



## **Gibbons v. Ogden: Notes for Teachers and Facilitator**

### **Key Points:**

- One of the first Commerce Clause cases, *Gibbons* is significant both for defining what is commerce and what is “commerce among the states.”
- Federalism is a big theme in the case. There is a tension between Congress’s enumerated rights in the Constitution and the rights of states, the so-called “police powers” (Amendment 10) to govern their own territories.

### **Additional Resources:**

- [Oyez: Gibbons v. Ogden](#)

### **Instructions for the Students:**

Start with the BRAINSTORMING SHEET & ARGUMENT SHEET. Review the case, then work through the SHEETS which will help the group prepare their arguments. During the discussion period you will need to select representatives (2-4) who will act as the advocates during the moot court. Students (Advocates) from each side will present a brief argument that reflects their group’s strongest points for an affirmative or negative response to the question posed. Afterwards the mock Supreme Court will decide the outcome of the case. Students will be instructed that all students on each side can raise their hand to answer questions posed by the Justices of the Court if their advocates need assistance or do not have a satisfactory answer. Advocates will only have 15 minutes to present their arguments to the Supreme Court. The government may reserve up to five (5) minutes for rebuttal which must be done at the start of their oral argument (kindly remind the government to reserve time if he or she forgets as a rebuttal is a powerful tool during oral arguments). The rebuttal should focus on responding to issues that *Gibbons* raised during their oral argument. You will also need to craft responses to any questions the Supreme Court might ask. The ARGUMENT SHEET is an excellent way to organize your group’s thoughts.

## BRAINSTORMING SHEET

Which side do you represent?

Your Group's Arguments (Rank from best to worst):

Opposition's Arguments (Rank from best to worst):

Counter-Arguments To Opposition's Arguments:

Possible Supreme Court Questions:

Responses To Supreme Court Questions:



## **Background and Facts**

This moot court concerns the case of *Gibbons v. Ogden* in which the Supreme Court held that the power to regulate interstate commerce, granted to Congress by the Commerce Clause of the U.S. Constitution, encompassed the power to regulate navigation.

### **Facts**

#### **Background:**

In 1803, New York state law gave Robert Livingston and Robert Fulton exclusive privileges over navigation on waters within state jurisdiction for thirty years. They were hoping to develop a national network of steamboat lines. Aware of the potential of the new steamboat navigation, competitors challenged Livingston and Fulton. In response to legal challenges, the two men attempted to undercut its rivals by selling them franchises or buying their boats.

Aaron Ogden tried to defy their monopoly, but ultimately purchased a license from the men. Ogden then entered into business with Thomas Gibbons. This partnership fell apart after three years when Gibbons operated another steamboat on a New York route belonging to Ogden. Gibbons' route was authorized by Congress under a 1793 law regulating the coasting trade. Ogden sued Gibbons in New York state court, asking the court to restrain Gibbons from operating on these waters.

#### **Procedure:**

The New York state court found in favor of Ogden, issuing an injunction to restrict Gibbons from operating his boats. Gibbons then appealed to the Supreme Court.

#### **Commerce Clause**

Article 1, Section 8, Clause 3 of the U.S. Constitution authorizes Congress "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." Basically, it allows Congress to pass laws that "regulate commerce" amongst the states. There has been debate over what "commerce" and "among the several States" means.

## **Federalism**

Federalism is one of the most important and innovative concepts in the U.S. Constitution, although the word never appears there. Federalism is the sharing of power between national and state governments.

The Tenth Amendment helps to define the concept of federalism. It reads, “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.” The Constitution has been said to outline the powers of the federal government, and this amendment reserves any unspoken powers to the state.

## **Key Issue**

Does Congress’s power over interstate commerce include navigation over waters?

### **Are we ready to form arguments?**

Before you do make sure that you understand:

- What is “interstate commerce?”
- Why does Congress’s power supersede state power in this case?



## Our Mission in this Moot Court

Our moot court begins at the point that the United States Supreme Court has agreed to resolve the issue of whether Congress’s power to regulate interstate commerce encompasses the power to regulate navigation.

### Brainstorming

Break into three groups:

Group 1: Attorneys representing Gibbons

Group 2: Attorneys representing Ogden

Group 3: Justices who will ask probing questions and decide the case.

Each side will have 15 minutes to present its arguments. Those representing Gibbons will go first and may reserve 5 minutes for rebuttal. Justices who will hear the case will have engaged in brainstorming and will interrupt the arguments with questions.

**Hints for attorneys representing Gibbons:** You must argue that Congress has the power to regulate interstate commerce among the States. You must argue that navigation falls under this power, and that States still don’t have the power to create their own laws relating to navigation. Think about the balance of powers between Congress and States, and why we should grant the federal government this extra power. As the side bringing the case, remember that you can reserve five minutes for rebuttal. That means you can have the last word to counter what the other side says.

**Hints for attorneys representing Ogden:** You must argue that the States have the power over navigation. Think about whether navigation falls under “interstate commerce.” Think about if States should still have the power over navigation even though Congress may also have this power. Consider the balance of powers between the federal and state governments.

**Hints for Justices:** Your job is to think about both sides of the case and develop questions for each side. Good questions will dig deeper into the arguments made and help clarify both sides.

### Summary of tasks:

1. Engage in general brainstorming of arguments for your side or if you are a justice of questions to ask.

2. As part of that brainstorming, review and consider the arguments on the Argument Sheet. Also consider arguments you thought of yourself.
3. Attorneys: Write out a bullet point list of the arguments you want to make and begin with the most persuasive. Use the Attorney Worksheet.
4. Attorneys: Think of counters to those arguments and develop answers. Do the same with the arguments you think the other side will develop.
5. Justices: Fill out the Justice worksheet
6. Attorneys: Designate the person to make the argument (but all attorneys can answer questions posed by the Justices)
7. Attorneys for Gibbons: Remember to reserve 5 minutes for rebuttal if you wish.

Attorneys making the argument: Introduce yourself by saying, “May it please the Court, my name is \_\_\_\_\_ and I represent \_\_\_\_\_ in this matter.”



## Arguments

Look over these arguments. Note whether they help Gibbons, Ogden, both sides or neither side. Or can our case be distinguished or aligned in some other way?

1. \_\_\_\_\_ Commerce is more than mere traffic—it is the trade of commodities. This broader definition includes navigation.
2. \_\_\_\_\_ States often passed laws on issues regarding interstate matters, so states should have fully concurrent power with Congress on matters concerning interstate commerce.
3. \_\_\_\_\_ States are sovereign and independent. Within their power, they should be able to make laws relating to navigation between them and other states.
4. \_\_\_\_\_ The creation of the federal government gave Congress the power over common concerns among the states. This includes navigation.
5. \_\_\_\_\_ Commerce just means traffic, or the buying and selling and interchange of commodities. This does not include navigation.
6. \_\_\_\_\_ It doesn't make sense that a system for regulating commerce is silent on the admission of vessels of one state into the ports of another.
7. \_\_\_\_\_ If commerce does not include navigation, the federal government has no direct power over navigation and can make no law prescribing what shall constitute American vessels.
8. \_\_\_\_\_ All of America understands that the word “commerce” includes navigation.
9. \_\_\_\_\_ There is a universally acknowledged power of the government to impose embargoes, which shows that America is united with respect to navigation.
10. \_\_\_\_\_ There is a universally acknowledged power of the government to impose embargoes, but that falls under the government's war-making power, not the regulation of commerce.
11. \_\_\_\_\_ Even if Congress has the power to regulate commerce among the States, the States may also exercise the same power within their respective jurisdictions. The State is only restricted when there is inconsistency with federal and state law.



12. \_\_\_\_\_ Congress is authorized to lay and collect taxes. But, States also collect taxes at the state level. So here, the State should also be able to have their own laws related to navigation.

13. \_\_\_\_\_ When a State proceeds to regulate commerce among the States, it is exercising the very power that is granted to Congress, and is doing the very thing which Congress is authorized to do. So, here Congress's power supersedes the state's power.



## **Attorney Worksheet**

Remember that you will begin by stating: “May it please the Court. My name is \_\_\_\_\_. I represent \_\_\_\_\_.” If you are representing Gibbons and wish to reserve five minutes for rebuttal, state that now.

List your key arguments below so you can rely on this sheet in arguing to the Court.

What will the other side argue? What are your counters to those arguments?



## Justice Worksheet

You are a Supreme Court Justice hearing *Gibbons v. Ogden*. Please answer the following questions. Be sure to reference the facts and the relevant cases on the argument sheet.

1. Pretend that you are listening to the oral arguments of the attorneys representing Gibbons. What two questions would you ask?
  - A.
  - B.
  
2. Pretend that you are listening to the oral arguments of the attorneys representing Ogden. What two questions would you ask?
  - A.
  - B.
  
4. At the conclusion of hearing the case, you have to write a court opinion ruling either in favor of Gibbons or Ogden. Remember that you need to weight the power of the federal government (Congress) and the state government. If you are ruling in favor of the federal government, you are arguing that the power granted by the Commerce Clause encompasses navigation between states. If you are ruling in favor of the state government, you are arguing that states should have fully concurrent power with Congress on matters concerning interstate commerce.

\_\_\_\_\_ Gibbons

\_\_\_\_\_ Ogden

4. Prepare a bullet point list of your reasons. Include why you rejected the losing side's arguments.



### **Supreme Court Decision: *Gibbons v. Ogden*, 22 U.S. 1 (1824)**

The Supreme Court unanimously held that the Congress had the power to regulate navigation under the commerce clause. Chief Justice John Marshall authored the opinion for the Court. There were no dissents. Along with *Marbury v. Madison* and *McCulloch v. Maryland*, *Gibbons* is universally hailed as among the most important of Marshall's opinions and among the most momentous of all the Court's decisions. Prime among the reasons for the Philadelphia Convention of 1787 was the recognized need to deal with the commercial rivalries among the states. The broad interpretation of the commerce clause crafted by Marshall greatly expanded the power of the federal government to legislate. The only criticism is whether or not Marshall needed to make a distinction between inter- and intra- state commerce since no one doubted that what was involved in this particular case was inter-state.