

Constitutional Law — Sovereign Immunity & DCC (MEE July 2017)

Question Presented

Businesses make billions in payments daily by electronic funds transfers. Banks use passwords and encryption to verify orders, but thieves sometimes cause unauthorized transfers. To combat this fraud, State A passed a law requiring all banks that offer funds transfer services to State A businesses to use biometric identification to verify payment orders above \$10,000.

← the challenged law. Applies to ALL banks = facially neutral

Experts dispute whether biometric identification is significantly better, but the legislature required it after heavy lobbying from a State A-based manufacturer of biometric identification equipment.

← protectionist motive? but still a legitimate state interest

A large bank, incorporated and headquartered in State B, provides banking services to businesses in every U.S. state, including State A.

← out-of-state multistate business → interstate commerce

Complying would require the bank to reprogram its entire U.S. electronic banking system at a cost of \$50 million.

← huge compliance burden → weighs against the law

The bank's own security experts do not believe biometric identification is particularly reliable.

← benefits disputed → the other side of the balancing test

Instead of complying, the bank stopped allowing its State A customers to make electronic transfers; many shifted to other banks, and the bank lost about \$2 million in State A profits.

← the injury: lost \$2M profits

There is no federal statute governing these services; the matter is governed entirely by state law.

← no preemption → dormant Commerce Clause applies

The bank sued State A and its Superintendent of Banking. It seeks \$2 million in damages from State A.

← damages vs. the STATE → 11th Amendment sovereign immunity (Q1)

It also seeks an injunction against the Superintendent, in her official capacity, to bar enforcement of the statute.

← official-capacity injunction → state-officer suit exception (Q2)

1. Can the bank maintain a suit in federal court against State A for damages?

← → Eleventh Amendment

2. Can the bank sue the Superintendent to enjoin enforcement of the statute?

← → suit against state officer (injunction)

3. Is the State A statute unconstitutional?

← → dormant Commerce Clause / balancing test

Question 1: Damages Suit Against State A (Eleventh Amendment)

Issue. Whether the bank can maintain a suit in federal court against State A for money damages.

Damages against the State itself → sovereign-immunity question.

Rule. The Eleventh Amendment bars a private party from suing a nonconsenting state for damages in federal court (state sovereign immunity). The bar is overcome only if the state waives immunity or Congress validly abrogates it under Section 5 of the Fourteenth Amendment.

11th Am bars private damages suits vs. a nonconsenting state; watch for waiver or valid §5 abrogation.

Analysis. Here, the bank, a State B resident, sues State A itself for \$2 million in damages in federal court. That is precisely a suit against a state for money, which sovereign immunity forbids. Nothing shows State A waived its immunity, and because the field is governed entirely by state law with no federal statute, there is no congressional abrogation to invoke.

State B bank vs. State A for \$ = the classic barred suit. No waiver, and no federal statute to abrogate through.

Conclusion. Therefore, the bank cannot maintain the damages suit against State A; a federal court would dismiss it on Eleventh Amendment grounds if the state asserts immunity.

Dismissed. Suing the State for money is exactly what the 11th Am forbids.

Question 2: Injunction Against the Superintendent (Suits Against State Officers)

Issue. Whether the bank can sue the state Superintendent of Banking in federal court to enjoin enforcement of the statute.

Same 11th Am wall: does an exception get you through?

Rule. A well-established exception to state sovereign immunity permits a suit against a state official, in her official capacity, seeking prospective injunctive relief to stop the enforcement of an allegedly unconstitutional law; such suits are not treated as suits against the state and so are not barred by the Eleventh Amendment.

State-officer exception: official capacity + prospective injunction = not a suit against the State.

Analysis. Here, the bank sues the Superintendent in her official capacity and seeks only an injunction against future enforcement, not damages. That fits the state-officer exception exactly, so the Eleventh Amendment does not bar it. The claim, resting on the U.S. Constitution, also raises a federal question that supplies subject-matter jurisdiction.

Official capacity ✓, injunction only ✓, no damages. Fits the exception. Federal question = jurisdiction.

Conclusion. Therefore, the bank can maintain the injunctive suit against the Superintendent in federal court.

Allowed. Sue the officer for an injunction, not the State for money.

Question 3: Constitutionality of the Statute (Dormant Commerce Clause)

Issue. Whether State A's biometric-identification statute unconstitutionally burdens interstate commerce.

No federal statute → dormant Commerce Clause.

Rule. Under the dormant Commerce Clause, a state law that discriminates against interstate commerce is virtually per se invalid. A nondiscriminatory law that imposes only an incidental burden is judged under a balancing test and is invalid only if the burden on interstate commerce is clearly excessive in relation to the putative local benefits.

Discriminatory = per se invalid. Evenhanded = balancing test.

Analysis. Here, the statute is facially neutral: it applies equally to in-state and out-of-state banks serving State A businesses, and nothing shows it burdens out-of-state banks more heavily, so it is nondiscriminatory and analyzed under a balancing test. State A has a legitimate interest in protecting its businesses from wire-transfer fraud, and courts generally defer to the legislature's choice of biometric identification even over contrary expert evidence, and even though the law followed lobbying by an in-state manufacturer. Against that, the law imposes a real burden: \$50 million to reprogram the bank's nationwide system, enough to deter it from offering the service at all. Whether the law survives turns on the balance, and the local benefits are uncertain because experts, including the bank's own, doubt biometric identification's reliability.

Applies to all banks = nondiscriminatory → balancing test. Legit anti-fraud interest (courts defer) vs. a \$50M burden. Benefits disputed.

Conclusion. Therefore, the statute is constitutional only if its fraud-prevention benefits are not clearly outweighed by the burden. Because the \$50 million burden is substantial and the benefits are uncertain, a court could reasonably find the burden clearly excessive and hold the statute unconstitutional; the result depends on that balancing.

Turns on balancing; \$50M vs. uncertain benefit could tip it to unconstitutional.

Step-by-Step: Suing a State + Dormant Commerce Clause

Work through jurisdiction first, then the merits. The first answer that reaches a result controls each branch.

1. Is the defendant the State itself (or its treasury) and is the relief damages or otherwise retrospective?

→ Yes: the Eleventh Amendment BARS the suit, unless the state waived immunity or Congress validly abrogated it under §5 of the 14th Amendment. Q1

→ No: continue.

↓

2. Is the defendant a state official sued in her official capacity for prospective injunctive relief against enforcing an allegedly unconstitutional law?

→ Yes: the state-officer exception applies; the suit is ALLOWED (not treated as against the State). Q2

→ No: sovereign immunity likely bars it.

↓

3. Merits: is there a relevant federal statute? If none, the dormant Commerce Clause applies. Does the law discriminate against interstate commerce (face, purpose, or effect)?

→ Yes: virtually per se INVALID (strict scrutiny).

→ No, evenhanded with at most an incidental burden: continue.

↓

4. Balancing test: is the burden on interstate commerce clearly excessive in relation to the putative local benefits?

→ Yes: UNCONSTITUTIONAL.

→ No: CONSTITUTIONAL. Q3: applies to all banks = evenhanded → weigh \$50M burden vs. uncertain benefit