Supremacy Clause

The **Supremacy Clause** is the provision in Article Six, Clause 2 of the United States Constitution that establishes the United States Constitution, federal statutes, and treaties as "the supreme law of the land." It provides that these are the highest form of law in the United States legal system, and mandates that all state judges must follow federal law when a conflict arises between federal law and either a state constitution or state law of any state.

The supremacy of federal law over state law only applies if Congress is acting in pursuance of its constitutionally authorized powers.

Nullification is the legal theory that states have the right to nullify, or invalidate, federal laws which they view as being unconstitutional; or federal laws that they view as having exceeded Congresses' constitutionally authorized powers. The Supreme Court has rejected nullification, finding that under Article III of the Constitution, the power to declare federal laws unconstitutional has been delegated to the federal courts and that states do not have the authority to nullify federal law.[1]

1 Text

> This Constitution, and the Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

2 *The Federalist* Papers

There are two sections of *The Federalist* Papers that deal with the Supremacy Clause. In Federalist No. 33, Alexander Hamilton argues that the Supremacy Clause is simply an assurance that the government's powers can be properly executed, saying that a law itself implies supremacy, and without supremacy it would amount to nothing.

In Federalist No. 44, James Madison similarly defends the Supremacy Clause as vital to the functioning of the nation. He noted that state legislatures were invested with all powers not specifically defined in the constitution, but also said that having the federal government subservient to various state constitutions would be an inversion of the principles of government, concluding that if supremacy were not established "it would have seen the authority of the whole society everywhere subordinate to the authority of the parts; it would have seen a monster, in which the head was under the direction of the members".

3 Supreme Court interpretations

In *Ware v. Hylton*, 3 U.S. (3 Dall.) 199 (1796), the United States Supreme Court for the first time applied the Supremacy Clause to strike down a state statute. Virginia had passed a statute during the Revolutionary War allowing the state to confiscate debt payments by Virginia citizens to British creditors. The Supreme Court found that this Virginia statute was inconsistent with the Treaty of Paris with Britain, which protected the rights of British creditors. Relying on the Supremacy Clause, the Supreme Court held that the treaty superseded Virginia's statute, and that it was the duty of the courts to declare Virginia's statute "null and void".

In *Martin v. Hunter's Lessee*, 14 U.S. 304 (1816), and *Cohens v. Virginia*, 19 U.S. 264 (1821), the Supreme Court held that the Supremacy Clause and the judicial power granted in Article III give the Supreme Court the power to review state court decisions involving issues arising under the Constitution and laws of the United States. Thus, the Supreme Court has the final say in matters involving federal law, including constitutional interpretation, and can overrule decisions by state courts.

In *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819), the Supreme Court reviewed a tax levied by Maryland on the federally incorporated Bank of the United States. The Court found that if a state had the power to tax a federally incorporated institution, then the state effectively had the power to destroy the federal institution, thereby thwarting the intent and purpose of Congress. This would make the states superior to the federal government. The Court found that this would be inconsistent with the Supremacy Clause, which makes federal law superior to state law. The Court therefore held that Maryland's tax on the bank was unconstitutional because it violated the Supremacy Clause.

In *Ableman v. Booth*, 62 U.S. 506 (1859), the Supreme Court held that state courts cannot issue rulings that contradict the decisions of federal courts, citing the Supremacy Clause, and overturning a decision by the

Supreme Court of Wisconsin. Specifically, the court found it was illegal for state officials to interfere with the work of U.S. Marshals enforcing the Fugitive Slave Act or to order the release of federal prisoners held for violation of that Act. The Supreme Court reasoned that because the Supremacy Clause established federal law as the law of the land, the Wisconsin courts could not nullify the judgments of a federal court. The Supreme Court held that under Article III of the Constitution, the federal courts have the final jurisdiction in all cases involving the Constitution and laws of the United States, and that the states therefore cannot interfere with federal court judgments.

In *Pennsylvania v. Nelson*, 350 U.S. 497 (1956) the Supreme Court struck down the Pennsylvania Sedition Act, which made advocating the forceful overthrow of the federal government a crime under Pennsylvania state law. The Supreme Court held that when federal interest in an area of law is sufficiently dominant, federal law must be assumed to preclude enforcement of state laws on the same subject; and a state law is not to be declared a help when state law goes farther than Congress has seen fit to go.

In *Reid v. Covert*, 354 U.S. 1 (1957), the Supreme Court held stated that the U.S. Constitution supersedes international treaties ratified by the U.S. Senate.

In *Cooper v. Aaron*, 358 U.S. 1 (1958), the Supreme Court rejected attempts by Arkansas to nullify the Court's school desegregation decision, *Brown v. Board of Education*. The state of Arkansas, acting on a theory of states' rights, had adopted several statutes designed to nullify the desegregation ruling. The Supreme Court relied on the Supremacy Clause to hold that the federal law controlled and could not be nullified by state statutes or officials.

In *Edgar v. MITE Corp.*, 457 U.S. 624 (1982), the Supreme Court ruled: "A state statute is void to the extent that it actually conflicts with a valid Federal statute". In effect, this means that a State law will be found to violate the Supremacy Clause when either of the following two conditions (or both) exist:[2]

1. Compliance with both the Federal and State laws is impossible
2. "State law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress"

In 1920, the Supreme Court applied the Supremacy Clause to international treaties, holding in the case of *Missouri v. Holland*, 252 U.S. 416, that the Federal government's ability to make treaties is supreme over any state concerns that such treaties might abrogate states' rights arising under the Tenth Amendment.

The Supreme Court has also held that only specific, "unmistakable" acts of Congress may be held to trigger the Supremacy Clause. Montana had imposed a 30 percent tax on most sub-bituminous coal mined there. The Commonwealth Edison Company and other utility companies argued, in part, that the Montana tax "frustrated" the broad goals of the national energy policy. However, in the case of *Commonwealth Edison Co. v. Montana*, 453 U.S. 609 (1981), the Supreme Court disagreed. Any appeal to claims about "national policy", the Court said, were insufficient to overturn a state law under the Supremacy Clause unless "the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained".[3]

However, in the case of *California v. ARC America Corp.*, 490 U.S. 93 (1989), the Supreme Court held that if Congress expressedly *intended* to act in an area, this would trigger the enforcement of the Supremacy Clause, and hence nullify the state action. The Supreme Court further found in *Crosby v. National Foreign Trade Council*, 530 U.S. 363 (2000), that even when a state law is not in direct conflict with a federal law, the state law could still be found unconstitutional under the Supremacy Clause if the "state law is an obstacle to the accomplishment and execution of Congress's full purposes and objectives".[4] Congress need not expressly assert any preemption over state laws either, because Congress may implicitly assume this preemption under the Constitution.[5]

4 The Fourteenth Amendment

Similarities exist between the Supremacy Clause and the Privileges or Immunities Clause of the Fourteenth Amendment to the U.S. Constitution, which states:

> "*No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.*"

The difference between the two is that while the Supremacy Clause deals with the relationship between the Federal Government and the states, the Fourteenth Amendment deals with the relationships among the Federal Government, the States, and the citizens of the United States.

5 See also

- Bricker Amendment
- Federal preemption
- Interposition
- Necessary and Proper Clause
- States' rights

- Paramountcy (Canada) – doctrine of the Canadian Constitution
- Section 109 of the Constitution of Australia – analogous section of the Constitution of Australia

6 References

[1] See *Ableman v. Booth*, 62 U.S. 506 (1859), *Cooper v. Aaron*, 358 U.S. 1 (1958).

[2] *Dow Chemical Co. v. Exxon Corp.*, 139 F.3d 1470 (Fed Cir 1998).

[3] *Commonwealth Edison Co. v. Montana,* 453 U.S. 609, 634, quoting *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142 (1963).

[4] *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372-374.

[5] *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 386-388.

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7.1 Text

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