

Federalism Attack Outline

1. Overview of Federalism

Definition: Federalism is the division of power between federal and state governments, balancing national authority with state sovereignty. Constitutional doctrines like the Dormant Commerce Clause, Privileges and Immunities Clauses, and State Action Doctrine regulate this balance.

2. Rule Statements

A. Dormant Commerce Clause

1. **Rule:** The Dormant Commerce Clause prohibits state laws that discriminate against or unduly burden interstate commerce unless Congress explicitly authorizes such regulation.
 2. **Tests:**
 - **Discrimination Test:**
 - Is the state law facially discriminatory against out-of-state commerce?
 - Example: A state law imposing higher fees on out-of-state businesses.
 - Standard: Such laws are presumptively invalid unless the state shows no less discriminatory means to achieve a legitimate local interest.
 - **Balancing Test (Pike v. Bruce Church):**
 - If the law is not discriminatory, courts weigh:
 - Local benefits of the law.
 - Burdens imposed on interstate commerce.
 - Outcome: Laws imposing excessive burdens compared to benefits are invalid.
 3. **Exceptions:**
 - **Congressional Authorization:**
 - Congress may explicitly authorize state regulations that would otherwise violate the Dormant Commerce Clause.
 - Example: Federal legislation allowing state regulations on environmental standards.
 - **Market Participant Doctrine:**
 - States acting as market participants (e.g., buying or selling goods or services) are exempt from Dormant Commerce Clause restrictions.
 - Example: A state giving preference to in-state businesses in government contracts.
-

B. Privileges and Immunities Clauses

1. Article IV, Section 2:

- Rule: Prohibits states from discriminating against citizens of other states concerning fundamental rights (e.g., employment, property ownership).
- Exceptions:
 - The state may justify the discrimination if:
 - It serves a substantial state interest.
 - There is no less discriminatory alternative.
 - Example: Requiring residency for lower in-state tuition rates.

2. Fourteenth Amendment Privileges or Immunities Clause:

- Rule: Protects rights related to national citizenship, such as the right to travel, petition the government, and vote in federal elections.
 - Limitation: The clause applies narrowly and does not protect state-based rights.
-

C. State Action Doctrine

1. Rule: Constitutional protections apply only to government (state) action, not private conduct, unless the private conduct qualifies as state action.

2. Tests:

○ Public Function Test:

- Is the private actor performing a function traditionally reserved to the government?
- Example: A private company operating a town may be subject to constitutional requirements (*Marsh v. Alabama*).

○ Significant State Involvement:

- Is the state entwined with the private conduct or endorsing the action?
- Example: A private club engaging in racial discrimination with state enforcement of its policies.

3. Limitations:

- State inaction or failure to regulate private conduct does not constitute state action.
-

3. Defenses and Exceptions

A. Defenses to Dormant Commerce Clause Challenges

1. Congressional Authorization:

- If Congress explicitly authorizes the regulation, Dormant Commerce Clause restrictions are inapplicable.
 - 2. **Non-Discriminatory Local Laws:**
 - Laws not facially discriminatory may be upheld under the balancing test if local benefits outweigh burdens on interstate commerce.
 - 3. **Market Participant Doctrine:**
 - States acting as market participants are exempt from Dormant Commerce Clause challenges.
-

B. Defenses to Privileges and Immunities Challenges

- 1. **Substantial State Interest:**
 - Discrimination is permissible if the state shows:
 - A substantial interest (e.g., conservation of resources).
 - No less restrictive means to achieve the goal.
 - 2. **Non-Fundamental Rights:**
 - Discrimination regarding non-fundamental rights (e.g., recreational fishing licenses) is not subject to strict scrutiny.
-

C. Defenses to State Action Doctrine Claims

- 1. **Private Actor Defense:**
 - Private entities not performing public functions or lacking significant state involvement are not subject to constitutional limitations.
 - 2. **Neutral Government Regulation:**
 - State laws that neutrally regulate private conduct without endorsing or entangling the state in unconstitutional practices are defensible.
-

4. Steps for Analysis

- 1. **Identify the Issue:**
 - Is the state action being challenged under the Dormant Commerce Clause, Privileges and Immunities Clauses, or State Action Doctrine?
- 2. **Apply the Rule:**
 - For the Dormant Commerce Clause: Is the law discriminatory, or does it impose undue burdens?
 - For Privileges and Immunities: Does the state law affect fundamental rights, and is the discrimination justified?

- For State Action: Does the private conduct qualify as state action under the applicable tests?
 - 3. **Evaluate Defenses and Exceptions:**
 - Are there valid justifications (e.g., substantial state interest, market participant exception)?
 - 4. **Assess the Outcome:**
 - Determine whether the state action is permissible or violates constitutional principles.
-

5. Policy Considerations

1. **Balancing State Sovereignty and National Unity:**
 - Federalism ensures states can address local concerns without fragmenting national cohesion.
 2. **Encouraging Economic Growth:**
 - The Dormant Commerce Clause prevents economic protectionism that harms interstate commerce.
 3. **Maintaining Constitutional Protections:**
 - The State Action Doctrine ensures private conduct does not evade constitutional scrutiny when intertwined with government functions.
-

6. Example Applications

Example 1: Dormant Commerce Clause

- **Fact Pattern:** A state bans the import of out-of-state apples to protect its own apple growers.
- **Rule:** The law discriminates against interstate commerce and is presumptively invalid unless the state shows no reasonable alternatives.
- **Outcome:** Likely struck down under the Dormant Commerce Clause.

Example 2: Privileges and Immunities

- **Fact Pattern:** A state charges higher fishing license fees for non-residents.
- **Rule:** The right to fish is not a fundamental right; the law is valid.

Example 3: State Action Doctrine

- **Fact Pattern:** A private security company operates prisons under state contracts.
- **Rule:** Operating a prison is a public function, so the company's actions are subject to constitutional scrutiny.