

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.

Question 4

Constitutional Law

In a recent statute, (The statute probably hasn't been challenged yet) Congress (Congress must have an enumerated power to act) authorized the United States Secretary of Transportation (Congress has broad power to delegate its authority) “to do everything necessary and appropriate (Part of the Necessary and Proper Clause) to ensure safe streets and highways.” (Streets and highways are areas that use the channels and instrumentalities of interstate commerce. Also, Congress is acting for a legitimate purpose) Subsequently, the Secretary (Government action) issued the following regulations:

Regulation A, which requires all instructors (The law applies equally to everybody. This would be a Due Process argument) of persons seeking commercial driving (Commerce Clause) licenses to be certified by federal examiners. (A power usually reserved to the states) The regulation details the criteria for certification, (Proper delegation of authority as the regulation sets out “intelligible criteria” to guide the Secretary) 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. (This regulation, in the aggregate, could have a substantial effect upon interstate commerce and is an exercise of Congress's Commerce Clause power)

Regulation C, which provides that states failing to implement adequate measures to ensure that bus seatbelts are actually used (Legitimate federal interest in a national program in pursuit of the general welfare) will forfeit 10 percent (Not an extremely high percentage) of previously-appropriated federal funds (Spending Power's regulation through funding) 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, (Issuing licenses is usually within the ambit of a State) 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, (Intrastate activity) 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.

A Discussion Worthy of Attention

This essay gave most people trouble. It was hard to really detect each constitutional challenge the respective parties could make. Some issues that definitely needed to be discussed were the Commerce Clause, Necessary and Proper Clause, Tenth Amendment and the Spending Power where Congress can regulate through funding. There were some clues in the fact pattern about how to answer this essay but nothing too obvious. Constitutional Law questions on the bar have recently become more peculiar than any others.

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In order to get to the substance of each regulation, it must first be shown that the regulations were the product of government action, whether it is within the powers vested to Congress and whether those powers may be delegated.

Government Action

In order to allege a violation of one's constitutional rights, there must be government action.

Here, the recently enacted statutes were issued by the United States Secretary of Transportation authorized through the Congress. Thus, there is government action.

Congress' Power to Act

The Constitution grants Congress a list of enumerated powers in Article I, § 1. It states, "All legislative Powers herein granted shall be vested in a Congress of the United States." This means Congress may only exercise its authority to act by those specific grants of power whether express or implied. Therefore, each regulation must touch upon whether Congress has the specific authority to act and whether it violated a limit on its power.

Delegation of Authority

Congress has broad discretion to delegate its legislative power to executive officers and administrative agencies when necessary to execute its own powers. However, it is subject to certain limitations. Every delegation must include an intelligible standard for the agency or officer to follow. In addition, Congress may not delegate executive powers to itself or its officers.

Here, Congress authorized the United States Secretary of Transportation to issue Regulations to ensure safe streets and highways. This is an appropriate delegation of Congress' power.

Necessary and Proper Clause

Under Article I, § 8, “The Congress shall have Power To make all Laws which shall be necessary and proper for carrying into Execution all other Powers vested by this Constitution in the Government of the United States.” This is known as the Necessary and Proper Clause and it enlarges Congress’ power to make any laws necessary and appropriate for carrying into execution any powers granted to any branch of the federal government. By itself it has no force, but coupled with another one of Congress’ enumerated powers, it lends strength in enforcing it. Thus, it expands and not limits Congress’ power.

The facts state Congress’ authorizes the Secretary to do “everything necessary and appropriate” to ensure safe streets and highways. It is the driving force behind Congress’ ability to regulate under any powers granted to it in the Constitution.

Equal Protection

The Equal Protection Clause does not apply to the Federal Government. Any argument related to Equal Protection would need to be made under a Fifth Amendment Due Process argument.

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

In order for the State Driving Academy to challenge Regulation A under the United States Constitution, it must have standing and the claim must be justiciable.

Standing

The party bringing a lawsuit must show that they have a stake in the outcome, meaning they suffered an “injury in fact” which was caused by the defendant’s conduct that a favorable ruling would redress.

Here, the State Driving Academy offers driving instruction to persons seeking commercial driving licenses. Regulation A would interfere with their business of issuing commercial licenses. The Academy has a stake in the outcome and a favorable ruling would aid their business. Thus, they have standing.

Ripeness

A federal court will not hear the merits of a case unless the plaintiff has been harmed or there is an immediate threat of harm.

In this case, the Academy is in immediate threat of harm as they will no longer be able to operate if Regulation A is not struck down as unconstitutional. The case is ripe.

Vagueness

A statute is vague if it fails to give reasonable notice of what is prohibited. Regulation A is not vague because it gives notice of what is required to obtain a commercial driver's license.

State Driving Academy will assert a constitutional challenge stating that Regulation A is a violation and encroachment upon their Tenth Amendment right over their citizens.

Tenth Amendment

The Tenth Amendment is a limit on Congress' power. It states "The powers not delegated to the United States, are reserved to the States." The state usually has ultimate power to protect the health, safety and morals of its citizens. Congress may not impair a States' ability to function effectively. However, this amendment has been eroded away to the point where it imposes practically no judicially enforceable boundary on Congress' power to legislate.

Here, Academy will contend that Congress has unconstitutionally encroached upon its power over its citizens. It will base its argument on the fact that licensing is usually within the province of the States and not grounded in Federal legislation. Essentially, Regulation A limits this state agency in its power to set standards in issuing commercial driving licenses.

Congress will allude to the fact that it has the power to issue regulations that are necessary and proper for the effective use of ensuring safe streets and highways. It will chiefly rely on its broad Commerce power.

Commerce Clause

The power of Congress over interstate commerce is complete and may be exercised to its utmost extent. This power cannot be diminished by the exercise of state power. The Commerce Clause permits "Congress the Power to regulate Commerce among the several States." The authority of Congress over interstate commerce includes the power to regulate the channels of interstate commerce (road, rivers, highways), to regulate the instrumentalities of interstate commerce (trucks, cars, the internet), and economic activities that the cumulative effect, when aggregated, could have a substantial effect on interstate commerce.

Here, the regulation is economic in nature as it regulates licensing for commercial driving. Licensing is primary a revenue source along with ancillary concerns of promoting safety. In this instance, Congress could rely on its ability to regulate the channels of interstate commerce such as the roads and highways on which commercial driver's use. Congress may also assert that it is regulating instrumentalities of interstate commerce as it seeks to control trucks, busses and the like. Finally, Congress could find that the economic effect on a uniform licensing scheme, in the aggregate, has a substantial economic effect on interstate commerce.

Any constitutional challenge by State Driving Academy will likely fail. It is no objection that Congress' Commerce Clause power regulates the same incidents that occur with the police power of the states. Therefore, any argument based on the Tenth Amendment is unaffected by the power of Congress to regulate interstate commerce.

Academy could still try and contend that the regulation is arbitrary and unfair, thus depriving them of Due Process of the law. However, a court will likely find that there is a rational basis for Congress to enact the statute.

Substantive Due Process

The Due Process Clause of the Fifth Amendment guarantees individuals fairness and equality of the law. Due Process concerns are found when a statute limits the liberty of all persons engaging in a certain activity. It creates freedom and embraces rights that are implicit in the concept of liberty. However, the Constitution provides only minimal protection for economic liberties and the rational basis test is used for any law affecting economic rights.

Here, Academy could challenge the law as being unfair and that it confines individual rights to pursue a choice to engage in commercial driving. To require a minimum number of years of experience is arbitrary because those who do not meet the qualifications are not able to earn the experience necessary to later obtain a federal certificate. In addition, to require a minimum score on a test of basic communication skills has no bearing on one's ability to drive a truck. Most truck drivers are not well educated or articulate and choose commercial driving as a way to make a living because it doesn't require basic communications skills, but physical labor. Thus, this is Academy's best chance of finding the regulation unconstitutional as it inhibits a person's liberty.

Unfortunately Academy's argument will likely fail. Congress would only need a rational basis for implementing the economic regulation. In applying rational basis, the court places the burden on the challenger to prove that the law is not rationally related to a legitimate government interest. This is an extremely difficult burden and rarely is met.

Rational Basis (Economic Regulation)

Here, a court may find that Congress had a rational basis for setting these standards. To require a minimum number of years of experience is rationally related to Congress' sweeping goal of ensuring safer streets and highways nationwide. Additionally, Congress could find that basic communications skills have a reasonable connection in ensuring proper safety and updates as to dangerous conditions on the interstate, roads and highways that commercial drivers employ.

Therefore, a Due Process argument will likely fail.

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

Standing – Ripeness - Vagueness

Capitol City Transport Company (Company) has standing if every bus they own in commercial service is not equipped with seatbelts for every seat. They have suffered an injury because Company would need to add seatbelts for every seat for every bus that they own. The case is ripe because Company has suffered an immediate threat of harm. Also, the statute is not vague as it is clear as to what the Secretary requires.

Mootness

A case is moot if it no longer presents a real, live case or controversy. Essentially, it has already been resolved. However, there are times when a court will hear a case that no longer presents a controversy if it is “capable of repetition yet evades review.”

Here, if every bus in commercial service that Company owns is already equipped with seatbelts for every seat, the case is moot. There is nothing a court could do to remedy a violation as Company is in compliance with the regulation.

Commerce Clause

Company will likely challenge Regulation B because the requirement that every bus in commercial service be equipped with seatbelts has nothing to do with commerce, nor any sort of economic enterprise. This regulation confers a police power on Congress that is exclusively reserved to the states. Under these facts, Company is a private corporation that only operates buses within the city limits of Capitol City. Nothing it does crosses states lines or has any economic affect on interstate commerce. It seems Company’s best constitutional challenge is that there is no rational basis for a congressional finding that the requirement of seatbelts for every seat on its intrastate buses affects interstate commerce. Thus, there is no reasonable connection between the means selected and the asserted ends of ensuring safe streets and highways.

Congress may base its response on its broad commerce powers. The activities of commercial buses, viewed in the aggregate, substantially affects interstate commerce. A court might find that Congress could rationally conclude that the seatbelt requirement affects interstate commerce because it touches streets and highways used in interstate travel. As such, there is a rational basis for concluding that this regulation sufficiently affects interstate commerce.

While this is a close call, it is important to note that only twice in history has a court struck down a regulation based on Congress’ commerce clause power.

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

Standing

State Highway Department (State Department) has standing as they will be injured by the forfeiture of previously-appropriated funds. State Department can use the foregoing arguments mentioned above. However, Congress will likely use its spending power to justify the regulation.

Spending Power

Congress can best justify the regulation by using their spending power to regulate through funding. Article I, § 8 gives Congress “the Power to lay and collect Taxes and provide for the general Welfare of the United States.” This has been interpreted to allow Congress to attach conditions on the receipt of federal funds to further policy objectives. *South Dakota v. Dole*, 483 U.S. 203 (1987).

The spending power is subject to certain limitations. First, the spending power must be in pursuit of the general welfare. Next, the grant of conditions must be clearly stated so that the States can exercise their choice knowingly. And, the conditions must be related to a federal interest in a national programs. Essentially, Congress can offer a financial inducement to the States by conditioning the receipt of federal funds upon compliance with a federal objective.

Here, Congress is using its spending power to induce State Department to implement adequate safety measures. This is a legitimate attempt to solve a national problem through the cooperation of state and federal governments. The purpose is to ensure safe interstate travel and Congress may withhold federal funds until a state complies with its national guidelines.

Therefore, since Congress has the power to spend for any public purpose, this regulation represents a legitimate attempt to solve a national problem. It is not an invasion into state sovereignty, but a proper method of obtaining compliance by the states. State Department may choose not implement such safety measures, but it will not receive the proposed funds.

Procedural Due Process

The government may not take away life, liberty or property without ***notice and an opportunity to be heard***.

Here, Department may challenge Regulation C as a violation of due process. In essence, the regulation would deprive them of funds previously issued without a hearing. Congress will argue that State Department accepted these federal funds on the condition that they implement the safety measures requested. Since State Department failed to follow those requirements, the federal government may recoup any funds State Department has already received.

However, this is a recent statute and it is unclear whether State Department accepted the federal funds on condition of implementing the safety measures or whether they were previously issued before the enactment of the statute. It seems the answer to that will solve the issue.

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Answering each call of the question specifically and addressing each issue within. Making logical coherent arguments using the facts as supported by the law **9%**

Government Action **17%**
Congress' Power to Act
Delegation of Authority
Necessary and Proper Clause
Equal Protection

1. What constitutional challenge may the State Driving Academy bring against Regulation A, and is it likely to succeed? **35%**

Standing
Ripeness
Vagueness
Tenth Amendment
Commerce Clause
Substantive Due Process
Rational Basis (Economic Regulation)

2. What constitutional challenge may the Capitol City Transport Company bring against Regulation B, and is it likely to succeed? **17%**

Standing – Ripeness - Vagueness
Mootness
Commerce Clause

3. What constitutional challenge may the State Highway Department bring against Regulation C, and is it likely to succeed? **22%**

Standing
Spending Power
Procedural Due Process

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