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Researching The Dormant Commerce Clause in the 21st Century

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Research Guides

Researching The Dormant Commerce Clause in the 21st Century

Guide Information

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About the Author

Ben Martin is a third year law student at the Georgia State University College of Law. He will graduate law school in May 2011. After completing law school, he will complete a Masters in Taxation in the Georgia State University J. Mack Robinson College of Business. He is interested in tax law and estate planning. This online research guide was created as part of an Advanced Legal Research class taught by Professor Nancy Johnson. For more information, please contact her at njohnson@gsu.edu

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Introduction

The Commerce Power is one of Congress's enumerated powers spelled out in Article I § 8, Clause 3. It gives Congress the power to "regulate commerce with foreign nations, among the states, and with the Indian Tribes." In the past, Congress has used this power in an attempt to expand its regulatory powers over the states. It does so by passing laws under the guise of "being or affecting interstate commerce." Congress first dealt with trying to define commerce in *Gibbons v. Ogden* when they adopted an expansive view of what constitutes commerce and placed more power in the hands of the federal government. Subsequent cases have adopted different views on the meaning of the commerce clause throughout the history of the United States. Congress has used the Commerce Power to implement regulatory programs, civil rights laws, unfair labor practices, and criminal laws. Most of these cases have expanded the power of the Federal government under the Commerce Power. Courts have also implemented a "negative doctrine" known as the "dormant commerce clause." This idea arises from the belief that states may not unduly place limitations or restrictions on interstate commerce. Justice Marshall first spoke about this idea in dicta in *Gibbons v. Ogden*. This power, which Congress uses just by being silent on an issue, is not spelled out in the US Constitution. Congress uses it to challenge state and local laws even if Congress has not exercised the Commerce Power. State laws and regulations can be overturned if they burden interstate commerce more than they benefit the citizens of the state where the legislation was passed. There are two exceptions to the DCC. States may pass legislation that is discriminatory if the state is acting as a market participant or they are given congressional approval.

Dormant Commerce Clause Analysis

1. Is State acting as <u>Market Participant?</u>

- **If no, then use DCC analysis (go to 2)**
- **If yes,**

- (a) Validly use MP exception? Is this condition one that operates w/in relevant market
  - § If no, apply DCC analysis (see 2)
- (b) Privileges and Immunities Clause (PIC) objection?
  - § (i) Fundamental Interest
  - § (ii)(a) Substantial Reason
  - § (ii)(b) Close Relation between discrimination and substantial reason

2. State is Outside the scope of the Market: Dormant Commerce Clause Analysis

- Does this law Discriminate?
  - If yes,
    - § Is there legitimate State interest?
    - § Is there non-discriminatory alternative
- Is the Law Neutral?
  - Use Pike Balancing Test: presumes law is valid
    Are the burdens placed on interstate commerce by the law outweighed by the

    benefits to the state?

Scope

This research guide is an introduction to the Dormant Commerce Clause. This is not one of Congress's enumerated powers and has been inferred from court rulings. The purpose of this guide is to give the user an overview of the Dormant Commerce Clause as it stands today as well as the historical use of the commerce clause through case law to the present today. The DCC is often inferred when there is a question about whether state regulation is valid in the absence of federal legislation. The Court cases listed give an overview of the broad range of regulations that are related to the DCC. The Federal government may invoke the clause to flex its power on an issue it has been silent about. Because the uses of the Dormant Commerce Clause are varied, I will only concentrate on the Dormant Commerce Clause as a whole. Areas of specific legislation that may be of interest to a user of this guide but are not discussed in great detail here include alcohol sales, wildlife and nature, trucking, shipping, and rail travel, food importation and exportation, and waste disposal. This guide will not delve into any specific area of regulation but is here to give users an idea of how the state's and Federal government interact in the absence of Federal legislation. This guide will offer users insight into the different beliefs that scholars, judges, and lawmakers have about the Dormant Commerce Clause. Lastly, this guide should also give users an introduction to issues or topics that may be pertinent in the future and information about various groups that have an interest in this topic.

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Primary Sources

The Constitution

Constitution

Article I § 8 Clause 3 lists the express powers of Congress. Among these is the only direct regulatory power the Congress has: the power to regulate interstate commerce. It grants Congress the right power to "regulate commerce with foreign nations and among the several states and with the Indian Tribes." Here is the full text of Article I § 8:

Section 8. The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

Federal Regulations

There are no Federal regulations or legislative history that deal specifically with the dormant commerce power. The dormant commerce power is exercised by silence. Accordingly, there will be no regulations or history listed here. However, there are state regulations and legislative histories for laws that are passed that involve state regulation of commerce. Users should look at the annotated code or legislative history of the state they are interested in to obtain this information.

United States Supreme Court Cases

Establishing the Inference of a Dormant Commerce Power

(1). *Gibbons v. Ogden* 22 U.S. 1 (1824)

-This was the first case that came before the US Supreme Court that dealt with the Commerce Power. The Court considered several issues. First among these was what commerce was. The court described commerce as "intercourse between nations, parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that commerce." This meant that, according to the court, commerce was all facets of business, and any facet of business could be regulated. The Court next considered what the phrase "among the states" meant. The court chose "among" to mean involving more than one state. The Court concluded ultimatelythat Congress had complete authority to regulate any and all commerce among the states. This case also established the inference that there was a "dormant commerce power." Justice Marshall wrote in dicta that the power to regulate commerce "could never be exercised in the hands of the people themselves, but must be placed in the hands of agents of lie dormant." The "hands of the people" refers to the states. Agents refers to Congress. Marshall seemed to be indicating that Congress could exercise its power by mere inaction. This case established the Commerce Power but also raised the issue of what could still be left to the states to regulate. These areas left to the state, those which are not interstate commerce, are often the subject of attempted regulation under the Dormant Commerce Clause.

Implementation of a Balancing Test

The Court's modern approach to the issue of whether a state could regulate or the federal government, although silent on the matter, has jurisdiction is based on a balancing test that measures the benefits of a law against the burdens it places on interstate commerce. If the benefit to the state outweighs the burden to interstate commerce, then the law will be upheld and vice versa. The following two cases highlight this balancing test.

(1). *South Carolina State Highway Dept. v. Barnwell Bros*. 303 U.S. 177 (1938)

- In this case the Court analyzed a state law that regulated the trucking industry by placing limitations on the length and width of trucks operating in South Carolina. The Court balanced the burden placed on truckers against the benefits to the state of South Carolina, specifically the health, safety and welfare of its citizens. The Court found the law constitutional and upheld it.

(2). S*outhern Pacific Co. v. Arizona*. 325 U.S. 761 (1945)

- In this case the Court analyzed a state law that placed a limitation on the length of railroad trains that operated in Arizona. The state law was put in place because shorter trains were more stable and less likely to run off the track. The Court found the law to be unconstitutional, and concluded that the burdens placed on the railroad industry by limiting train lengths outweighed the benefits to the safety of Arizona's citizens. The Court held that although the commerce clause does not give the federal government exclusive right to regulate commerce. However, states do not have the authority to impede commerce when there is a need for uniformity from state to state. The court concluded that the state law had a detrimental effect on interstate commerce.

Other Important Cases

(1). *Philadelphia v. New Jersey* 437 U.S. 617 (1978)

-New Jersey sought to keep other State's garbage out of their landfills. They passed a state statute that banned other state's garbage from being dumped in their landfills. Philadelphia brought an action against NJ that this law was unconstitutional. The Court says this law was discriminatory and an placed undue burden on commerce. Regardless of whether the law was for economic or environmental protection, NJ was “hoarding” its landfills and burdening interstate commerce. By doing this they were discriminating against out-of-state commercial interests.

(2). *Hunt v. Washington State Apple Advertising Comission*, 432 U.S. 333 (1977)

- The state of North Carolina implemented a law that did not allow apples shipped into the state to show grades or classifications except for those issued by the federal government. This also meant that apples grown in North Carolina could not show any marking except federal markings. Plaintiff sued and the court found in their favor. The court held that the law, which was meant to benefit North Carolina farmers, unduly burdened the sale of apples from other states in North Carolina. The court also held that NC did not show any benefits flowing from the law. The law burdened Washington apple growers by not allowing them to market their apples with their own grades or by announcing these grades, which were the product of an entirely different grading scale than the US Standard.

(3). *C & A Carobone, Inc. v. Town of Clarkstown* 511 U.S. 383

-Clarkstown built a recycling center for solid waste and passed an ordinance that the town's solid waste had to be sent there. The town's reason for doing this was to use the fees collected at the solid waste center to pay for the cost of building it. C & A Carbone had their own center for recycling solid waste and did not want to use the town center. They brought suit after they were penalized for not using the town center. The Court ruled that local governments were not allowed to use their regulatory powers to discriminate in favor of local governments or entities. The court ruled the laws effects impeded interstate commerce by only allowing the municipally owned center to process wast in Clarkstown.

(4). *Kassell v. Consolidated Freightways* 450 U.S. 662 (1981)

-The US Supreme Court ruled that a Iowa statute that regulated the length of tractor trailers was unconstitutional. The state of Iowa enacted the law because they had evidence that longer trailers were more dangerous on highways. The Court upheld the lower court ruling because although there may have been a benefit to the safety of Iowa's citizens, the state did not present any evidence of this benefit. Therefore, the benefit did not outweigh the burden on interstate commerce imposed by the law. ALthough state laws are normally given deference, here the law was ruled unconstitutional because the negative impact on commerce was too great.

(5). *Minnesota v. Cloverleaf Creamery Co*., 449 U.S. 456

- Minnesota passed a statute that banned the sale of milk in plastic containers that were not recyclable or returnable. However, milk could still be sold in non-plastic containers that were non-recyclable. Minnesota had an enormous paper industry and almost no plastic industry. The Court found this law to be valid because it prohibited all milk retailers, whether located in Minnesota or not, from selling their products in recyclable, returnable plastic containers or choosing to sell milk in paper containers. The law benefitted the local economy and did not place an undue burden on out-of-state mild producers. The court said the law regulated "even-handedly" and was therefore, different from previous laws that the court had struck down.

(6) *Pike v. Brace Church, Inc.* 397 U.S. 137 (1970)

- An Arizona law prohibited the shipment of cantaloupes not packaged in specific packaging. Appellant shipped his fruit unpackaged and sought an injunction and a repeal of the law. Arizona sought to keep the law and maintained it was in place to "promote and preserve" Arizona fruit growers' reputations. The Court found for the Appellant stating that, "where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. Here, the Court said that interest that was protected by the law was not great enough to outweigh the burden it placed on interstate commerce.

(7) *Hughes v. Oklahoma* 441 U.S. 322 (1979)
- A law that made the exportation of minnows illegal was found to be in violation of the US Constitution. The law did not allow Oklahoma minnows to be sold out-of-state. The Court reasoned that because there was no limits on the sale of minnows in-state but their sale was forbidden out-of-state, the law discriminated against interstate commerce and violated the DCC.

(8) *Maine v. Taylor* 477 U.S. 131 (1986)
- Maine had a statute on their books that prohibited shipping live bait into the state. This statute was in place to preserve the Main ecosystem. Defendant was caught with a bait shipment and brought suit. The Court ruled that the statute was not a violation of commerce principles because it was put in place to preserve the health, safety, and welfare of the citizens of Maine and to preserve the natural ecosystem that was unique to the state. The Court held the law to be proper because there was no other way to ensure that bait shipped into the state would not destroy the natural environment.

(9) *Granholm v. Heald* 125 S. Ct. 1885 (2005)
- Petitioners sued because they believed a Michigan law limiting the shipping of wine by mail only to in-state wineries was unconstitutional. The Supreme Court agreed and affirmed the ruling that the law was invalid because it discriminated against out-of-state commerce. The state did not show that the discrimination was necessary to advance an agenda that was beneficial to the state. Further, the law was not shielded by the 21st Amendment.

(10) *Wyoming v. Oklahoma* 502 U.S. 437 (1992)
- Wyoming brought suit against Oklahoma because an Oklahoma statute required all plants that burned coal in the state to use a mixture of coal that contained at least 10% of coal from Oklahoma. Plaintiff thought the statute was unconstitutional. The Court ruled in favor of Wyoming because the law discriminated against interstate commerce. The benefits to Oklahoma were not outweighed by these burdens.

(12) *Department of Revenue of Kentucky vs. Davis* 553 U.S. 328
- The Court ruled the the DCC was not violated when states provide an income tax free provision for in-state bonds but deny if for out-of-state bonds. Bonds were deemed to be a public function that was used to further legitimate state interests. These benefits to the state outweighed any burden they placed on interstate bond commerce.

Market Participant Exception

This is an exception to the commerce power. States may not normally discriminate against out of state participants in the market. However, when a state acts in a capacity of producer or supplier in the market, that state may be allowed to discriminate in ways that will be beneficial to the state. When states act as regulators and not market participants, then they may not create discriminatory regulations.

(1) *Huges v. Alexandria Scrap Corp* 426 U.S. 794 (1976)
- This case introduced the idea of the market participant exception. A Maryland rule placed burdens on out-of-state scrap processors. Bounties were given for the removal and disposal of old cars. They had to submit additional paperwork that in-state processors did not need to skip. The Court ruled that this law was valid because the state was not regulating the market, but merely appropriating its own funds. The Court also said there was nothing in the Constitution that prohibited a state from acting in the market in the absence of Federal legislation and could act in a way that favors its own citizens.

(2) *South Central Timber v. Wunnicke* 467 US 82 (1984(
- This case placed a limitation on the market participant exception. The court ruled that when a state is acting as a regulator, it may impose burdens on those industries it is acting as a participant in but may not act in any greater capacity than that. It does not give states unlimited cachet to act in favor of local interests. If this were to happen, the exception would swallow the rule.

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Secondary Sources

Reports and Legal References

James L. Buchwalter, J.D., *Construction and Application of Dormant Commerce Clause, U.S. Const. Art. I, § 8, cl. 3—Supreme Court Cases.* 41 A.L.R. Fed. 2d 1
This report gives an outline of the dormant commerce clause in relation to US Supreme Court rulings. It looks at several areas of commerce that are generally state regulated that have been subject to the dormant commerce clause and when the laws have been held to be unconstitutional. This report is very useful if there is a specific area of regulation the user wants to research.

71 Am. Jur. 2d State and Local Taxation § 175
Gives an overview of how the dormant commerce clause restricts state regulation and taxation and when the dormant commerce clause may be invoked to protect interstate commerce.

15A Am. Jur. 2d Commerce § 39

Provides a general overview of the dormant commerce clause. Outlines its relation to, as well as its effects on, state taxation.

15 C.J.S. Commerce § 9

Outlines both the commerce power and the dormant power and the restraints they impose on the states.

5 C.J.S. Commerce § 51

Outlines the dormant commerce power and its use. This excerpt also introduces the market participant exception and explains when there may be an exception that will be a valid discrimination against interstate commerce.

Books & Treatises

There are a vast number of books on the Dormant Commerce Clause. Most of them are books on Constitutional Law. Below is a sampling of books that will be very helpful for someone trying to discern what the DCC is and how it is used by the US Congress. Two of them are classic treatises related to the subject while the other two give insight into the issue from a less legal perspective.

1. Erwin Chemerinsky. Constitutional Law Principles & Policies. (3rd. Ed. 2006)
Call Number: KF4550 .C427 1997

The Dormant Commerce Clause is discussed in § 5.3. The author presents the user with an overview of the dormant commerce clause. He examines its history and analyzes when states may be regulated under the dormant commerce clause. He also examines on a case-by-case basis, the major cases that the court has ruled on regarding the Dormant Commerce Clause.

The Commerce Clause is discussed at length in § 3.3. The author presents an in-depth discussion of the clause from the first discussion of it in the US Supreme Court in Gibbons v. Ogden all the way up to the *Morrison* and *Lopez* cases that the Rehnquist Court used to frame the modern analysis of regulations under the Commerce Clause. He also shows the reader what laws have been enacted under the Commerce Power and significant historical developments relating to the Commerce Power.

This book is easy to read and used in many Constitutional Law classes. It gives readers an in-depth look at all facets of the constitution and is an ideal starting place for starting research.

2. Jethro K Lieberman. A Practical Companion to the Constitution: How the Supreme Court has Ruled on Issues from Abortion to Zoning." (1999).
Call Number: KF4548 .L54

This book is a good starting point for defining the "dormant commerce clause." The book is a concise encyclopedia or terms and issues associated with the Constitution. It is categorized alphabetically and there is a heading for dormant commerce clause. It gives a brief history of the dormant commerce clause and provides footnotes for important cases in the text. These case names are located in an index in the book. Additionally, the description of the dormant commerce clause offers insight into how the clause has been changed recently and what exceptions there are to the dormant commerce clause. The book also provides references to other terms that may be helpful in researching the dormant commerce clause. These terms could be plugged into a research database or read about in the book.

3. David M. O'Brien. Constitutional Law & Politics: Volume I. (4th ed. 2002).
Call Number: KF4541.A7 O27

This book is a hybrid casebook and historical account of the politics and the Constitution It is useful for researching a variety of Constitutional issues. In addition to case excerpts, the book has notes written by the author about various political and historical issues that were occurring in the United States at the time the cases were heard by the Court. There is a section devoted to States' Power over Commerce and Regulation. It examines the dormant commerce clause and includes selected major cases about the dormant commerce clause. The book also has a chart of cases at the end that lists "Other Rulings on State Regulation of Commerce in the Absence of Federal Legislatoin." It lists pertinent cases and gives a synopsis of the ruling in the case. This book is an interesting starting point for research and provides guidance for finding primary sources.

4. Ronald D. Rotunda & John E. Nowak. Treatise On Constitutional Law: Substance & Procedure. (4th Ed. 2007)
Call Number: KF4550 .R63

This comprehensive treatise outlines the entirety of Constitutional Law. There are two sections dedicated to the Commerce Power. The first section, § 4, deals with the scope of the actual Commerce Power. It provides a historical overview of it, and case law. The second section, § 11, is better suited for users of this guide because it deals specifically with the dormant commerce clause. This section examines how courts have interpreted state regulations related to commerce in the absence of Federal legislation. It provides useful insight into why there is a dormant commerce power, and how congress is actually "exercising" its power by remaining silent. It also examines the Commerce Clause & Restrictions Powers. The most prevalent of these is the supremacy clause. § 11.11 provides an analysis of the Dormant Commerce power and how Congressional Silence is interpreted by courts.

Law Review and Other Articles

1. David S. Day, "The Rehnquist Court And The Dormant Commerce Clause Doctrine: The Potential Unsettling of the "Well-Settled Principles."" 22 U. Tol. L. Rev. 675., 675-689 (1991).

Examination of the Dormant Commerce Clause under Chief Justice Rehnquist. Looks at decisions made by the court involving the Dormant Commerce Clause and gives a synopsis of the changes the doctrine has gone through during this time as well as how it was used to shape the law.

2. Norman R. Williams, "Why Congress MayNot Overrule the Dormant Commerce Clause" 53 UCLA L. Rev. 153 (2005)

A defense to the notion that Congress is able to override Supreme Court decisions involving the Dormant Commerce Power. The paper examines how Congress is not actually able to override the Court's decisions. It also looks at the history of the DCC and its relation to the three branches of government. Lastly, it examines how the the DCC causes state and federal interaction.

3. Martin H. Redish & Shane V. Nugent., "The Dormant Commerce Clause And The Constitutional Balance of Federalism." 1987 Duke L.J. 569. (1987)

This article examines the "legitimacy" of the DCC and its use. The author's believe that the DCC is not necessary and that there is text in the Constitution that allows Congress to regulate state actions and laws in the absence of Federal legislation. They believe that there is no basis for the DCC and it should not be used.

4. Stephen K. Schutte, "Doctrinal Foundations of Section 1983 And The Resurgent Dormant Commerce Clause." 77 Iowa L. Rev. 1249, 1249-1281 (1992).

This article examines the Dormant Commerce Clause and its use in bringing § 1983 actions. § 1983 is part of the Civil Rights Act of 1871 and is a means of enforcing Constitutional Rights. This article examines dormant commerce clause litigation and the future of § 1983 litigation in light of *Dennis v. Higgins*, which favored a broad interpretation of § 1983 and used the DCC to help achieve this.

5. Timothy J. Slattery, "The Dormant Commerce Clause: Adopting a New Standard And a Return to Principle." 17 Wm. & Mary Bill Rts. J. 1243., 1243-1280 (2009).

This note looks at the Dormant Commerce Clause and how it may be used to effectuate the state and municipal bond market. Possible discrimination occurs when out-of-state bonds are taxed and in-state bonds are exempted. The author's argue that the DCC is useful for facilitating this because there is an element of protection of health, safety, and welfare of state's citizens because it promotes a stable financial market

6. Lisa M. Slepnikoff. "A Bigger and Better Market Participant Exception? Examining Justice Souter's Revision of the Market Participant Exception to The Dormant Commerce Clause in Department of Revenue of Kentucky v. Davis." 55 S.D. L. Rev. 356 (2010)

This law review artible examines the decision in Dept. of Rev. v. Davis, the last major US Supreme Court case that ruled on the DCC. It looks at Justice Souter's opinon and what changes may be in store for the dormant commerce clause.

7. Maxwell L. Sterns, "A Beautiful Mend: A Game Theoretical Analysis of the Dormant Commerce Clause Doctrine." 45 Wm. & Mary L. Rev., 1, 1-155 (2003).

This note discusses the theories behind the Dormant Commerce Clause Doctrine's validity. The author discusses the DCC in light of the "prisoner's dilemma" and how it works to promote cooperation among states. It looks at several of the perceived flaws in the doctrine and what the author perceives to be the proper balance between the DCC and state law.

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Research on the Internet

Legal Research: Lexis & Westlaw

Westlaw

www.lawschool.westlaw.com
www.westlaw.com

Westlaw is a subscription based legal research database. It is an invaluable tool for researching any legal issue because of the wealth of current primary and secondary sources. Users may search using query terms or natural language. Westlaw has Federal and State caselaw and access to Federal and State statutes. It also has law reviews, journals, secondary sources, forms, access to newspaper and periodicals, and legal forms. These materials can be accessed through the Westlaw directory. The principal way to search on Westlaw is by using KeyDigests. These categorize legal issues by topic. Users may search for a specific topic using either the KeyDigest or KeySearch. KeyDigest organizes out over 400 keys that each high light a different legal topic. They are arranged in alphabetical order. KeySearch categorizes different topics according to their legal relevance to each other. Users may simply plug in a search query and see what key numbers the database pulls up. From here, they can access materials pertinent to the issue in the West database. Optionally, students may KeyCite a specific citation if they know it. The West Keys for Commerce and Constitutional Law are 83 and 92 respectively. Under these Key headings are an array of topics related to both the Commerce Clause and the United States Constitution. KeyCites also allow users to see if the case is still valid law.

LexisNexis
www.lexisnexis.com
www.lexisnexis.com/lawschool

LexisNexis is also a subscription based legal research database. It is Westlaw's chief rival. Lexis offers the same access to primary and secondary sources that Westlaw does. This includes Federal and state caselaw and statutes. Lexis also offers access to many law reviews, journals, treatises, reference materials and periodicals. Search tabs are broken into Legal, News & Business, Public Records, and Find a source. "Find a source" is an alphabetized directory of available databases. Users may also search by topic or area of law under the Legal heading. Each topic has headnotes that are subtopics. "Commerce" can be found under the "Transportation Law" and "Constitutional Law" headings. Lexis offers users the "Shepardize" option. This option is similar to Westlaw's KeyCite feature. Shepardizing allows users to track cases full treatment to discern what is still good law and what the latest rulings are on a particular legal issue. Shepardizing must be done using a specific citation. Lexis also allows users to track emerging legal issues. This feature is helpful for users who want to find what particular issues are pertinent to their research topic.

Contemporary Research Sites

Loislaw.

www.loislaw.com
Loislaw is a one-source stop for primary law, treatises and forms, public records and bar publications. The site allows access to both federal and state case law and statutes as well. United States Supreme Court and Federal District Court rulings are available through the Federal caselaw search option. It is a flat fee subscription site that allows users to tailor their subscription to their own special needs. Loislaw is ideal for students fresh out of law school and no longer have access to Lexis or Westlaw. It may also be ideal for solo practitioners who do not want to pay the costs associated with Westlaw or Lexis. All Loislaw documents are official versions of documents and are published on the site within 24-72 hours of their receipt from the court or legislature.

Casemaker.
www.gabar.org/casemaker

Casemaker is an online research database that is accessed throughout he Georgia Bar's website. In order to access it, users need to be a member of the bar. Casemaker allows access to both federal and state materials. These include Federal Court rules, administrative codes, and Attorney General opinions. The site has United States Supreme Court as well as Federal Circuit Court cases dating back to 1950. Users can also access legal libraries in all 50 states. There is a user manual and help guide on the website that instruct the user how to perform searches and how to use the site.

LegalTrac
http://www.jenkinslaw.org/collection/legaltrac.php

LegalTrac is a comprehensive database that offers citations and full-text articles from a host of major law reviews, legal newspapers, international legal publications, specialty publications, and bar publications. It also includes access to general-interest and business periodicals that relate to legal issues. The material is indexed and includes Federal and State cases, laws, and regulations. It also includes state and federal legal practices. If full-text articles are not available, the citation will allow a searcher to pinpoint articles they could search for in a physical library to review. It is a membership-based site that has several different subscription options. Law students may access the site through the GSU Law Library website.

HeinOnline
http://heinonline.org/

HeinOnline is a comprehensive search database that provides access to legal libraries, journals, and law reviews from around the world. It provides access to the Federal Register Library and the United States Supreme Court Library. It also provided access to Bar Journals and the US Presidental Library as well as several international legal journals and libraries. It is a good source for current law review articles as well as older articles. HeinOnline displays items in .pdf format. This image is a scanned image of the actual page. HeinOnline also requires a subscription fee.

Findlaw
www.findlaw.com

Findlaw compiles websites and other resources, including attorney listings, for free legal research. Findlaw may be helpful in directing the user to an attorney and giving a basic understanding of the "commerce clause". However, it should be used in conjunction with the options listed above. It may be particularly useful in helping to find an attorney who specializes in Constitutional Law. It will probably be the least effective option listed but may still link the user to useful websites.

Other Internet Sources

www.google.com
www.wikipedia.org

These are free internet based research sources. They are a good starting point to search for an introduction to the Commerce Clause. Google also has a scholar feature that can be used to research academic articles.

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Interest Groups

United States Department of Commerce

www.commerce.gov

This is the official website for the United States Department of Commerce. The department states its mission is to "promote job creation and improved living standards for all Americans by creating an infrastructure that promotes economic growth, technological competitiveness, and sustainable development." Among its tasks are gathering economic and demographic data for business and government decision-making, issuing patents and trademarks, and helping to set industrial standards. The Department proposes and helps to finalize legislation related to commerce within the United States. Although not directly related to the constitution or the commerce clause, many of the tasks they perform are related to interstate commerce in the United States. The department may be able to give users a better idea on what items are of interest to the federal government that are legislated by the states, and thus subject to the DCC.

United States Chamber of Commerce

www.uschamber.com

The United States Chamber of Commerce is a not-for-profit lobbying group that lobbies on behalf of businesses in the United States. These businesses must be members. The chamber typically takes a pro-business stance on most issues. It is the largest lobbying group in the United States. They also support globalization and free trade. Their motto is "fighting for your business." Like the Commerce Department, the USCOC's do not specifically relate to the commerce clause, they are involved in actions and lobbying on behalf of interstate commerce.

The Federalist Society

http://www.fed-soc.org/

The Federalist Society is comprised of conservatives and right leaning thinkers that are concerned about the current state of the law. The group is dedicated to giving these people a voice in the legal arena. It is composed of law students, lawyers, academics, and faculty members of law schools in the United States. They believe that judges should say what the law is and not interpret it based on what they think it should be. The group runs on a platform that freedom is preserved through the state and the separation of governmental powers is central to our Constitution. The Federalist Society website has useful information on the Dormant Commerce Clause, but it is important to remember that the site is run by a group of Conservative thinkers and the views in the site will tend to slant to the right. The site may not give you an objective look at the Commerce Clause and issues that relate to it today, but it will give you an idea of issues that Conservatives deem to be important in the 21st Century.

American Constitution Society for Law & Policy

http://www.acslaw.org/

The American Constitution Society for Law & Policy (ACS) is an activist group dedicated to maintaining the vitality of the US Constitution. They maintain they are helping to protect the US Constitution in the 21st Century. The group is comprised of lawyers, law students, judges, and other people in the legal community who want to ensure that the words of the US constitution enjoy their proper place in American law. ACS bills itself as non-partisan and is a non-profit organization. They do not lobby or litigate as a group. ACS has an "Economic, Workplace, & Envonmental Regulation group and a group that focuses on Separation of Powers.

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