

The ACA would argue that the subject statute clearly imposes significant restrictions on interstate commerce. They would argue that motorists driving through State X on their way from one state to another should not be expected to know the requirements of State X law, and thus face risk of [a] ticket or possible arrest.

State X will counter by noting that any impact on interstate commerce is, at best, minimal and tangential, and does not constitute an undue burden. The State will note that they do not ban the ownership or possession of radar detectors, only the use of radar detectors.

Additionally, State X will argue that its regulation is required to enable State X to use its

police power to provide for safe roads and highways. State X will cite to laws in other states, such as Virginia, prohibiting the use of radar detectors. State X will similarly note that other states validly impose regulations that are far more burdensome, such as laws regarding child safety seats.

State X will also note that no discriminatory impact exists against out-of-state residents. All motorists - both from outside State X and residents of State X - are subject to the ban. Presumably, State X will post appropriate signage at or near public roads that cross into State X advising motorists of the existence of the ban on radar detectors. This will further minimize the impact on out-of-state motorists.

On these bases, the Court is likely to agree with State X's contention that State X's regulation does not violate the Commerce Clause.

B. The Supremacy Clause.

In arguing that the relevant statute is in violation of the Supremacy Clause, the ACA is really arguing that by reason of the applicable NHTSA regulations on radar detectors, the Federal government has preempted any state legislation impacting this area. For the reasons noted below, this argument too will fail.

Federal laws and regulations can preempt state laws either expressly or through implication. Express preemption is readily apparent when it occurs; here, no evidence exists to indicate that the NHTSA's regulations promulgated on this topic state that they are exclusive, and thus no express preemption exists.

The federal government can also preempt by implication. If the scope of the federal action is such that it leaves no room for any additional state regulation, then state action is prohibited. Here, the NHTSA regulations only apply to trucks with a gross weight of five tons or more. The ACA will argue that by defining certain classes of vehicles which are not allowed to use radar detectors, the NHTSA also implicitly ruled that other motor vehicles are not prohibited from doing so.

This argument is likely to fail, however. Nothing implicit in the text of the regulation, as provided, implies any intent at reserving the arena for the federal regulatory action. Rather, the NHTSA's findings of fact are in no way limited to certain classes of vehicles, certain sizes, weights, etc. This would suggest, the State will argue, that NHTSA simply was not willing or able to extend its regulations further, but not that the individual states were prohibited from doing so.

Again, as noted above, many other states have similar or comparable statutes, regulating radar detectors or other areas. As such, the requisite intent to preempt is not likely to be found, and the Court will agree with State X that the regulation is not in violation of the Supremacy Clause.

* * *

Since the regulation is not invalid on any basis challenged by the plaintiff, assuming no facts inconsistent with those given, the statute will be upheld.