

Question 4

In a recent statute, Congress authorized the United States Secretary of Transportation “to do everything necessary and appropriate to ensure safe streets and highways.” Subsequently, the Secretary issued the following regulations:

Regulation A, which requires all instructors of persons seeking commercial driving licenses to be certified by federal examiners. The regulation details the criteria for certification, which require a minimum number of years of experience as a commercial driver and a minimum score on a test of basic communication skills.

Regulation B, which requires that every bus in commercial service be equipped with seatbelts for every seat.

Regulation C, which provides that states failing to implement adequate measures to ensure that bus seatbelts are actually used will forfeit 10 percent of previously-appropriated federal funds that assist states with highway construction.

The State Driving Academy, which is a state agency that offers driving instruction to persons seeking commercial driving licenses, is considering challenging the validity of Regulation A under the United States Constitution. The Capitol City Transit Company, which is a private corporation that operates buses within the city limits of Capitol City, is considering challenging the validity of Regulation B under the United States Constitution. The State Highway Department, another state agency, is considering challenging the validity of Regulation C under the United States Constitution.

1. What constitutional challenge may the State Driving Academy bring against Regulation A, and is it likely to succeed? Discuss.
2. What constitutional challenge may the Capitol City Transport Company bring against Regulation B, and is it likely to succeed? Discuss.
3. What constitutional challenge may the State Highway Department bring against Regulation C, and is it likely to succeed? Discuss.

Answer A to Question 4

State Driving Academy Challenges

Standing

In order to bring a claim in federal court challenging this regulation each of the parties must have standing. In order to have standing the plaintiff must show (1) injury in fact, (2) that the defendant caused the harm, and (3) that a favorable opinion will remedy his harm. In this case, the state agency is likely to have standing because the regulation will require their instructors to obtain the federal certification and therefore they will incur greater expense because of the regulation. Moreover, a challenge brought against the US Secretary is proper because he is the one who issued the regulations. Finally, a favorable opinion invalidating the regulation would remedy the injury because they would no longer have to incur the expense to comply with the regulation.

Constitutional Challenges

State Action

In order for the constitution to apply there must be state action. State action exists whenever the government or a government official is acting or a private party with sufficient entanglement with the state is acting. In this case, the US Congress and the US Secretary of Transportation issued these regulations and therefore there is state action and the constitution will apply to such regulations.

Not Within Enumerated Powers

The State agency would argue that such regulation is not within Congress' enumerated powers and therefore would violate the constitution. Congress would argue that it has the power to regulate interstate commerce and therefore has the ability to regulate (1) the channels of interstate commerce, (2) the instrumentalities of interstate commerce including those things within interstate commerce, (3) those activities that

have a substantial effect on interstate commerce. When Congress is using its commerce power to regulate an activity the activity must have a substantial effect on interstate commerce. If the activity is an economic activity then the court will uphold the regulation so long as in the aggregate all substantially similar activity is likely to have a substantial effect on interstate commerce.

In this case, the activity is commercial driving instruction. Congress is requiring that all instructors of persons seeking commercial driving licenses be certified by federal examiners. The regulation requires [a] certain minimum number of years of experience and a minimum score on a test of basic communication skills. In this case, Congress is not regulating an instrumentality of interstate commerce or a channel of interstate commerce but rather an activity. This activity is a commercial activity because it involves the provision of driving instruction for a fee. This commercial activity, although entirely intrastate, may be regulated by Congress so long as there is a reasonable belief that such economic activity would, in the aggregate, have a substantial effect on interstate commerce. In this case, since this [is] an economic activity, it is likely that such activity would have a substantial effect on interstate commerce because driving instruction provided to commercial truckers is likely to have an effect on the way that truck drivers drive on the road. If the truckers are taught more effectively then it is likely that they are going to [drive] safer when on the roads and therefore cause less accidents. Moreover, the safety of the highways has a substantial effect on interstate commerce. Moreover, in the aggregate if the instruction is not sufficient then our highways are likely to be unsafe and therefore will increase the cost of interstate commerce or reduce the amount of interstate commerce.

Since the activity is likely to have a substantial effect on interstate commerce the court will likely uphold regulation.

Delegation of Legislative Powers

This State may also challenge the regulation as an invalid delegation of legislative power. As a general rule Congress may delegate its legislative authority so

long as it provides reasonably intelligible standards. In this case, Congress has delegated its authority to the US Secretary of Transportation. This delegation will be valid so long as Congress has provided reasonably intelligible standards. In this case, Congress has said that the Secretary should do everything “necessary and appropriate to ensure safe streets and highways.” While this guidance is broad the court is not likely to invalidate this as unintelligible because such broad delegations of authority have been upheld in the past. Therefore it is likely a valid delegation of legislative power.

10th Amendment: Commandeering

The State may challenge this regulation on the ground that it is commandeering state officials by forcing them to comply with a federal regulation. In this case, the State Driving Academy is a state agency; therefore their employees are state officials. The state would argue that by forcing them to comply with the regulation Congress is infringing on the state’s inherent powers protected by the 10th Amendment. In this case, while the regulation does require the state officials to comply with the regulation, the regulation is not likely to violate the 10th Amendment because it is regulating both private as well as state actors. In prior cases, the court has upheld generally applicable regulations that require state agencies to comply so long as they were applicable to both private and public actors. In this case, the regulation applies to all commercial driving instructors, public and private, and therefore will likely not violate the 10th Amendment.

Capitol City Transport’s Challenges

State Action

As mentioned above, there is state action in this case, so the construction applies.

Not Within Enumerated Powers

Transport would likely argue that this regulation is not within Congress' enumerated powers and therefore is unconstitutional. As mentioned above, under the Commerce Clause Congress has the power to regulate the instrumentalities of interstate commerce as well as those things within interstate commerce. Instrumentalities of interstate commerce include cars, planes, buses, etc. Moreover, Congress has the power to regulate an activity [that] has a substantial effect on interstate commerce.

In this case, the Regulation requires that every bus in commercial service be equipped with seatbelts for every seat. A bus is an instrumentality of interstate commerce because it is generally used to move people both within the state and between states. Even though Transport does not operate buses within interstate commerce (since it only operates within the City limits) the bus, itself, is an instrumentality of interstate commerce and therefore can be regulated by Congress under the Commerce Power. Moreover, commercial busing is an activity that has a substantial effect on interstate commerce because it is an economic activity that in the aggregate moves thousands of people and goods between states. So even though City itself does not move people in interstate commerce, the commercial activity of busing people within the city, in the aggregate, has a substantial effect on interstate commerce. If buses that operate in the country are safer than the roads and highways are likely safer and therefore there is going to be beneficial effect on interstate commerce.

Therefore the regulation is within Congress' enumerated powers.

Delegation of Legislative Powers

A challenge claiming invalid delegation is likely to fail for the reasons mentioned above.

Equal Protection

Under the 5th Amendment Due Process Clause, the federal government is prohibited from making unjustifiable distinctions between its people. In this case, the plaintiff may challenge the regulation as a violation of equal protection because it distinguishes commercial buses from other buses. As a general rule, any classifications among economic actors is subject to minimum rationality review. In that case, the regulation is valid so long as it is rationally related to a legitimate government interest. In this case, the regulation is likely to be upheld because the regulation is rationally related to the legitimate interest of ensuring the safety of those instrumentalities of interstate commerce. Secretary may have concluded that commercial buses are more of [a] threat to safety and therefore needed to be regulated before other buses were regulated. Moreover, putting safety belts on buses makes them safer by ensuring less injuries when and if there is an accident. Therefore this challenge is likely to fail.

State Highway Department's Challenges

State Action

As recommended above, there is state action in this case, so the construction applies.

Not Within Enumerated Powers

The State Highway Department may challenge this regulation by claiming that the regulation is not within Congress' enumerated powers. Congress has the power to tax and spend for the general welfare. In addition, Congress has the power to condition federal funds so long as the condition is related to the purpose for which the funds were granted.

In this case, the regulation requires states to implement adequate measures to ensure that bus seatbelts are actually used by conditioning 10% of the previously appropriated federal funds that assist states with highway construction on the implementation of such measures. Under Congress' conditional spending power this

condition placed on the funds is appropriate so long as the condition is related to the purpose for which the funds are used. The funds are being used to assist with highway construction. Such funds are likely to be used to build better, safer and more highways. The condition on the funds is that the states must implement measures ensuring that buses have seatbelts. The purpose of the condition is to improve the safety of an important instrumentality of interstate commerce. In this case, the condition is clearly related to at least one of the likely goals of the federal funds. Therefore the regulation is not outside of Congress' enumerated powers.

Delegation of Legislative Powers

A challenge claiming invalid delegation is likely to fail for the reasons mentioned above.

10th Amendment: Commandeering

The State Highway Department may challenge the regulation as invalid because it compels the state to legislate. As a general rule Congress cannot compel the state to implement legislation. Such regulations would be invalid and a violation of the 10th Amendment. However, Congress does have the power to condition its provision of federal funds on the states enacting certain regulation so long as the condition is not compelling the states to implement the regulation. In this case, Congress has conditioned only 10% of the federal highway funds on the implementation of such measures. 10% is only a slight percentage of the total and therefore it is unlikely that such an amount would constitute coercion of the states into implementing measures. If the state decides not to implement the measures it still will get 90% of the funds that were previously appropriated. Therefore the court is likely to find that such regulation is only inducing the states to act, not compelling them to act.

Therefore the regulation is not likely a violation of the 10th Amendment.

Answer B to Question 4

1. What constitutional challenges may the State Driving Academy bring against Regulation A, and is it likely to succeed?

Standing

It first must be determined whether the State Driving Academy (SDA) has standing to challenge Regulation A. Because of the requirement in Article III that federal courts only hear actual cases and controversies, the United States Supreme Court has imposed various requirements to determine whether a case is justiciable. Importantly, a litigant must have standing to bring a claim in federal court. This requires the litigant demonstrate injury in fact, causation, and redressability.

The SDA can demonstrate injury in fact based on Regulation A. The SDA offers its own driving instructions for persons seeking commercial driving licenses. However, the current federal regulation requires that the instructors at the SDA be certified by federal examiners, and meet specific criteria for eligibility. Thus, the SDA is injured because it cannot continue to offer driving instruction until it has complied with the federal regulations. Causation is also met, since the fact that the SDA cannot continue to offer instruction was caused by Regulation A. Finally, the SDA can also demonstrate redressability. If it succeeds in challenging Regulation A under the U.S. Constitution, it will be overturned, and the SDA will no longer have to comply.

As such, the SDA has standing to challenge Regulation A.

Improper delegation of legislative power

The SDA will first argue that the entire regulatory scheme is an improper delegation of legislative power. Congress may delegate its power to other branches, so long as intelligible standards are given and the power assigned is not uniquely confined to Congress (e.g., the power to declare war). It should be noted that although some

intelligible standard is required, the United States Supreme Court has not struck down a delegation of legislative power in nearly 30 years.

In this case, Congress authorized the United States Secretary of Transportation, an executive officer, to “do everything necessary and appropriate to ensure safe streets and highways.” This does seem possibly overbroad. However, the facts indicate that, as regards Regulation A, specific details were given for the licensing scheme. The facts say that the criteria for certification were detailed, and lists the types of things required for certification. Based on the fact that the United States Supreme Court is hesitant to overturn delegations of legislative power, these criteria are likely sufficient.

As such, a challenge based on improper delegation of legislative power will likely fail.

Interstate Commerce Clause

In order for Congress to take action, it must exercise an express power granted to it in the Constitution or it must exercise an implied power, typically those necessary and proper to achieve those powers expressly granted. Article I of the Constitution grants Congress the power to regulate interstate commerce. The United States Supreme Court has interpreted this power broadly, and Congress may regulate interstate commerce in three different areas: (1) it may regulate the channels of interstate commerce, such as highways and rivers; (2) it may regulate the instrumentalities used in interstate commerce, as well as regulate to protect the persons and things engaged in interstate commerce; and (3) it may regulate activities which have a substantial effect on interstate commerce.

In this case, Regulation A requires that all instructors of persons for commercial driving licenses be certified by federal examiners. Regulation A is part of the overall scheme “to ensure safe streets and highways.” The SDA will argue that this regulation is too broad, because it is not limited to those engaged in interstate commercial driving. Specifically, they will argue that the regulation also requires instructors to be certified

even when they're only instructing commercial drivers engaged in wholly intrastate commerce, and thus, the Interstate Commerce Clause cannot justify Congress' action here.

First, Congress will argue that Regulation A is a method of regulating the instrumentalities used in interstate commerce. Specifically, Congress will point out that those engaged in commercial driving are instrumentalities of interstate commerce, and thus regulating those who grant licenses to these drivers is entirely proper under the second prong mentioned above. However, Congress will also argue that the activity regulated has a substantial effect on interstate commerce.

Importantly, when Congress regulates an activity which may be entirely intrastate, it has to demonstrate that the activity has a substantial effect on interstate commerce. However, where the activity regulated is commercial or economic in nature, the regulation will be upheld if there is a rational basis to conclude that the activity regulated, in the aggregate, does have a substantial effect on interstate commerce. That test would easily be met in this case. It can rationally be assumed that commercial drivers within a state would impact commercial activities in interstate commerce – intrastate drivers could convey goods to interstate drivers, goods in interstate commerce could be moved by commercial drivers through the state, etc.

As such, Regulation A is constitutional under the Interstate Commerce Clause.

Intergovernmental immunity/principles of federalism

The SDA will next argue that Regulation A violates principles of intergovernmental immunity. Specifically, it will state that the federal government is targeting the states and forcing them to comply with federal regulations. The SDA will argue that Regulation A commandeers state officials to enforce the regulatory scheme, since all state driving instructors must now comply with federal certification rules. However, state governments are not immune to federal regulation, and it should be noted that principles

of federalism are not violated where a federal law regulates both states and private individuals equally, without directly targeting states.

This argument will likely fail. First, Regulation A is not targeted only to states. The facts indicate that Regulation A is applicable to all instructors of persons seeking commercial driving licenses. Thus, Congress is not requiring states to regulate in a certain way, but merely requiring those engaged in a specific activity [to] meet certain requirements.

Next, Regulation A does not commandeer state officials. Although state officials must meet certain requirements before being permitted to instruct, the Regulation does not mandate that state executive officials enforce a federal law. It merely requires all persons engaged in commercial driving instruction, both private and governmental, follow the federal rules.

As such, Regulation A does not violate principles of intergovernmental immunity.

Preemption

Because of the Supremacy Clause of Article IV, a lawfully passed act of Congress may preempt or supersede state laws. Congress may expressly preempt state law, or impliedly do so. It does so impliedly where the state law prohibits obtaining a federal objective or interferes with a federal scheme.

In this case, the SDA will argue that Congress is intruding on areas left to the States under the 10th Amendment. However, this argument will fail. As demonstrated above, Regulation A is lawful under the Interstate Commerce Clause. If the SDA has conflicting licensing requirements for commercial driving instructors, its scheme will be struck down and Regulation A upheld under the Supremacy Clause.

Conclusion

As such, the SDA's challenge to Regulation A will fail.

2. What constitutional challenge may the Capitol City Transport Company bring against Regulation B, and is it likely to succeed?

Standing

As indicated above, a litigant must have standing to bring suit in federal court, meaning it must demonstrate injury in fact, causation, and redressability. The Capitol City Transport Company (CCTC) can demonstrate injury from Regulation B because it requires CCTC to put seat belts in all of its buses. This is an economic detriment that CCTC will have to incur. Because this economic detriment is due entirely to Regulation B, causation is met. Additionally, redressability is also met, because if the regulation is declared unconstitutional CCTC will no longer have to comply.

As such, CCTC has standing to litigate the constitutionality of Regulation B.

Interstate Commerce Clause

CCTC will also likely argue that Regulation B exceeds Congress' power under the commerce clause. However, this argument will likely fail. Again, as indicated above, Congress may regulate interstate commerce in three different ways (see above).

Regulation B requires that every bus in commercial service be equipped with seat belts. This indicates that Congress is regulating instrumentalities of interstate commerce, since buses engaged in commercial service are being regulated and are an instrumentality. Additionally, Congress is protecting persons involved in interstate commerce, since the regulation require seat belts. However, CCTC will argue that the regulation is again overbroad, because it does not regulate only buses engaged in

interstate commercial activity. Once again, as indicated above, since this activity is economic, Regulation B will be upheld if there is a rational basis to conclude the activity, in the aggregate, has a substantial effect on interstate commerce. Such a rational basis is easy to see here. Buses engaged in commercial service, even if only within the state, will likely impact commercial activity coming into the state and leaving it.

As such, a challenge under the interstate commerce clause will fail.

Government action

The CCTC may also argue that the law infringes its substantive due process rights under the 5th Amendment, as well as its rights to equal protection (which is implied in the 5th Amendment). However, to properly allege a violation of due process or equal protection, some government action must be shown. This is easy here, since the act complained of is a federal regulation, which would count as government action.

Equal protection

Again, implied into the 5th Amendment is a clause providing that no one be deprived of equal protection of the laws. Where a law regulates on a suspect or quasi suspect class, or infringes a fundamental right, strict scrutiny or intermediate scrutiny may be used. However, for all other activities or classes, only a rational basis test is used. Specifically, the claimant must demonstrate that the law is not rationally related to a legitimate government purpose. This test is very deferential to the government.

In this case, CCTC will argue that its equal protection rights are violated. Particularly, it will argue that the regulation targets only commercial buses, and not other buses. However, commercial buses are not a suspect or quasi suspect class. Additionally, no fundamental rights are infringed by Regulation B. Thus, only a rational basis review will be used to determine the validity of the law. The state purpose of these regulations is to ensure safe streets and highways. This is clearly a legitimate government purpose.

Additionally, the law is rationally related to this purpose because regulating commercial drivers, who would frequently be on streets and highways, is a manner of ensuring that the roads are safe for other drivers.

As such, an equal protection challenge to this regulation will fail.

Substantive due process

The due process clause analysis is similar to the equal protection analysis. However, we are not concerned with discrimination based on a group or class, but a law which equally deprives people of constitutionally protected rights. Where a law infringes upon fundamental rights, strict scrutiny must be used. However, for all other rights only a rational basis test is used.

The analysis is the same as the equal protection analysis above, and the law will be upheld.

Taking

CCTC may also argue that the regulation affects a taking of private property. The 5th Amendment provides that the federal government shall not take private property for public use without paying just compensation. The takings clause can apply both to physical takings as well as regulatory takings which deny owners the economic use of their property.

CCTC will argue that the law affects a taking, because it requires them to put in seat belts. Specifically, it will argue that Regulation B is [a] governmental act which requires them to pay money to install seat belts, thus decreasing the value of their overall business enterprise.

However, Congress will argue that in no way does the regulation deprive CCTC of all economically viable uses of its buses. To the contrary, it is simply making the buses

safer for their continued commercial use in which CCTC was making profits. And although the takings clause does apply to regulations, it typically applies to those regulations which limit the use of the land. In this case, the regulation only requires that CCTC install seat belts in its buses, which would in no way limit the use of the buses.

Conclusion

As such, Regulation B will be upheld under the US Constitution.

3. What constitutional challenge may the State Highway Department bring against Regulation C, and is it likely to succeed?

Standing

Again, the 3 standing requirements must be met. The State Highway Department (SHD) can show that Regulation C injures it because the state will lose federal funding if it does not implement adequate measures for providing seat belts. Causation is met, since the funding will be cut due to the requirements of Regulation C. And finally, redressability is met, because a successful constitutional challenge will overturn the law, meaning SHD no longer has to comply.

Intergovernmental immunity

Here, a challenge based on violations of intergovernmental immunity might succeed. As stated above, the federal government cannot commandeer state executive officers or state legislatures to ensure enforcement of federal laws. Specifically, the federal government cannot force the states to enact laws or regulations.

In this case, Regulation C punishes states which fail to enact adequate measures under the federal scheme. The SHD will argue that this violates intergovernmental immunity,

since the federal government is requiring states to regulate and punishing them if they don't.

In response, Congress will argue that this is perfectly acceptable under its taxing and spending power. As indicated above, this is a successful argument, and a challenge based on intergovernmental immunity will fail.

The power to tax and spend

Article I of the Constitution grants Congress the power to tax and spend to ensure a common defense and provide for the general welfare. This essentially allows Congress to spend money for any purpose which is related to the general welfare of the United States. Of particular importance, under the Spending Clause, Congress may “attach strings” to congressional grants of money to require [that] States act in a certain way. Thus, although Congress may have no power to regulate a certain area, it can require states to regulate as a condition of receipt of federal funds.

In this case, Congress cannot constitutionally require states to legislate on the subject of commercial drivers' licenses. However, under the spending clause, it can incentivize [sic] states to so regulate by conditioning the receipt of federal funds on enacting proper measures under the federal scheme. Here, the facts indicate that Congress has indicated that states will forfeit 10% of federal funds for highway conditions if they fail to enact measures to ensure compliance with Congress' regulation of seat belts on buses. The SHD will argue that Congress has no power to require states to regulate, and thus this scheme is unconstitutional. However, as discussed above, Congress can properly condition receipt of federal funds on state compliance with federal regulations, and thus Regulation C is constitutional.

Conclusion

As such, Regulation C is constitutional.