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Minnesota v. Clover Leaf Creamery Co.

Laura Cohen

Minnesota v. Clover Leaf Creamery Co.

101 S. Ct. 715, 68 L. Ed. 2d 222 (1981)

INTRODUCTION

American consumers are feeling the backlash of their propensity for disposable packaging, which contributes significantly to this country's solid waste management and energy consumption problems.[1] In response, numerous state legislatures have enacted or considered a range of packaging laws designed to place limits on the use of nonrecyclable materials and containers.[2] The Minnesota legislature, after banning the use of metal pull-tab containers for soft drinks, beer, and tea,[3] sought to further promote the state's conservation efforts. In 1977, it enacted a statute that prohibited the sale of milk in nonreturnable, nonrefillable plastic containers.[4] Several Minnesota dairies and plas-

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1. ENVIRONMENTAL PROTECTION AGENCY (EPA) RESOURCE RECOVERY AND WASTE REDUCTION: FOURTH REPORT TO THE CONGRESS (hereinafter EPA REPORT) 15 (table 2), 17 (table 3) (1977). Disposable packaging constitutes more than half of all solid refuse generated by consumers (excluding food waste). *Id.* EPA has also estimated that enactment of a nationwide bottle deposit law would yield energy savings equivalent to 42 million barrels of oil per year. *Id.* at 70.

2. Among the various types of state packaging laws are: (1) mandatory deposits on beverage containers, *see, e.g.*, CONN. GEN. STAT. ANN. § 22a-78 (West Supp. 1980); OR. REV. STAT. § 459.820 (1979), (2) taxes on products likely to end up as litter, *see, e.g.*, CAL. REV. & TAX CODE §§ 42000-42703 (West 1979); COLO. REV. STAT. § 24-32-1001 (Supp. 1978), and (3) bans on specific types of containers, *see, e.g.*, DEL. CODE ANN. tit. 7, § 6059 (Supp. 1978) (ban on nonrefillable glass containers).

3. MINN. STAT. ANN. § 325.248 (West Supp. 1980).

4. Laws of Minn. 1977, ch. 268, §§ 1 & 2 (codified at MINN. STAT. ANN. § 116F.21 West Supp. 1980) (repealed by Laws of Minn. 1981, ch. 151, § 2). The statute specifically prohibited the retail sale of milk or fluid milk products in a nonreturnable, nonrefillable rigid or semi-rigid container at least 50% of which is plastic.

The purpose and policy sections provide:

Statement of Purpose.

> The legislature finds that the use of nonreturnable, nonrefillable containers for the packaging of milk and other milk products presents a solid waste management problem for the state, promotes energy waste, and depletes natural resources. The legislature therefore, in furtherance of the policies stated in Minnesota Statutes, section 116F.01, determines that the use of nonreturnable, nonrefillable containers for packaging milk and other milk products should be discouraged and that the use of returnable and reuseable packaging for these products is preferred and should be encouraged.

Id.

Statement of Policy.

> The legislature seeks to encourage both the reduction of the amount and types

tics manufacturers[5] brought suit against the state and successfully challenged the statute in state court[6] as violative of both the equal protection clause[7] and the commerce clause[8] of the federal constitution. The Minnesota Supreme Court affirmed the lower court's decision on equal protection grounds, but did not reach the commerce clause issue.[9] The United States Supreme Court granted certiorari in *Minnesota v. Clover Leaf Creamery Co.*[10] and, in its first review of a state packaging

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of material entering the solid waste stream and the reuse and recycling of materials. Solid waste represents discarded materials and energy resources, and it also represents an economic burden to the people of the state. The recycling of solid waste materials is one alternative for the conservation of material and energy resources, but it is also in the public interest to reduce the amount of materials requiring recycling or disposal.

Id.

The legislative debates reveal that in early 1977 major dairies were on the verge of making a significant financial commitment to the throwaway plastic container. The legislature had to act quickly before the plastic nonreturnable container could develop an economic foothold in the market which would, politically if not economically, preclude a switch to returnable containers. Transcript of the Full Senate Floor Discussion on H.F. 45, at 1-2 (May 20, 1977), *quoted in* Brief for Petitioner at 8-10, Minnesota v. Clover Leaf Creamery Co., 101 S. Ct. 715 (1981).

5. There were two identifiable groups of plaintiffs in the action. One group of plaintiffs was involved in the packaging and sale of milk, and the other in the production and sale of plastic goods and associated equipment. The dairy industry group included Clover Leaf Creamery Company, a Minnesota dairy; Marigold Foods, Inc., a Minnesota dairy; Wells Dairy, Inc., an Iowa dairy; and Weber & Barlow Stores, Inc., a grocery retailer. The industry group included the Society of Plastics Industry, Inc., the principal trade association of the plastics industry; Phillips Petroleum Company, a multinational petrochemical company; Hoover Universal, Inc., a maker of molding equipment; and M-H Packaging Systems, Inc., a molder of plastic containers.

6. Clover Leaf Creamery, Inc. v. State (Ramsey County, Minn., District Court, April 7, 1978) (unpublished decision).

7. U.S. CONST. amend. XIV states: ". . . nor [shall any State] deny to any person within its jurisdiction the equal protection of the laws."

8. U.S. CONST. art. 1, § 8, cl. 3 states: "The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States . . . ."

9. Clover Leaf Creamery Co. v. State, 289 N.W.2d 79 (Minn. 1979). After conducting an exhaustive review of the evidence, the court found that the state's evidence, consisting primarily of a 1977 final report by Midwest Research Institute and the United States Environmental Protection Agency (EPA) entitled "Resource and Environmental Profile Analysis of Five Milk Container Systems," was persuasively attacked by plaintiffs' expert witnesses. *Id.* at 83. The court concluded that in terms of solid waste disposal problems, energy waste, and the depletion of natural resources, plastic containers were no worse than paperboard. The court also rejected the state's argument that the ban on plastic nonrefillables was the first step in a program to promote environmentally sound packaging such as refillable containers; the court found that future action by the Minnesota legislature to ban nonreturnable paperboard containers was "uncertain, if not highly doubtful," and therefore concluded that the asserted goal was "speculative and illusory." *Id.* at 86.

Judge Wahl, dissenting, concluded that the statute was a constitutionally permissible first step under New Orleans v. Dukes, 427 U.S. 297 (1976), and was valid under the commerce clause as well. *Id.* at 83.

10. 101 S. Ct. 715 (1981) (Brennan, J., writing for a six-person majority; Powell, J., concurring in part and dissenting in part; and Stevens, J., dissenting. Rehnquist, J., took no part in the consideration or decision of the case). Amicus briefs were filed by the United States and by the Minnesota Public Interest Research Group.

law,[11] upheld the Minnesota legislature's restriction on plastic milk containers against both constitutional challenges.

This Note examines the background of the *Clover Leaf* decision and the Supreme Court's equal protection and commerce clause analysis of Minnesota's narrowly-drawn packaging legislation. It concludes with a discussion of the potential impact of the *Clover Leaf* decision on future disposable packaging legislation.

I

CASE HISTORY AND BACKGROUND

A number of states, including Minnesota, have implemented laws that require a mandatory deposit on all recyclable containers.[12] These deposit laws, which have the potential to conserve energy, reduce air and water pollution, and save consumers billions of dollars annually,[13] have generally withstood legal challenge.[14] No court has found a deposit law unconstitutional under either a commerce clause or equal protection theory.[15] In enacting the nation's first legislative ban on nonrefillable, nonreturnable plastic milk containers,[16] Minnesota formulated a statute less comprehensive than typical mandatory deposit laws. The affected parties—Minnesota's dairy industry and various plastics industries—filed suit in the Ramsey County District Court to enjoin enforcement of the statute on constitutional grounds.[17] Specifically, plaintiffs argued that the Minnesota statute violated equal protection guarantees because the classification of plastic containers as

11. Comment, *Plastic Bans, Bottle Bills and Comprehensive Container Legislation: Packaging Laws Get Mixed Reviews in State Courts*, 9 ENVT'L L. REP. 10,193, 10,194 (1979).

12. *See, e.g.*, DEL. CODE. ANN. tit. 7, ch. 60; IOWA CODE ANN. § 455, ch. 12; ME. REV. STAT. ANN. tit. 32, §§ 1861-1869; MICH. COMP. LAWS § 18.1206; OR. REV. STAT. §§ 459.810-459.890; and VT. STAT. ANN. tit. 10, §§ 1521-1527.

13. EPA has estimated that enactment of a nationwide bottle deposit law would yield energy savings equivalent to 42 million barrels of oil per year. Furthermore, it would lead to the creation of 82,000 jobs, and the net consumer savings resulting from such a law have been estimated at $2.5 billion annually. EPA REPORT, *supra* note 5, at 70, 71, 74. A federal task force has concluded that such a law would reduce emissions of air pollutants by approximately 500,000 tons per year in 1985 and trim annual waterborne discharges by roughly 75,000 tons. RESOURCE CONSERVATION COMMITTEE, COMMITTEE FINDINGS AND STAFF PAPERS ON NATIONAL BEVERAGE CONTAINER DEPOSITS 34, 42 (1978).

14. Comment, *supra* note 11, at 10,194-95. "Supporters of packaging laws have faced their greatest hurdles in getting such measures passed in the first place. . . ." *Id.*

15. *See, e.g.*, American Can Co. v. Oregon Liquor Control Comm'n, 15 Or. App. 618, 517 P.2d 691 (1973) (Oregon container deposit law sustained on equal protection and commerce clause grounds); Bowie Inn, Inc. v. City of Bowie, 274 Md. 230, 335 A.2d 679 (1975) (Maryland city ordinance requiring return deposits on all soft drinks and malt beverage containers upheld under both equal protection and commerce clause).

16. Clover Leaf Creamery Co. v. State, 289 N.W.2d 79, 81 n.6 (1979).

17. Clover Leaf Creamery, Inc. v. State (Ramsey County, Minn., District Court, April 7, 1978) (unpublished decision). *See also* Clover Leaf Creamery v. State, 289 N.W.2d 79, 80 (Minn. 1979).

environmentally harmful was not rationally related to Minnesota's environmental goals.[18] At trial, plaintiffs produced "impressive supporting evidence" that the plastic milk jug prohibition would deplete natural resources, exacerbate solid waste disposal problems, and squander energy.[19] Given the consumer preference for throwaway containers, the plaintiff industries argued that the ban would only result in a transfer of the plastic container market share to environmentally inferior paperboard containers.[20] Plaintiffs also argued that the statute's true purpose was to protect Minnesota's paper and timber industries at the expense of out-of-state plastics industries.[21] Such discriminatory regulation, argued the plastic manufacturers, placed an unreasonable burden on interstate commerce.[22]

Plaintiffs from Hawaii and New York had also successfully challenged their own states' plastic packaging laws on equal protection grounds.[23] In the wake of these successful statutory challenges and the Minnesota Supreme Court's decision in *Clover Leaf*, one commentator concluded that the death knell had sounded for legislative attempts to ban plastic packaging.[24] On January 21, 1981, the United States Supreme Court reversed this trend, upholding the Minnesota plastic milk container ban. Reiterating that equal protection challenges to socioeconomic legislation warrant only limited judicial scrutiny, the Court's decision affords wide latitude for state experimentation with environmental legislation.

II
SUPREME COURT ANALYSIS IN CLOVER LEAF

A. Equal Protection Analysis

The constitutionality of a legislative classification under the equal protection clause depends on the purpose attributed to the legislation and on whether there is some rational relationship between that pur-

18. 289 N.W.2d 79, 80 (1979).
19. 101 S. Ct. at 723.
20. Brief for Plaintiffs/Respondents at 11-22.
21. *Id.* at 5, 9.
22. *Id.*
23. Juice Tree Hawaii, Inc. v. Yuen, 9 ENVT'L L. REP. 20,739 (Hawaii Cir. Ct. 1979) (holding a packaging statute to be in violation of due process, equal protection and commerce clauses, and impermissibly vague); Society of Plastics Indus., Inc. v. City of New York, 68 Misc. 2d 366, 326 N.Y.S.2d 788 (Sup. Ct. 1971) (holding that a city ordinance taxing the sale of plastic containers violated the equal protection clause because the city had not shown that plastic waste produced environmental risks and solid waste management problems not common to other packaging materials).
24. "[T]he writing on the wall emerges vividly. . . . [I]t is a waste of legislative energies to enact prohibitions against plastic packaging . . . . The latest decisions establish a trend which now appears unlikely to be reversed." Comment, *supra* note 11, at 10,198.

pose and the classification established to achieve it.[25] The Court in *Clover Leaf* made the critical determination of legislative purpose in summary fashion. After noting that the parties had conceded the legitimacy of the legislature's stated goals of promoting resource conservation, easing solid waste disposal, and conserving energy, the Court expressed its willingness to accept the Minnesota Supreme Court's finding that these were the actual objectives, unless an examination of the circumstances compelled the conclusion that they " 'could not have been a goal of the legislation.' "[26] Thus, the Court limited its consideration to the "narrow issue whether the legislative classification between plastic and nonplastic nonreturnable milk containers is rationally related to achievement of the statutory purposes."[27]

Defining the scope of review under this standard, the Court made clear that equal protection challenges to economic legislation warrant only limited judicial inquiry.[28] Whether a statute will in fact achieve

25. J. NOWAK, R. ROTUNDA & J. YOUNG, HANDBOOK ON CONSTITUTIONAL LAW 524 (1978) [hereinafter cited as NOWAK].

26. *Clover Leaf*, 101 S. Ct. at 723 n.7 (citing Weinberger v. Wiesenfeld, 420 U.S. 636, 648 n.16 (1975)). In this case, the parties agreed that the familiar "rational basis" test set forth in New Orleans v. Dukes, 427 U.S. 297, 303 (1976) was the appropriate standard of review for equal protection analysis. The parties did not try to invoke any stricter measure of equal protection. This is consistent with the Minnesota Supreme Court's decision. The trial court, however, had adopted the plaintiffs' position that the true purpose of the statute was illegitimate—to "isolate from interstate competition the interests of certain segments of the local dairy and pulpwood industries." Brief for Plaintiffs/Respondents at 23.

27. 101 S. Ct. at 723 n.7 (quoting Weinberger v. Wiesenfeld, 420 U.S. 636, 648 n.16 (1975)).

A court often faces difficulty in determining the appropriate standard of review to be used when a party charges that a statute, while neutral on its face, is actually a device to create an unconstitutional classification. The court must decide whether the charge merits adoption of a more rigorous standard of review to prevent the subversion of the equal protection guarantee by a legislative body. NOWAK, *supra* note 25, at 531. The Court will intensify its review in a case like Arlington Heights v. Metropolitan Housing Dev. Corp., 429 U.S. 252 (1977), where violation of a fundamental right is alleged. In that case, the Court stated that evidence of disproportionate impact on petitioner's class was not sufficient to support a determination of "invidious racial discrimination." *Id.* at 265 (citing Washington v. Davis, 426 U.S. 229, 242 (1976)). *See also* Sherbert v. Verner, 374 U.S. 398, 406 (1963) (first amendment interest in religion); Korematsu v. United States, 323 U.S. 214, 216 (1944) (race); Skinner v. Oklahoma, 316 U.S. 535, 541 (1942) (right to marry and procreate). A court may also look to legislative and administrative history and departures from normal procedure and, in extraordinary instances, legislators may be called to testify, although such testimony may be subject to a claim of privilege. *Arlington Heights*, 429 U.S. at 267-68. In *Clover Leaf*, the Court apparently did not believe it necessary to go to such lengths to ascertain the legislative purpose. The Court indicated that it had reviewed the legislative history, 101 S. Ct. at 723 n.7, and it was evidently satisfied that the stated environmental purposes could have been goals of the legislation.

28. 101 S. Ct. at 722-24. *See* New Orleans v. Dukes, 427 U.S. 297 (1976), in which the city was allowed to distinguish between long-established and recently-established pushcart vendors: "[O]ur decisions presume the constitutionality of the statutory discriminations and require only that the classification challenged be rationally related to a legitimate state interest." *Id.* at 303.

The rational relation test is a highly cursory standard of review, developed after 1937

its stated purpose is beside the point; speculation on this issue is left to the legislature. Thus the Court must approve legislation "[w]here there was evidence before the legislature reasonably supporting the classification . . . ."[29] Accordingly, the Court found that the Minnesota Supreme Court had exceeded constitutional bounds by substituting its judgment for that of the legislature[30] when it independently reviewed evidence that the trial court admitted was " 'in sharp conflict.' "[31]

Minnesota offered several theories to support its classification, any one of which, if accepted by the Court, would have been sufficient to sustain the constitutionality of the statute.[32] First, the state argued that the elimination of the popular, but resource-wasteful, plastic milk jug would encourage industry to produce environmentally superior containers, even though recyclable containers were not available at that time.[33] The Minnesota Supreme Court, in rejecting that argument, expressed doubt that the state would extend its efforts to the recycling area.[34] The United States Supreme Court, reversing, made it clear that a legislature may eliminate a perceived evil using a step-by-step approach[35] and found the state's approach acceptable in this regard.[36] Although plaintiffs asserted that Minnesota's initial step did not further the statute's environmental goals,[37] the Court disagreed: "[T]he Equal Protection Clause is satisfied by our conclusion that the Minnesota Legislature *could rationally have decided* that its ban . . . might foster greater use of environmentally desirable alternatives."[38]

Second, Minnesota contended that a ban on plastic nonreturnables

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when the Supreme Court, retreating from its aggressive role in legislative review, rejected both the substantive due process theory and the claim to an institutional ability to determine the reasonableness of classifications under the equal protection clause. NOWAK, *supra* note 25, at 523. So limited is rational relation review that only one case involving economic regulation has been invalidated by the Supreme Court in the last 50 years. Amicus Brief for the United States at 13 n.7. That case was Morey v. Doud, 354 U.S. 457 (1957), in which exemption for one firm from requirements governing sale of money orders was held invalid. Morey v. Doud was subsequently overruled by New Orleans v. Dukes, 427 U.S. at 306.

29. *Clover Leaf*, 101 S. Ct. at 724.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. Clover Leaf Creamery Co. v. State, 289 N.W.2d 79, 86 (1979).

35. In New Orleans v. Dukes, 427 U.S. 297 (1976), the Court upheld an ordinance which banned the sale of food from some, but not all, pushcarts in the French Quarter of New Orleans. With respect to the "grandfather clause" which allowed several of the older pushcart vendors to continue operation, the Court stated: "Legislatures may implement their program step by step . . . in such economic areas, adopting regulations that only partially ameliorate a perceived evil and deferring complete elimination of the evil to future regulations . . . ." *Id.* at 303.

36. 101 S. Ct. at 726.

37. *Id.* at 723-24.

38. *Id.* at 725 (italics in original).

would reduce future economic disturbance of its dairy industry. If the state postponed its move toward encouraging greater use of environmentally superior milk containers, the Minnesota dairy industry would later stand to lose large amounts of capital investment in plastic container production facilities. The Court upheld the state's position, citing *New Orleans v. Dukes*[39] and other precedents.[40] That the Minnesota legislature had "grandfathered" paperboard milk containers[41] did not make the ban on plastic nonreturnables arbitrary or irrational.[42]

Finally, the state asserted that the Minnesota statute would help conserve energy and ease solid waste disposal problems. Studies considered by Minnesota's lawmakers indicated that production of paperboard containers requires less energy than production of plastic milk containers and, further, that plastic containers occupy a greater volume in landfills than other nonreturnable containers.[43] The Court found both environmental purposes to be valid because, in view of the evidence before the legislature, the question was "at least debatable."[44]

B. Commerce Clause Analysis

State legislation in areas of legitimate local concern such as environmental protection and resource conservation must not run afoul of the commerce clause of the federal Constitution.[45] Although the Minnesota Supreme Court did not reach the issue, the Court addressed the plaintiffs' original commerce clause challenge.[46]

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39. 427 U.S. 297 (1976).

40. 101 S. Ct. at 725 (citing Katzenbach v. Morgan, 384 U.S. 641, 657 (1966); Williamson v. Lee Optical Co., 348 U.S. 483, 489 (1955); Ry. Express Agency v. New York, 336 U.S. 106, 110 (1949).

41. The Court's use of the term "grandfathering" was an analogy to *New Orleans v. Dukes*. In that case, the city of New Orleans had passed an ordinance banning pushcart vendors from the city's historic French Quarter, but had excluded from the operation of the ordinance any vendor who had been in business in that area for at least eight years. The Court upheld this "grandfather clause," perhaps because vendors with a longstanding business operation had some sort of reliance interest that the city was allowed to recognize if it so desired. *See id.* at 305.

42. *Id.*

43. *Id.* at 726, 727.

44. *Id.* at 726. The Court stated: "Although parties challenging legislation under the Equal Protection Clause may introduce evidence supporting their claim that it is irrational, . . . they cannot prevail so long as 'it is evident from all considerations presented to [the legislature] and those of which we may take judicial notice, that the question is at least debatable.'" *Id.* at 724 (quoting United States v. Carolene Products Co., 304 U.S. 144, 154 (1938)).

45. 101 S. Ct. at 727.

46. The majority in the Supreme Court decision cited the "obvious factual connection between the rationality analysis under the Equal Protection Clause and the balancing of interests under the Commerce Clause" to justify reaching the question. *Id.* at 727 n.14. Justice Powell dissented on this point, based on the Minnesota district court's specific finding that the actual purpose of the statute was to promote local industries at the expense of nonresident dairy and plastics industries. *Id.* at 730. Justice Powell explained that the Court

Applying the test set forth in *Pike v. Bruce Church, Inc.*,[47] the Court first examined the Minnesota law to determine whether its purported environmental objectives amounted to economic protectionism of local interests.[48] In prior cases the Court has emphasized that legitimate environmental objectives will not save a statute that on its face, or in its application, discriminates against articles of commerce from outside the state.[49] In *Clover Leaf*, the Court found that Minnesota's ban on plastic milk containers was not intended to favor local pulpwood industries at the expense of out-of-state plastics manufacturers. Rather, Justice Brennan explained that the statute regulated "even-handedly" and did not distinguish between intrastate and interstate commerce: Minnesota's statute prohibited "*all* milk retailers from selling their products in plastic, nonreturnable containers, without regard to whether the milk, the containers, or the sellers, are from outside the state . . . ."[50]

The Court next inquired whether the incidental burdens imposed on interstate commerce by the Minnesota plastic ban were " 'clearly excessive in relation to putative local benefits.' "[51] The burden on commerce was found to be "relatively minor,"[52] both because most dairies use several different types of containers and because the statute permitted continued production of plastic pouches and plastic returnable bottles.[53] Indicating some sympathy with the state's objectives, the Court further found that even if the out-of-state plastics industry was burdened relatively more than the Minnesota pulpwood industry, this burden was not " 'clearly excessive' . . . in light of the substantial state

should accept these findings, in the absence of a contrary finding by the Minnesota Supreme Court. He noted that court's discussion of the stated legislative intent to promote environmental interests, but interpreted the discussion as an acknowledgment of the *avowed* legislative purpose only; he maintained that the Minnesota Supreme Court had expressed no opinion as to whether promotion of environmental interests was the *actual* purpose of the statute. Therefore Justice Powell believed that the Court erred in reaching a decision "flatly contrary to the only relevant specific findings of fact." *Id.*

47. 397 U.S. 137 (1970) (Arizona requirement that all canteloupes grown in state be packaged in state was excessively burdensome to interstate commerce). The first stage of the test is whether the statute imposes restrictions evenhandedly on intrastate and interstate commerce. Second, the statute must address a legitimate local public interest. Third, the statute must be reasonably designed to achieve that interest. Fourth, the benefits will be weighed against the economic burdens of compliance, the statute being upheld unless the burden is "clearly excessive in relation to the putative local benefits." Finally, the court will consider the availability of less burdensome alternatives. *Id.* at 142, *cited in Clover Leaf*, 101 S. Ct. at 728.

48. 101 S. Ct. at 727.

49. City of Philadelphia v. New Jersey, 437 U.S. 617 (1978). The Court struck down a New Jersey statute prohibiting the importation of solid and liquid wastes into the state, even though the statute advanced health and environmental objectives.

50. 101 S. Ct. at 728 (emphasis added).

51. *Id.* (citation omitted).

52. *Id.*

53. *Id.* at 728-29.

interest in promoting conservation of energy and other natural resources and easing solid waste disposal problems . . . ."[54] Finally, the Court considered alternatives to Minnesota's packaging law.[55] The alternatives suggested by plaintiffs were rejected as more burdensome on commerce (for example, banning all nonreturnables) or less likely to be effective (for example, providing incentives for recycling) than the Minnesota statute.[56]

Having determined that Minnesota's plastic ban was rationally related to the statute's stated purposes and that the putative local benefits outweighed the minor burden on interstate commerce, the Supreme Court reversed the judgment of the Minnesota Supreme Court.

C. Justice Stevens' Dissenting Opinion

In his dissent, Justice Stevens characterized the majority opinion as based upon "a newly discovered principle of federal constitutional law" for which he could find no support.[57] Justice Stevens maintained that state, not federal, law determines the allocation of fact-finding authority between a state's courts and its legislature. Therefore, he believed the Minnesota Supreme Court was free to assume the role of fact-finder and find, contrary to the legislature, that the facts did not show a rational relation between the statute's means and its ends. Justice Stevens concluded that the Supreme Court had overstepped its bounds by not respecting the interpretation of Minnesota law as announced by the highest judicial tribunal in that state.

In a footnote to the majority opinion, Justice Brennan dismissed Justice Stevens's dissent as "simply, wrong."[58] While a state court may apply a more stringent standard of review under the state constitution's equivalent of the federal equal protection and due process clauses, it is bound by the standards enunciated by the Supreme Court when reviewing legislation challenged as unconstitutional under the federal Constitution.[59]

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54. *Id.* at 729.
55. *Id.*
56. *Id.*
57. 101 S. Ct. at 731 (Stevens, J., dissenting).
58. 101 S. Ct. at 722 n.6.
59. Under Justice Stevens's approach, each state's courts could be authorized to overturn state legislation that might have survived the more deferential and cursory review at the hands of the federal courts. In effect, this approach would permit the states to apply federal constitutional standards more stringently than do the federal courts. Nevertheless, state courts would still be constrained to apply the Supreme Court's interpretation of constitutional rights as the minimum constitutional standard.

III

IMPACT OF THE CLOVER LEAF DECISION

The degree of independent review the Court chooses to exercise over socioeconomic legislation reflects its perception of the proper allocation of decisionmaking power between the judiciary and the legislature. Since 1937, which marked the beginning of a trend toward increased judicial deference to legislative judgment,[60] the Court has declined to exercise any real scrutiny of socioeconomic legislation under the equal protection clause. The judiciary, it has recognized, has no special competence to decide the complex factual questions underlying economic regulation.[61] The *Clover Leaf* decision reiterates that commitment to judicial restraint.

The rational relation standard permits the Court to strike down legislation when the stated goals are not conceivably furthered by the statutory classification or when the stated purposes are clearly pretexts for unconstitutional activity. Absent such circumstances, the Court will generally defer to the legislature; it usually will not conduct an extended inquiry into a legislature's true motives when it applies the rational basis test to a statute challenged on equal protection grounds.[62] This restraint, exercised in *Clover Leaf*, is not constitutionally mandated by notions of federalism or separation of powers, but is grounded solely in judicial prerogative.[63]

It is significant that the Court addressed the commerce clause question despite the Minnesota Supreme Court's failure to do so. Justice Powell, dissenting, would have remanded the issue to the Minnesota Supreme Court.[64] He criticized the Court's decision on this issue, because it was made without the benefit of a decision by the highest state court and because it was "flatly contrary to the only relevant specific findings of fact."[65] By reaching the commerce clause question when it did, however, the Court eliminated the uncertainty that other states would have faced in drafting similar legislation and obviated the necessity of additional litigation to settle the issue.

Moreover, for purposes of future environmental legislation, the substantial weight assigned by the Court to state environmental inter-

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60. NOWAK, *supra* note 25, at 523.

61. *See, e.g.*, City of New Orleans v. Dukes, 427 U.S. 297, 303-04 (1976); Ry. Express Agency v. New York, 336 U.S. 106, 110 (1948).

62. When a fundamental right is at stake, however, the Court will conduct a more thorough inquiry. See note 27 *supra*.

63. *See* L. TRIBE, AMERICAN CONSTITUTIONAL LAW § 16-2 (1978): "Within broad limits, courts have traditionally exhibited extreme deference to the legislative definition of 'the general good,' either out of judicial sympathy for the difficulties of the legislative process, or out of a belief in judicial restraint generally."

64. 101 S. Ct. at 730-31.

65. *Id.* at 730.

ests in the commerce clause analysis is the most significant precedent to emerge from the *Clover Leaf* case. In close cases the balancing-of-interests phase of commerce clause analysis is often decisive. By weighting the scale heavily in favor of the state's interests,[66] the Court drastically reduced the possibility of a successful challenge of nondiscriminatory environmental legislation.

Will *Clover Leaf*'s impact be limited to similar factual situations? In defending the statute against equal protection challenges, the state emphasized that the plastic container was not yet firmly established in the Minneapolis-St. Paul market and, therefore, that the legislature had minimized economic dislocation by acting when it did.[67] The Court considered this fact,[68] but Justice Brennan made it clear that the Court's holding had broad application and was intended to remind courts of their limited role when reviewing socioeconomic legislation under the equal protection clause.[69]

Similarly, the commerce clause holding does not seem to be predicated on any peculiar set of facts. Because the affected dairies and plastics industries were located both within and outside the state of Minnesota, the legislation at issue in *Clover Leaf* avoided the fate of the environmental statute struck down as "protectionist" in *City of Philadelphia v. New Jersey*.[70] Had the affected industries in *Clover Leaf* been located solely outside the state, the result might have been different. A statute that is neutral on its face may nevertheless be held to be discriminatory due to its impact in operation.[71] As long as legislation can be rationally supported and is administered in a nondiscriminatory manner, however, the strong presumption of validity should apply.

Given that the *Clover Leaf* decision turned on the standard of review, it is not in itself a victory for environmentalists.[72] The Court has bowed to the state legislatures, giving them great latitude to enact socioeconomic legislation.[73] The wisdom of the Minnesota legislation remains to be proved.[74]

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66. See text accompanying note 54 *supra*.

67. 101 S. Ct. at 725.

68. *Id.* at 725-26.

69. *Id.* at 724-26.

70. 437 U.S. 617 (1978). See note 49 *supra*.

71. *See, e.g.*, Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 352 (1977).

72. That is, with the exception of the substantial weight the Court assigned to the state interest in conservation.

73. One advantage of this approach is that it allows the Court to avoid the difficult process of continually weighing the utility of legislation against the equal protection guarantee, a process which is perhaps better left to the legislature.

74. Voluminous evidence was introduced by plaintiffs in an effort to cast serious doubt on the likelihood that the statute would succeed as drafted. In fact, one commentator observed that "[t]he overall impression left by the [Minnesota Supreme Court's] . . . opinion is that plastic is an environmental godsend." Comment, *supra* note 11, at 10197.

All parties would concede that this single piece of legislation will not solve the solid waste problem. Perhaps the ban will not even have a significant impact. Nevertheless, in the realm of politics, where a partial victory is often the only kind available, it is significant that the small step taken by the Minnesota legislature has been upheld by the Court. "[I]t is one of the happy incidents of the federal system," wrote Justice Brandeis, "that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."[75] Minnesota's example may inspire other states to grapple with the mounting problem of solid waste disposal.

Laura Cohen

75. New State Ice Co. v. Liebman, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).