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The U.S. Constitution and the Commerce Clause Power

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The Constitution of the United States and The Commerce Clause Power

Contrary to popular myth, even among legal scholars, the commerce clause power within the U.S. Constitution does not use the phrase “interstate commerce”.

The Constitution states at Article I, Section 8, clause 1:  The Congress shall have Power…[clause] 3:  To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes; …

Here the Constitution states, “The Congress shall have Power…To regulate Commerce … among the several States,”…

Within the Constitution, the “several States” is a term that only refers to a State, (a State as a sovereign corporate body), and the term does not refer to a Citizen of a State. This meaning is consistently used throughout the entire Constitution.

This is clearly and explicitly differentiated in Article III, which states the jurisdiction of the judicial power as: “Section 2, 1:  The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority:--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State; 10 --between Citizens of different States, --between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.”

We note this was again clearly and explicitly differentiated in Amendment XI.

Amendment XI.  The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

The Commerce clause power does not grant power to Congress to regulate commerce between “citizens of different States”, which is the specific phrase chosen for Article III. The Commerce clause power grants Congress a much more limited power as the Constitution states, “The Congress shall have Power…To regulate Commerce … among the several States,”…

Commerce among the several States is commerce between different States, such as between Maine and Massachusetts, or between Kentucky and Virginia. These States would have ongoing transactions as Kentucky was the Kentucky District of Virginia prior to becoming a separate State.

Good Luck!  Dean Cantalupo

Reference notes are provided below for your convenience:

US Constitution.
Article I.  Section 1.  All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.
Section 8
1: 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;

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

18: To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

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Article III
Section 2
1: The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States,--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

2: In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

3: The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Amendment XI
The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

End notes.