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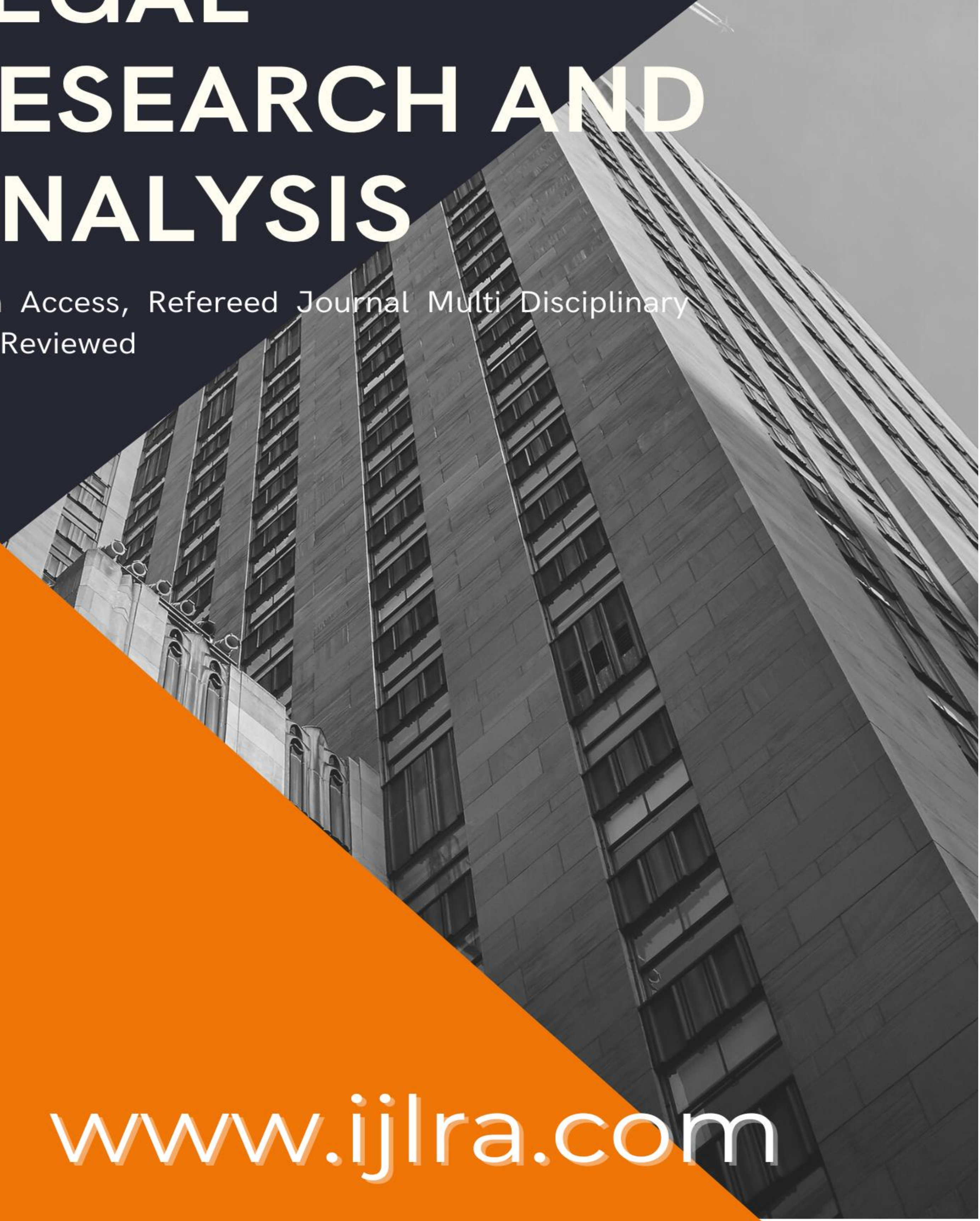

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FROM GIBBONS TO CANNA: AN ANALYSIS OF THE CHANGING CONSTITUTIONAL BOUNDARIES OF THE COMMERCE CLAUSE

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Abstract

The Commerce Clause as provided under Article I, Section 8, Clause 3 of the U.S Constitution grants Congress the power to regulate commerce with foreign nations and amongst the country's states. The Clause has generated considerable constitutional debate because the expansion of congressional authority over interstate commerce has often raised questions concerning the constitutional balance between federal and state power. The Commerce Clause has historically been perceived as the power of the federal government to pass rules regarding interstate economic activities however this has been frequently used by the federal government as a justification of its usage of legislative powers over the state governments. This paper seeks to analyze and explain the evolution of the interpretation of the commerce clause made by the Supreme Court by examining various landmark decisions such as that of Gibbons v. Ogden, Wickard v. Filburn, The National Labor Relations Board v. Jones & Laughlin Steel Corporation, United States v. Lopez, United States v. Morrison Gonzales v. Raich, National Federation of Independent Businesses v. Sebelius and Canna Provisions, Inc. v. Bondi to assess whether the Supreme Court's Commerce Clause jurisprudence reflects a consistent expansion of federal authority or a continuing attempt to balance national economic interests against state autonomy.

Introduction

The essence of federalism is that a permanent constitutional agreement requires the distribution of sovereign powers of a union of people belonging to various states. In the simple sense, there is a distinction that is made between the center and the federate units, but however they are united by a common sovereignty which has surrendered to the supreme constitution. The underlying principle of a federal system is to ensure negotiated coordination between the power center and the federates by dispersing the powers of a center to uphold the liberty of the

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federates. In the U.S, the constitutional relationship between the states and the national government is defined by dual sovereignty, which legally bars the complete surrender of state power. In other words, the U.S constitution treats states as separate co-sovereigns rather than subordinates to the federal government. This understanding can be inferred from the Tenth Amendment to the U.S constitution which states that *"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."*[1]

Reuven S. Avi-Yonah explained the evolution of federalism in the United States as "*The United States, the country which began as a loose confederation of sovereign states. The issue of state sovereignty loomed large in the formation of the Constitution and, thereafter, through the civil war, and the concept of state rights still resonates strongly today. As a result, in the United States, federalism means that the federal government should respect the sovereignty of the states as much as is compatible with the need to have a unified country"*[2]. The U.S is a pioneer in adopting a federal form of government where the Congressional powers are principally enumerated in Article I, Section 8 of the Constitution and powers not delegated to the federal government are reserved to the states or the people under the Tenth Amendment. The regulatory powers of the states is not absolute, this has been limited by certain constitutional provisions such as the commerce clause, as enumerated under Article I, Section 8 of the constitution which has been often characterized as an exception to the rules of federalism.

The Commerce Clause

The Commerce clause as established under Article I, Section 8, Clause 3 regulates commerce with foreign nations and amongst U.S states. The Clause grants Congress the authority to regulate interstate commerce and has consequently served as a significant constitutional basis for federal economic regulation. It is described to act as a regulatory power of the government, because in the U.S residual powers of the state hold a prominent position as against the power of the center. In order to understand the application and importance of the Commerce Clause it is pertinent to first understand the meaning of the term 'Commerce'. The term has been commonly defined as trade, intercourse, navigation, traffic, and transportation for profit[3]. This

[1] Tenth Amendment of the U.S Constitution
[2] Avi-Yonah, Reuven S. "Federalism and the Commerce Clause: A Comparative Perspective." St. & Loc. Tax. Law: 3-8 (2007).
[3] Bork, Robert; Troy, Daniel E.. "Locating the Boundaries: The Scope of Congress's Power to Regulate Commerce". Harvard Journal of Law & Public Policy 25: 849, 861–62. (2002)

comprehensive definition of the term ‘Commerce’ has led the court to make a broad and extensive interpretation of the Commerce Clause specified under Article I, Section 8 of the Constitution. At this juncture, the affirmative Commerce Clause should be distinguished from the Dormant Commerce Clause. The former concerns the affirmative power of Congress to regulate interstate commerce, while the latter refers to judicial limitations on state measures that discriminate against or unduly burden interstate commerce.

Emergence of the Commerce Clause

The Commerce Clause and its importance was interpreted for the first time by the U.S Supreme Court in the case of Gibbons v. Ogden[4] where the court established that the federal government by virtue of the commerce clause is empowered to determine and regulate interstate commerce. This case revolves around the monopoly granted by the New York State government in 1808 to operate boats in state waters as well as the waters that stretch between states. Aaron Ogden had a monopoly license granted by the state of New York to operate steamboats between New Jersey and New York. Thomas Gibbons was also engaging steamboat operations on the same route as Ogden however his operations were authorized by a federal coasting license issued under an act passed by the Congress. Ogden had filed a case before the New York court contending that he had held a monopoly right granted by the New York state to operate his boat and that this right was legal even though the operations were conducted on shared interstate waters and urged the court to pass an order restraining Gibbons from carrying out his steamboat operations in that area. Gibbons had argued that the U.S Constitution empowers the congress to solely regulate provisions of interstate commerce and that since his federal coasting license was issued under an act passed by the Congress he would be entitled to the right of operating steamboats in that area. The New York court ruled in the favor of Ogden twice, which led Gibbons to appeal for his right before the U.S Supreme Court. Justice Marshall in his ruling favoring Gibbons opined that the federal government has supreme position to regulate over interstate commerce activities by virtue of deriving its power from the constitution and further defined commerce as “*commercial intercourse between states”* and emphasized the usage of the commerce clause[5]. The case of Gibbons established an expansive understanding of interstate commerce and demonstrated that state regulation could not prevail where it conflicted with valid federal regulation enacted pursuant to the Commerce Clause.

[4] 22 U.S. 1 (1824)
[5] Gallagher, Laura Ann Grace, "The Commerce Clause and its Effect on Federalism" (2015). Political Science. 20.

Applicability of the Commerce Clause

The commerce clause has evolved over time after the Supreme Court ruling of Gibbons v Ogden. In 1937 Justice Hughes explained the term 'affecting commerce' as "*in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerc*e"

The National Labor Relations Board found that Jones & Laughlin had engaged in unfair labor practices by interfering with employees' rights under the National Labor Relations Act[6], while trying to negotiate a conflict that broke out in the steel industry. In response to this order Jones & Laughlin sued the National Labor Relations Board on the ground that it was unconstitutional and thus did not have the authority to rule in the manner which it did. The court decided in favor of the National Labor Relations Board on the ground that any labor dispute arising between employees and employers have a close and substantial relation to interstate commerce due to its potential impact on production. The court further opined that the term 'affecting commerce' is the underlined ground for the Congress to justify its powers that have been derived from the Commerce Clause. Jones & Laughlin marked an important shift toward a more expansive interpretation of congressional Commerce Clause authority.

The landmark case of Wickard v. Filburn[7] has been used as a precedent for all the cases that are brought before the court on the issue pertaining to the commerce clause since 1942 as it became one of the leading authorities for the "substantial effects" and "aggregation" approaches to Commerce Clause analysis. The ruling in this case elucidated the fact that local commercial activities are capable of substantially affecting interstate commerce and thus are subject to any federal regulation passed in this regard. In 1942 the Secretary of Agriculture, Wickard contended that the Agricultural Adjustment Act that levied penalties on farmers growing more wheat than the allowed quota was passed by the Congress and that Filburn had exceeded the said production quota, thus contravening the Act. Filburn countered this argument by justifying to the Supreme Court that the extra wheat was not for commercial purposes but rather for his personal use. The Supreme Court by applying the concept of aggregation highlighted that although Filburn's individual wheat production was small and largely intended for personal use, the aggregate effect of similar conduct by farmers across the country would

[6] 301 U.S. 1 (1937)
[7] 317 U.S. 111 (1942)

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gravely impact the country's wheat market resulting in a substantial effect on interstate commerce and thus, decided in favor of Wickard. Justice Jackson opined that "*matters having such a close and substantial relation to interstate traffic that the control is essential or appropriate to the security of that traffic, to the efficiency of the interstate service, and to the maintenance of conditions under which interstate commerce may be conducted upon fair terms and without molestation or hindrance.*[8]"

The Supreme Court in the case of United States v. Lopez[9] in 1995 laid down the three categories that would essentially come under the purview of the Commerce Clause "*First, Congress may regulate the use of the channels of interstate commerce... Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities... Finally, Congress's commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce"* These grounds form the basis for all the cases pertaining to Commerce Clause that were decided thereafter. The brief facts that revolved around this case are that the federal Gun-Free School Zones Act was unconstitutional since it had no relation to interstate commerce and thus cannot be justified under the Commerce Clause. Mr. Lopez who was charged under this Act for possessing a firearm in a school zone, challenged the constitutional validity of this Act before the Supreme Court and the Court by virtue of the above stated ground upheld the contentions of Mr. Lopez and struck down the Act. Similarly, the court in the case of United States v. Morrison[10] the ruling in *Lopez* was reinforced by emphasizing that Congress's Commerce Clause power does not extend to noneconomic activity merely because such activity may have aggregate economic consequences.

The case of Gonzales v. Raich[11] is an important decision in which the court relied upon previous decisions such as that of Lopez, Morrison and Wickard to conclude this case. Here the question before the court was with respect to the contradiction between the provisions of the Controlled Substance Act passed by the Federal Government which prohibited the cultivation and use of marijuana and the California's Compassionate Use Act that permitted the

[8] Ibid.
[9] 514 U.S. 549 (1995)
[10] 529 U.S. 598 (2000)
[11] 545 U.S. 1 (2005)

medical use of marijuana under state law. The Court reasoned that Congress could regulate intrastate cultivation of marijuana because the activity formed part of a comprehensive federal regulatory scheme governing the interstate market in controlled substances. The Court therefore relied significantly on the principle that local economic activity may be regulated when its exemption could undermine the broader federal regulatory scheme. Justice O'Connor provided a dissenting opinion on this case and stated that the commerce clause has given enormous power to the Federal Government and has taken away the power of the state. By relying on the 'substantial effects' test laid down in Wickard v Filburn as well as the three guidelines set forth in the case of United States v. Lopez, Justice O'Connor asserted that the Controlled Substance Act was unconstitutional.

In the case of National Federation of Independent Business v. Sebelius[12] the issue before the court was whether the Congress is empowered under the Commerce Clause to pass the individual mandate of the Affordable Care Act which mandatorily requires individuals to purchase health insurance. The Court ultimately held that the individual mandate could not be sustained under Congress's Commerce Clause power because the Clause does not authorize Congress to compel individuals to enter commerce. However, the payment imposed by the mandate was upheld as a valid exercise of Congress's taxing power. In the opinion of Justice Ginsburg *"According to The Chief Justice, the Commerce Clause does not permit that preservation. This rigid reading of the Clause makes scant sense and is stunningly retrogressive"*. By highlighting the term retrogressive Justice Ginsburg has suggested a flexible interpretation of the Commerce clause which has the ability to include several other aspects within its ambit.

Despite Justice O'Connor's dissenting opinion, in the ruling of Raich, the interpretation of the Clause remains persuasive even after two decades of state-level marijuana legalization and changing federal policy. In 2025, the First Circuit Court of Appeals rejected a constitutional challenge to the federal marijuana prohibition and reaffirmed the continuing decision of Raich. The court concluded that Congress's authority to prohibit marijuana under the Commerce Clause remained valid despite the substantial growth of state-level legalization[13].

[12] 567 US. 519 (2012).
[13] *Canna Provisions, Inc. v. Bondi*, 138 F.4th 602 (1st Cir. 2025)

Conclusion

The Commerce Clause is one of the most debated concepts because of its broad nature that requires an extensive interpretation to be made with a passage of time. It is imperative to note that this clause fundamentally regulates interstate economic activity which is a dynamic and ever evolving concept. Thus, a single and rigid interpretation of the applicability of this clause cannot be made. The evolution of the Commerce Clause as analyzed over a the years demonstrates that the Supreme Court has neither consistently expanded nor consistently restricted congressional authority over interstate commerce. Rather, its jurisprudence reflects a continuing attempt to define the constitutional boundaries of federal regulatory power while preserving the federal structure of the United States. The Commerce Clause must therefore be understood as an evolving constitutional mechanism through which the Court has attempted to balance national economic interests with the autonomy of the states. While its broad interpretation has frequently been criticized for enabling federal intrusion into areas traditionally regulated by the states, the limitations developed in *Lopez*, *Morrison*, and *NFIB* demonstrate that congressional authority is not without constitutional boundaries. he jurisprudence consequently reflects neither an unqualified expansion nor a complete restriction of federal power, but an ongoing judicial effort to determine the extent to which activities bear a constitutionally sufficient relationship to interstate commerce. In this sense, the Commerce Clause continues to occupy a central position in maintaining the constitutional balance between federal authority and state autonomy.

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