4. The Court argues that the loss of 5% of federal funds is not coercive, but rather serves as a “mild encouragement” to nudge state action. The Court continues on to say that states are ultimately left free to decide for themselves, despite the potential loss of a relatively small amount of money. Answers will vary as to whether students agree with the Court in this regard.

1. The Dissenting Opinion argues that the condition placed by the Congress on federal highway funds isn’t reasonably related to highway construction, and rather than being a condition is an attempt by Congress to chip away at state authority in a way the Constitution doesn’t allow.
2. Accept reasoned responses.

1. Prior to the passage of the MLDA 1984, only 18 states had made the legal drinking age 21; the remaining 32 states had lower minimum drinking ages. As the power to create a minimum drinking age is a reserved power under the 10th Amendment, federalism flourished in this area, creating a patchwork of drinking ages that differed state-to-state.
2. Twenty-eight states changed their drinking age to 21 within 3 years of the passage of MLDA 1984, presumably as a direct response to its passage. Four states, including South Dakota, changed their drinking age to 21 within 1 year of South Dakota v. Dole, presumably as a direct response to its ruling. Other forces pushing in this direction included an aggressive lobbying and public relations campaign by Mothers Against Drunk Driving.
3. Answers will vary, but many students will now likely interpret the federal government’s action to be coercive, as 28 of 32 states complied within 4 years of the passage of MLDA 1984.

Document A: United States Constitution, Article I, Section 8, Clause 3 (1787)
1. This section gives Congress the power to oversee trade between the states, as well as with foreign countries and the Indian tribes.

Document B: United States Constitution, Article VI, Section 2 (1787)
1. The Constitution is the supreme law of the land, and no law made by Congress or by the states may contradict it.

Document C: Gibbons v. Ogden (1824), Majority Opinion
1. Moving goods on interstate roads, trains, planes, or ships; producing or buying a good or service in one state and selling it in another; interstate banking; etc.
2. The ability of the federal government to make rules for interstate commerce supersedes the power of the states to regulate such commerce. Because of the Supremacy Clause, any state law in conflict with the Constitution is invalid.
Document D: Schechter v U.S. (1935), Unanimous Opinion

1. The federal government has the power to regulate the direct effects of intrastate commerce.

2. Indirect commerce may not be regulated by the federal government, but may be regulated by state governments.

3. Congress would then have authority almost every activity in which people engage.

Document E: Wickard v. Filburn (1942), Unanimous Opinion

1. Congress may regulate activities that exert a substantial effect on interstate commerce.

2. Document D, the Schechter decision, distinguishes between direct and indirect effects, and the indirect effects remain in control of the states. Document E, Wickard v. Filburn, says that all commercial activities, whether direct or indirect, may be regulated by Congress if they have a "substantial effect" on commerce.

3. Accept reasoned responses. Students may speculate regarding the composition and/or reasoning of the Court in the intervening seven years.

4. It is the foundation of modern Commerce Clause authority because it affirms the power of Congress to regulate such a sweeping range of activities.


1. Accept reasoned responses.

2. Answer depends on how student responded on Question 1.

3. Agrees with Document D: Schechter decision.


1. The Court only needed to ask whether Congress could have had a "rational basis" (good reason) for concluding that there is a significant connection between gun-related school violence and interstate commerce.

2. He writes that the Gun-Free School Zones Act did not expand the scope of the Commerce Clause because it simply applied pre-existing law to changing economic circumstances.


1. Crimes based on gender are not economic activities. The Commerce Clause only gives Congress power to regulate interstate economic activity. The Constitution clearly spells out the powers given to Congress, and those powers do not include unlimited power to regulate.

Document I: Gonzales v. Raich (2005), Majority Opinion

1. Each of these documents presents a different perspective on the issue of Congressional power to regulate local markets, so it is a stretch to for the opinion to refer to "well-settled" law.

2. Examples might include baked goods, craftwork, office work, child care, etc. Answers will vary as to whether or not Congress should have the right to regulate such individual activity (though the decision in Gonzales v. Raich arguably opens the door to such regulation.)

3. The Majority Opinion explains that the Court only needed to find that Congress could have had a good reason for concluding that respondents' home-grown marijuana might have affected interstate commerce.
Document J: Gonzales v. Raich (2005), Dissenting Opinion
1. There are no significant limits.

1. The cartoonist agrees with the argument in Document J, one of the dissents in Raich.

Document L: Maps of States With Legalized Medical Marijuana
3. Some students may say that states are choosing to exercise their power to regulate intrastate commerce even in the face of federal legislation. Others may suggest that even though the CSA was passed by Congress, it is possible that the executive branch has decided not to enforce the law, with respect to medical marijuana.

UNIT 2 – PRIVATE PROPERTY

Document A: Magna Carta Excerpts (1215)
1. Corn, money, horses, carts, wood
2. He must be paid for his property.
3. They are deeply rooted traditional rights.

Document B: Blackstone’s Commentaries on the Laws of England (1765)
1. Only by consent of the owner

Document C: The Fifth Amendment (1791)
1. Listed are protection against being deprived of life, liberty, or property without due process; guarantee of just compensation if one’s property is taken, and that takings will occur only for public use.
2. Individual rights

Document D: James Kent, Commentaries on American Law, Volume 2 (1827)
1. There are times when public welfare is more important than private property rights. Sometimes property owners must expect to put public welfare first.
2. Building of a road through farmlands.
3. Taking the property of A and giving it to B.

1. The right to keep others off of one’s property.
2. The right to keep others off of one’s property is fundamental to property rights. If the government wants to turn a private marina into a public one, it must pay just compensation to the owner, because he will have been denied his right to exclude others from his property.

* This was the majority opinion, written by Justice Rehnquist, in a 6-3 case.