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## Expansive Reading of Property Clause Upheld

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# EXPANSIVE READING OF PROPERTY CLAUSE UPHELD

CONSTITUTIONAL LAW—PROPERTY CLAUSE: The Eighth Circuit upholds congressional power to control the use of motorboats and snowmobiles within areas owned by Minnesota but regulated by the Boundary Waters Canoe Area Wilderness Act as a constitutional extension of the property clause. *State of Minnesota by Alexander v. Block*, 660 F.2d 1240 (8th Cir. 1981).

## INTRODUCTION

Superior National Forest in the north central United States contains an area known as the Boundary Waters Canoe Area Wilderness (BWCAW). This area is remarkable for its stands of virgin forest and more than 1,000 lakes connected by streams and short portages.<sup>1</sup> The BWCAW served as the highway system for America's Woodland Indians and it remains a water-lover's paradise. The State of Minnesota and the federal government have long sought to protect and preserve this unique area.<sup>2</sup> The Canadian government has also acted to preserve the area by designating the region which complements and extends the BWCAW as Quetico Provincial Park.

Congress enacted the Boundary Waters Canoe Area Wilderness Act of 1978 (BWCAW Act)<sup>3</sup> to safeguard this land further. Congress explained its rationale for the BWCAW Act:

(1) [to] provide for the protection and management of the wilderness so as to enhance public enjoyment and appreciation of the unique biotic resources of the region,

(2) [to] protect and enhance the natural values and environmental quality of the lakes, streams, shorelines and associated forest areas of the wilderness,

(3) [to] maintain high water quality in such areas,

(4) [to] minimize to the maximum extent possible the environmental impacts associated with mineral development affecting such areas,

(5) [to] prevent further road and commercial development,

(6) [to] provide for the orderly and equitable transition from motorized recreational uses to non-motorized recreational uses on those lakes, streams and portages . . . where such mechanized uses are to be phased out. . . .<sup>4</sup>

Prohibiting the use of recreational motor vehicles on land and water

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1. *State of Minnesota by Alexander v. Block*, 660 F.2d 1240, 1245 (8th Cir. 1981).

2. The federal government first acted in 1902 to reserve forest land in the area and in 1909 proclaimed the one million acre area the Superior National Forest. *Id.*

3. BWCAW Act of 1978, Pub. L. No. 95-495, 92 Stat. 1649 (1978).

4. *Id.*

was the primary tool which Congress planned to use in carrying out these stated goals.<sup>5</sup> The BWCAW Act was consistent with the policy Congress has followed since passing the Wilderness Act of 1964. That Act stated, "it is hereby declared to be the policy of the Congress to secure for the American people of present and future generations the benefit of an enduring resource of wilderness."<sup>6</sup> The BWCAW Act provided a blueprint for the gradual termination of motor vehicles from the BWCAW.

The BWCAW Act immediately created a controversy. Critics objected in particular to Section 4, which strictly limits the use of motor boats within the BWCAW and restricts the use of snowmobiles to two designated trails.<sup>7</sup> Private individuals, the state of Minnesota, and the National Association of Property Owners (NAPO) brought suit against the United States to have the Act declared unconstitutional.<sup>8</sup> The plaintiffs contended that the Act violated the Tenth Amendment of the Constitution by illegally extending congressional power.<sup>9</sup> Plaintiffs and defendants filed motions and cross motions for summary judgment. The United States District Court for the District of Minnesota granted defendants' motion for summary judgment and denied that of plaintiffs. Plaintiffs appealed.<sup>10</sup>

## PROPERTY CLAUSE

### *Background*

Apportioning power between the states and the federal government has created conflicts since the first days of the republic. The founding fathers sought to preserve state sovereignty and local government, yet they recognized the need for a detached federal government to arbitrate disputes

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5. 123 CONG. REC. H621 (daily ed. Jan. 31, 1977) (remarks of Rep. Fraser, who introduced the Act).

6. Wilderness Act of 1964, 16 U.S.C. § 1131a (1964).

7. Section 4(e) permits the use of snowmobiles only until January 1964. BWCAW Act of 1978 Pub. L. No. 95-495, § (e), 92 Stat. 1649, 1650-52 (1978). The Act designates quotas of motorized craft for each of the lakes, limits the horsepower and speed of the boats, and provides dates for either termination or reassessment of these uses. *Id.*

8. The Eighth Circuit consolidated these three cases. In the first and most important case, Minnesota, NAPO, and other individuals challenged the government's right to legislate over lands it does not own. This case was originally filed in United States District Court for the District of Columbia. Plaintiffs dismissed it without prejudice after Judge Harold Greene denied their motion for a temporary restraining order. Plaintiffs refiled their action in United States District Court in Minnesota. The second case consolidated the other two lawsuits filed by NAPO against the United States and against the Secretary of Agriculture. In the second case, the plaintiffs complained that the Act constituted an unconstitutional "taking" of property under the Fifth Amendment, and that it was an unconstitutional delegation of power to an individual (the Secretary). The second case also involved a challenge that the Act conflicted with Canadian-United States treaties and thus must fall. The court easily and quickly laid all the issues in the second case to rest. This article will concentrate, as did the court, on the first case.

9. The Tenth Amendment provides that "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." U.S. Const. Amend. X.

10. National Association of Property Owners v. U.S., 499 F. Supp. 1223 (D.Minn. 1980).

between the states and to guide foreign policy.<sup>11</sup> The Articles of Confederation failed in large part because they did not allocate sufficient power to the central government.<sup>12</sup> In an effort to strike a more successful balance of power, the drafters of the Constitution extended Congress' power. One such extension is the Property Clause in Article 4, which states that "[t]he Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."<sup>13</sup> The states and Congress have disagreed over the interpretation of this clause. *State of Minnesota by Alexander v. Block*<sup>14</sup> is a classic illustration of that controversy.

### *Judicial Interpretation of the Property Clause*

The Supreme Court has given the Property Clause both broad and narrow interpretations, depending on the active or passive role its members believe is proper for Congress. An early case in which the clause was broadly interpreted is *Camfield v. United States*.<sup>15</sup> In *Camfield*, two individuals owning alternating sections of land in a checkerboard area built a square fence enclosing both their sections and sections owned by the government. They therefore had the exclusive use of their own land, and the government's land. The portions of the fence along the government land were several inches over the boundary and on private land. The fence thus enclosed the entire area, but did not touch government property. The government, however, sued in equity to have the fence removed. The plaintiff argued that the government could not use the Property Clause to force him to remove the fence because it was all on private property. He further contended that the government's power could not extend even a few inches over the boundary onto private property to regulate his fence-building.

These arguments did not persuade the Court. Mr. Justice Brown asserted that one man may not do something on his own private land constituting a nuisance to adjoining property owners.<sup>16</sup> The Court stressed that the government has the same rights as any individual with respect to its property. The government may maintain possession, eject trespassers, and object to its neighbors' nuisances. The Court held that the fence was an illegal encroachment on government land and a nuisance, and ordered its removal. The court relied on the Property Clause for the proposition that Congress' police power over its own lands is not subject to any distinct limitations or boundaries.<sup>17</sup> The Court found that suing

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11. A. KELLY & W. HARBISON, *THE AMERICAN CONSTITUTION* 117-35 (5th ed. 1976).

12. *Id.*

13. U.S. Const. art. 4, § 3, cl. 2.

14. 660 F.2d 1240 (8th Cir. 1981).

15. 167 U.S. 518 (1897).

16. *Id.* at 523-24.

17. *Id.* at 524-26.

Camfield to remove his fence was a valid exercise of Congress' power, stating that any other interpretation would make a mockery of congressional power under the Property Clause.

Recent cases follow this broad interpretation of the Property Clause. In *Kleppe v. New Mexico*,<sup>18</sup> the Supreme Court was asked to decide whether congressional regulations aimed at protecting wild burros and horses could be sustained under the clause as a "needful" regulation "respecting" public lands.<sup>19</sup> The state of New Mexico and private individuals argued that the Property Clause must be interpreted literally as power over property only, not power over animals on the property. The court, however, construed the Clause broadly, noting that "the power over the public lands thus entrusted to Congress [in the Constitution] is without limitation."<sup>20</sup> In effect, the Court found that Congress was self-regulating because "the Clause . . . gives Congress the power to determine what are 'needful' rules 'respecting' the public lands."<sup>21</sup> The Court, citing *Camfield*, held that regulations respecting animals on the public lands were both appropriate and valid, as Congress was both a proprietor and a legislator over the public domain.

In *United States v. Brown*,<sup>22</sup> the Eighth Circuit further extended and clarified congressional power under the Property Clause. *Brown* involved a national park in Minnesota in which Congress had forbidden the carrying of firearms and hunting. Carl Brown was convicted for possession of firearms in the park. He appealed his conviction, and Minnesota participated as *amicus curiae*. Minnesota and Brown argued that the federal government could only prevent hunting on the land owned exclusively by the federal government and that the restrictions were illegal as applied to the portions of the national park retained by the state. The court disagreed and held that the Property Clause supported the government's restrictions.<sup>23</sup>

The hunter in *Brown* had never entered federal land; he had entered the park from state-owned land and had been hunting on a state-owned lake when arrested. The court reasoned that the Property Clause empowered Congress to regulate lands not federally owned to protect nearby

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18. 426 U.S. 529 (1976).

19. *Id.* at 535. Plaintiffs challenged the validity of the Wild Freeroaming Horses and Burros Act, 16 U.S.C. §§ 1331-1340 (1970 & Supp. IV 1980). The Act required the cooperation of the State with the Secretary of Agriculture in protecting the animals. New Mexico at first complied with the Act, but soon balked, as did individual ranchers in the state.

20. 426 U.S. at 539.

21. *Id.*

22. 552 F.2d 817 (8th Cir. 1977), *cert. denied*, 43 U.S. 949 (1977).

23. The Court reasoned that because the state had cooperated and actively participated in the creation and designation of the Voyageur National Park with knowledge of Congress' clear intent to prohibit firearms and hunting, it could not now be heard to complain about these prohibitions. The Court found that the regulations could be sustained either under this reasoning, or under the Property Clause. *Id.* at 820-22.

federal lands. The critical question for the *Brown* court was not who owned the land, but "whether federal regulations can be deemed 'needful' prescriptions 'respecting' the public lands."<sup>24</sup>

The Eighth Circuit found that duck hunting on lands immediately adjacent to national parks presented potential dangers and unwarranted intrusions onto public lands, injuries to park users, and disruptions of wildlife migration patterns. The court thus found the prohibitions against firearms and hunting to be valid regulations "designed to promote the purposes of the federal lands within the national park."<sup>25</sup>

This line of cases indicates that the Property Clause sustains a regulation or Act when Congress can show a nexus between the challenged regulation and a policy designed to protect or enhance the public welfare. This interpretation is not iron-clad, however. The Supreme Court has also more narrowly construed the Property Clause.

The leading case for the narrow interpretation is *Kansas v. Colorado*.<sup>26</sup> This case concerned a dispute between the two states over the use of the Arkansas River. Kansas complained that Colorado was taking more than its fair share of water, to the detriment of Kansas farmers. The federal government attempted to intervene, asserting that its power over the reclamation of arid lands in these states gave it the right to apportion the river's waters. The Supreme Court rejected the attempts to intervene, holding that the government had no power under the Property Clause to join a dispute between these states.

The Court recognized that the Constitution is not to be construed narrowly or technically, but it stated that the Constitution does not grant Congress legislative control over the states.<sup>27</sup> The Court found that the Tenth Amendment was controlling. It further stated that the Constitution had not granted to the federal government the power to arbitrate disputes over water and therefore the power remained with the states or the people.<sup>28</sup> The Court refused to allow the United States to enter the dispute, even via the Property Clause. It held that the United States could intercede only so far as to preserve or improve the navigability of the Arkansas River, a power enumerated and granted to it in the Constitution.<sup>29</sup>

The Supreme Court generally interprets the Property Clause broadly

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24. *Id.* at 822.

25. *Id.* at 822-23. Citing the Tenth Amendment, the court of appeals followed the reasoning in *Kleppe* and *Camfield* that states laws conflicting with valid federal legislation must be overruled.

26. 206 U.S. 46 (1907).

27. *Id.* at 88-90.

28. *Id.*

29. *Id.* at 117. The Court found that the power to regulate navigability flowed from Congress' power to regulate interstate commerce. *Id.* at 86. Article One grants power to Congress over interstate commerce: "The Congress shall have power . . . to regulate commerce . . . among the several states." U.S. Const. art. I, § 8, cl. 3.

and allows Congress great liberties in regulating federal lands. The Court has imposed some limits, however, on congressional power, as in *Kansas v. Colorado*. The distance that congressional regulation may extend from the borders of government land remains unclear.

*State of Minnesota by Alexander v. Block Supports A Broad Interpretation of the Property Clause*

In *State of Minnesota by Alexander v. Block*,<sup>30</sup> Minnesota alleged that the BWCAW Act was unconstitutional because Congress had legislated over the entire Wilderness Area, part of which was owned by Minnesota. The state challenged Congress' ability to regulate property owned by the states as an illegal extension of the Property Clause. The federal government contended that the legislation was a valid exercise of its power, supported by the Property Clause and numerous decisions of the United States Supreme Court.

The state of Minnesota and the private plaintiffs relied heavily on *Kansas v. Colorado*. The Eighth Circuit, however, found that the narrow construction urged by these groups was inappropriate in light of *Camfield* and the line of cases following it. The court further noted that the Supreme Court had greatly limited *Kansas v. Colorado* and that more recent expansive interpretations were much more on point and persuasive.<sup>31</sup>

The Eighth Circuit in *State of Minnesota* attempted to "decide the question left open in *Kleppe*—the scope of Congress' property clause power as applied to activity occurring off federal land."<sup>32</sup> Following the line of cases flowing from *Camfield*, the Eighth Circuit found that Congress clearly has the power to designate federal land for particular purposes, such as wilderness preservation. The court further held that "as a necessary incident of that power, Congress must have the ability to insure that these lands be protected against interference with their intended purposes," even if the protective regulations apply to non-federal land.<sup>33</sup>

The Eighth Circuit restricted its analysis to whether Congress' motorized use restrictions were reasonably related to the purposes sought in the creation of the BWCAW.<sup>34</sup> The court followed the test enunciated in *Brown and Kleppe*: if Congress can show a nexus between the challenged regulation and a policy designed to protect or enhance the public welfare, then the regulation or Act can be sustained by the Property Clause.

The court looked to the purposes of the BWCAW Act and noted the congressional goal of protecting the environmental integrity of the wil-

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30. 660 F.2d 1240 (8th Cir. 1981).

31. *Id.* at 1249, n. 18. As the court limited *Kansas v. Colorado* in a footnote, it may prefer to keep its analysis intact.

32. *Id.* at 1248.

33. *Id.* at 1249.

34. The purposes are set forth in the text *supra* accompanying note 4.

derness. The Act contains congressional findings that the orderly management of wilderness areas and their preservation necessitates protection of wilderness environmental systems.<sup>35</sup> The court found that hearings, testimony, and legislative history provided ample evidence that the use of motorized vehicles was incompatible with protecting wilderness areas. The court stated that "Testimony established that the sight, smell and sound of motorized vehicles seriously marred the wilderness experience of canoeists, hikers, and skiers and threatened to destroy the integrity of the wilderness."<sup>36</sup> The Eighth Circuit concluded that congressional restrictions on motorized vehicles were rationally related to its goal of preserving wilderness areas. The court further found that the preservation of wilderness areas was in the public interest. Thus, the court held that the regulations were constitutionally supported by the Property Clause.<sup>37</sup>

### CONCLUSION

The holding in *State of Minnesota by Alexander v. Block* is neither a radical departure from nor a shocking extension of precedent construing the Property Clause. It reaffirms and strengthens earlier decisions allowing legislation to impact on non-public lands, provided that Congress can demonstrate a connection between the regulation and a sound policy which protects or enhances public welfare. This nexus test is not a difficult one for Congress to meet, particularly if it has included a purpose section in the challenged legislation. This case is important because it supports and encourages congressional action in important and controversial areas such as environmental protection.

A contrary holding in this case would have spelled disaster for environmentalists and would have seriously reduced Congress' ability to carry out its policies. Congress needs broad regulatory powers to preserve wilderness areas. States often challenge wilderness legislation, as they are more easily swayed by opposing interest groups. Thus, wilderness protection is most successful as a national policy. The decision in *State of Minnesota by Alexander v. Block* restricts judicial inquiry in environmental regulation in national parks to whether the regulation is rationally related to congressional policy. This application of judicial restraint sensibly facilitates wilderness preservation.

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35. 660 F.2d at 1251.

36. *Id.*

37. The court further held that the Act did not contravene the Tenth Amendment, that it was not an illegal "taking" of property, under the Fifth Amendment, that it did not violate treaties regarding regulation of waters along international boundaries, and that it was not invalid for failure to file an environmental impact statement. *Id.* at 1253-59.