

12-1975

## Constitutional Issues in Federal No-Fault

Frank J. Vandall

Follow this and additional works at: [https://digitalcommons.law.mercer.edu/jour\\_mlr](https://digitalcommons.law.mercer.edu/jour_mlr)

---

### Recommended Citation

Vandall, Frank J. (1975) "Constitutional Issues in Federal No-Fault," *Mercer Law Review*. Vol. 27 : No. 1 , Article 17.

Available at: [https://digitalcommons.law.mercer.edu/jour\\_mlr/vol27/iss1/17](https://digitalcommons.law.mercer.edu/jour_mlr/vol27/iss1/17)

This Special Contribution is brought to you for free and open access by the Journals at Mercer Law School Digital Commons. It has been accepted for inclusion in Mercer Law Review by an authorized editor of Mercer Law School Digital Commons. For more information, please contact [repository@law.mercer.edu](mailto:repository@law.mercer.edu).

# CONSTITUTIONAL ISSUES IN FEDERAL NO-FAULT

By FRANK J. VANDALL\*

There has been substantial discussion of various state no-fault provisions. By comparison, little has been said about the sweeping federal no-fault bill.<sup>1</sup> Adoption of the federal plan, however, would make discussion of state plans truly academic. The Report of the Commerce Committee outlined the general provisions of the federal proposal:

The bill would create a nationwide automobile insurance system which would, in the event of a motor vehicle accident, pay the cost of restoring to the maximum extent feasible, all occupants and pedestrians who are injured, and compensate, subject to reasonable limitation, the economic loss of all deceased victims. While extending this *right to recover benefits* to all persons, S. 354 would simultaneously restrict each person's *right to sue* because of the fault of another to cases of serious injury.

. . . . .  
Each State could establish a State no-fault plan which meets or exceeds the national standards set forth in S. 354 at any time prior to the completion of the first general session of the State legislature that convenes after the bill is enacted . . . .

If a State does not establish a no-fault plan in accordance with title II during its first legislative session, an alternative State no-fault plan for motor vehicle insurance, title III of the bill, would become applicable and go into effect in that State nine months later . . . .<sup>2</sup>

Suppose that shortly after S. 354 becomes law, a client comes into your office who has recently been involved in an automobile collision. He has endured a great deal of pain and suffering but did not receive the type of injury necessary to permit a suit in tort. If this occurs, you may be confronted with the issue whether the federal reparations system is unconstitutional. The following is an analysis of the basic constitutional problems presented by S. 354.

## I. THE FEDERAL ACT EXCEEDS THE POWER OF CONGRESS TO IMPOSE MANDATORY REQUIREMENTS ON A STATE.

Under Title II of the bill, the state has the power to adopt a plan that meets or exceeds the federal requirements. Title III, however, provides that if the state fails to adopt a plan, a pre-established federal plan will go into effect. State action is commanded in several respects. Section 105, for

---

\*Associate Professor of Law, Emory University School of Law. Washington and Jefferson College (B.A., 1964); Vanderbilt University (J.D., 1967); University of Wisconsin (LL.M., 1968).

Special appreciation must be given to Frederic M. Krieger for his research assistance.

1. S. 354, 93d Cong., 1st and 2d Sess. (1973).

2. REPORT OF THE SENATE COMMERCE COMM. ON S. 354, S. REP. NO. 382, 93d Cong., 1st Sess. 2 (1973) (emphasis in the original) [hereinafter cited as COMMERCE COMMITTEE REPORT].

example, requires a state to form and administer an assigned risk plan. Section 105(a)(5) requires the state plan to provide favorable rates, as determined by the state, to economically disadvantaged individuals. Section 108 could require the state to create an agency to administer an assigned claims plan. There are many other sections that require state action. In short, S. 354 forces the state to devote existing state agencies and personnel to regulate and operate Title III of the plan.<sup>3</sup> If no agencies existed in the state to discharge these duties, the state could be required to create and staff them.<sup>4</sup>

These provisions raise an important constitutional question. Does Congress have the power to employ a regulatory scheme that compels a state to devote its agencies and personnel to administer a federal law? Chief Justice Stone (concurring) said, in *New York v. United States*,<sup>5</sup> that "[t]he federal government may not interfere unduly with the State's performance of its sovereign function of government."<sup>6</sup> Justice Douglas, dissenting in *Maryland v. Wertz*,<sup>7</sup> pointed out several imaginary horrors where the federal government would go too far in requiring state action. His examples were compelling the states to build superhighways in order to accommodate interstate vehicles, to provide inns and eating places for interstate travelers, and to quadruple their police forces in order to prevent commerce crippling riots.<sup>8</sup> Extended to its logical conclusion, S. 354 would substantially alter the republican form of government guaranteed by article 4, section 4, of the United States Constitution.

Congress can obtain state action by conditioning grants in aid on satisfactory state response, however. This is acceptable because the state can voluntarily decline to take measures conforming to the federal standards. It is not coerced to take such measures. Aid to families with dependent children and federal aid to highways are examples of traditional grants in aid.<sup>9</sup>

The proponents of S. 354 suggest that the recent Clean Air Act is analogous to the federal no-fault provision.<sup>10</sup> Under the Clean Air Act, however, the federal law displaces state law and the federal government itself takes over the basic task of administering a federal program.<sup>11</sup> The Clean Air Act does not coerce the state to take legislative or administrative action.<sup>12</sup>

---

3. REPORT OF THE SENATE JUDICIARY COMM. ON S. 354, S. REP. NO. 757, 93d Cong., 2d Sess. 36 (1974) (minority view) [hereinafter cited as JUDICIARY REPORT].

4. *Id.* at 38.

5. 326 U.S. 572 (1946).

6. *Id.* at 586-87.

7. 392 U.S. 183 (1968).

8. *Id.* at 204-05.

9. See, e.g., 42 U.S.C.A. §§601-44 (Rev. 1974); 23 U.S.C.A., ch. 1 (Rev. 1966).

10. See, e.g., Griswold, *Opinion on the Constitutionality of the National No-Fault Motor Vehicle Insurance Act*, in *Hearings on S. 354 Before the Senate Judiciary Committee*, 93d Cong., 1st and 2nd Sess., 743, 866-68 (1974) [hereinafter cited as *Hearings*].

11. See 1970 Amendments to the Clean Air Act, 84 Stat. 1713 (1970), 42 U.S.C.A., ch. 15B (Supp. 1975).

12. 42 U.S.C.A. §1857a (Supp. 1975).

Under that Act, the federal administrator may delegate much of his authority to a state, but there is nothing in the statute that would compel an unwilling state to accept the delegation.<sup>13</sup> If a state fails to meet the Federal Clean Air Act standards, the alternative is not compulsion, instead it is direct regulation by an established federal agency.<sup>14</sup>

The most substantial argument against S. 354 is that no provision of the Constitution gives Congress the ability to act as a source of legislative power for the states.<sup>15</sup> The effect of Title III of S. 354 is that the Federal Government makes state law rather than the state legislatures.<sup>16</sup> This is in disregard of the fact that the only source of power for the state legislatures is state constitutions, not the Congress.<sup>17</sup>

The argument that S. 354 can rest on the supremacy clause is weak. That provision of the Constitution is used to strike down state laws that conflict with federal laws.<sup>18</sup> The supremacy clause could, therefore, erase the state constitutional provisions that conflict with S. 354.<sup>19</sup> The clause is not a source of state legislation, however.<sup>20</sup> It does not enable Congress to enact state laws.<sup>21</sup>

---

13. *Id.* But see 42 U.S.C.A. §1857c (Supp. 1975).

14. See 42 U.S.C.A. §1857c-8 (Supp. 1975).

15. See, e.g., *Hearings, supra* note 10, 211, 213 (Statement of Dr. Mitchell Wendell on S. 354).

16. Title III of S. 354 is an alternative state no-fault plan that will become the law of any state that fails to enact a conforming no-fault statute of its own by the close of the first general legislature which commences after the date of enactment of S. 354. S. 354, 93d Cong., 1st and 2d Sess. §201(b) (1973).

17. Dr. Wendell forcefully argued at the Senate Hearings that the only source of power for enactment of state laws is the state's constitution. See *Hearings, supra* note 10 at 213-15. But see *Hearings, supra* note 10 at 835-68 (Former Solicitor General Griswold strongly disagrees with Dr. Wendell). Dr. Wendell purports to rely on Professor Hart. See Hart, *The Relations Between State and Federal Law*, 54 COLUM. L. REV. 489,491 (1954).

18. Illustrative of proper use of the supremacy clause is the federal regulation of interstate boating safety. Under its express constitutional powers, Congress has by statute regulated boat safety. See 46 U.S.C.A. ch. 33 (Supp. 1975). The state thereafter can only regulate so long as not in conflict with the federal regulation. To the extent state regulation conflicts with federal law, it is invalid. See, e.g., *Cooley v. Board of Wardens*, 53 U.S. (12 How.) 299 (1851).

19. Cf. *City of Burbank v. Lockheed Air Terminal, Inc.*, 411 U.S. 624 (1973); *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). Compare *Guss v. Utah Labor Relations Bd.*, 353 U.S. 1 (1957).

20. See U.S. CONST. art. VI, §2. As the Supreme Court has observed, the supremacy clause gives equal preemptive force to the federal Constitution, treaties, and federal laws. See, e.g., *City of Burbank v. Lockheed Air Term. Inc.*, 411 U.S. 624, 625 (1973); *Hearings, supra* note 10, 646, 675-81 (Statement on Behalf of Insurance Co. of North America by Thomas C. Matthews, Jr., Esquire). The argument against S.354 is premised on the fact that S. 354 is arguably not federal law, but Congress enacting state law. Thomas Matthews, *inter alia*, disagrees. See *Hearings, supra* note 10 at 675-81.

21. See notes 18-20 *supra* and accompanying text. As one opponent of S. 354 has observed, the supremacy clause

is merely a description of the status of Acts of Congress which have been validly enacted. The purpose of the provision is to protect the integrity of federal law, not to authorize the enactment of state law.

*Hearings, supra* note 10 at 217.

A strong argument can be made that Congress has the power to impose mandatory requirements on a state, requiring state legislative or executive action. Former Solicitor General Irwin Griswold states, for example, that the argument against S. 354 relates to matters which can be called "details."<sup>22</sup> He says that

[a]s far as the rule of liability for automobile accidents is concerned, no action by the state is required. If Title II goes into effect, it will be because the state chooses to adopt legislation which meets the tests of Title II. If the state does not adopt legislation conforming to Title II, and Title III then goes into effect, the liability law of the state is changed by the Federal statute without the necessity of state legislation.<sup>23</sup>

In support of S. 354, it can be said that the authority of Congress to require states to act in certain instances is not contested. Section 2 of the 13th, 15th, 19th and 24th amendments, and section 5 of the 14th amendment empower Congress to enforce the substantive provisions of these amendments by appropriate legislation, including, if necessary, the role of an affirmative policeman of state action or inaction.<sup>24</sup>

Perhaps the strongest case supporting S. 354 is *Sanitary District of Chicago v. United States*.<sup>25</sup> The Attorney General in that case sued the Sanitary District of Chicago to prevent the taking of more water from Lake Michigan than was permitted by federal statute. The Sanitary District argued that a state statute permitted the removal of water in excess of the amount permitted by the federal statute and the water was required for public health reasons. Mr. Justice Holmes, speaking for a unanimous Court, held that

the main ground is the authority of the United States to remove obstructions to interstate and foreign commerce. There is no question that this power is superior to that of states to provide for the welfare or necessities of their inhabitants. In matters where the states may act, the action of Congress overrides what they have done.<sup>26</sup>

Griswold argues that the decision is significant for several reasons. First, the matter at issue was sewage disposal and this was an essential state function.<sup>27</sup> Second, the decision required the state official to act in accordance with the federal statute.<sup>28</sup> It is a clear example of federal law requiring a state official to act, even where there is state law directly to the con-

---

22. See *Hearings*, *supra* note 10 at 836.

23. *Id.*

24. *Id.* at 837-38; cf. Bickel, *The Original Understanding and the Segregation Decision*, 69 HARV. L. REV. 1 (1955).

25. 266 U.S. 405 (1925).

26. *Id.* at 426.

27. *Hearings*, *supra* note 10 at 843.

28. *Id.* at 843.

trary.<sup>29</sup> Third, the *Sanitary District* decision holds "that when Congress exercised its power over interstate and foreign commerce, the welfare or needs of the inhabitants of the State *could not even be considered*' in evaluating the reach of the Commerce Clause."<sup>30</sup> Fourth, the burden on commerce in the *Sanitary District* case was no more than that of an automobile liability insurance system on interstate commerce.<sup>31</sup>

Perhaps the strongest argument for the proponents is the analogy to the Clean Air Act. It is a far more extensive imposition of mandatory requirements on the state than S. 354. But, at the same time, it must be admitted that the provisions of the Clean Air Act are intended to merely supplement state administration of implementation plans. From a practical standpoint, however, the specific responsibilities imposed on states under the Clean Air Act are so extensive that they could not be carried out by the Federal Environmental Protection Agency.<sup>32</sup> For example, the Act requires states to undertake such programs as the establishment of vehicle inspection and maintenance programs.<sup>33</sup> The retrofitting of certain pre-1968 vehicles with emission control equipment and similar measures are all state activities.<sup>34</sup> The only manner in which such large scale programs could be established through the Clean Air Act's enforcement mechanisms would be for the Environmental Protection Agency to seek federal court orders against the state agencies, specifically mandating them to act.<sup>35</sup>

## II. THE FEDERAL GOVERNMENT CANNOT OVERRIDE STATE CONSTITUTIONAL PROVISIONS.

What happens where a state has a constitutional provision prohibiting it from enacting a plan such as S. 354? Five states: Arizona, Arkansas, Kentucky, Pennsylvania and Wyoming, have specific provisions in their constitutions prohibiting a limitation on the amount that can be recovered for injuries resulting in death, or injuries to person or property.<sup>36</sup> In four states, Ohio, New York, Oklahoma, and Utah, there is a similar constitutional provision applicable only to injuries resulting in death.<sup>37</sup> In one state, Connecticut, there is constitutional language which creates a doubt whether the legislature could enact legislation limiting the right to recover for injuries.<sup>38</sup> The thrust of S. 354 is that any state constitutional provision

29. *Id.* at 843-44.

30. *Id.* at 844 (emphasis in the original).

31. *Id.*

32. 42 U.S.C.A. ch. 15B (Supp. 1975).

33. 42 U.S.C.A. §1857f-6a (Supp. 1975). See generally 42 U.S.C.A. §1857f (1969).

34. 42 U.S.C.A. §1857f-6a (Supp. 1975).

35. See, e.g., 42 U.S.C.A. §1857c-5 (Supp. 1975).

36. See ARIZ. CONST. art. XVII, §6; ARK. CONST. amend. 26 to art. V, §32; KY. CONST. §54; PA. CONST. art. III, §18; WYOMING CONST. art. X, §4.

37. See, e.g., OHIO CONST. art. I, §19(a); N.Y. CONST. art. I, §16; *Hearings, supra* note 10 at 803.

38. See CONN. CONST. art. 1, §10.

prohibiting enactment of a no-fault plan pursuant to Title II would be rendered void, thus removing any legal impediments facing a state desiring to enact such a plan.<sup>39</sup>

The arguments that S. 354 can override state constitutional provisions is direct. The state constitutional provisions relate only to liabilities arising under the state's tort law and that law will be replaced by the reparations system established by Congress. The prohibition of any limitation on the amount recoverable in a court action is not necessarily violated by abolishing the cause of action for negligence in automobile injury cases when a new system of liabilities is established which provides a reasonable substitute for the common law action.<sup>40</sup> That is, S. 354 would be a reasonable substitute for the tort action. In summary, the proponents argue that even if a state constitution conflicted with S. 354, the provision would, to that extent, be void from the instant the federal bill was signed into law.<sup>41</sup> This effect is guaranteed not only the supremacy clause of the Constitution but by the express language of section 201A of the Bill which specifies Congress' intent to pre-empt any state law that would prevent the establishment of a no-fault system.

The proponents have two strong cases in their favor. Pennsylvania has a constitutional provision that there can not be a limitation on the "amount to be recovered." But in *Jackman v. Rosenbaum Co.*,<sup>42</sup> the plaintiff argued that the failure of party wall legislation to allow consequential damage sustained by him during the course of construction constituted a limitation on the "amount to be recovered." The Supreme Court of Pennsylvania rejected the argument and held that there was a distinction between a statute which established a limitation and one which defined a right. The court held that the plaintiff did not have a right to recover.<sup>43</sup> Also, Pennsylvania courts have held that the abolition of the cause of action for alienation of affection is not made invalid by the Pennsylvania constitutional provision.<sup>44</sup>

Over twenty state constitutions provide that all courts shall be open and every man shall have a remedy for injuries.<sup>45</sup> The Supreme Court of Massachusetts specifically upheld the constitutionality of that state's no-fault statute against the argument that article 9 of the Massachusetts constitution prevented the state legislature from abolishing a cause of action for pain and suffering. This is the well known *Pinnick v. Cleary*<sup>46</sup> case.

---

39. COMMERCE COMMITTEE REPORT, *supra* note 2 at 2.

40. *Id.*

41. *See, e.g., Hearings, supra* note 10 at 657.

42. 263 Pa. 158, 106 A. 238 (1919).

43. *Id.* at 158, 106 A. at 242.

44. *See McMullen v. Nannah*, 49 Pa. D. & C. 516 (C. P. Beaver County, 1943); *cf. Kirby v. Pennsylvania R.R.*, 76 Pa. 506 (1874).

45. *See, e.g., ALA. CONST. art. I, §13; ARIZ. CONST. art. XVIII, §6; MASS. CONST. pt. 1, art. XI; OKLA. CONST. art. II, §6; UTAH CONST. art. I, §11. See generally Martel, No-Fault Automobile Insurance in Pennsylvania—A Constitutional Analysis*, 17 VILL. L. REV. 783, 819 (1972).

46. 360 Mass. 1, 271 N.E.2d 592 (1971).

III. CONGRESS LACKS AUTHORITY UNDER THE COMMERCE CLAUSE TO PROVIDE FOR INSURANCE COVERING AUTOMOBILE ACCIDENTS.

Rudolph Janata, President of the Defense Research Institute, has stated:

We deny that Congress is empowered, under the Commerce Clause, to impose federal insurance standards. The effect of who pays for damages which result from highway accidents has no bearing upon the regulation of commerce.<sup>47</sup>

He has further said that

[t]he important consideration for Congress then is whether, as claimed by the Commerce Committee, accident reparations system, . . . would have any effect on the free flow of interstate commerce. When statistics relating to gasoline sales, vehicle miles traveled, automobile sales, licensed drivers, and other factors related to motor vehicle transportation over the past several years are examined, it appears impossible to make any strong case for the proposition that the present auto reparations system has had any impact on interstate commerce.<sup>48</sup>

In contrast to Mr. Janata's view, the minority members of the Senate, who are against the constitutionality of S. 354, state:

[b]ecause the business of insurance is deemed interstate commerce, Congress clearly has the power, under the Commerce Clause of the Constitution, to enact a national automobile accident compensation system. . . .<sup>49</sup>

In *United States v. Southeastern Underwriters Association*,<sup>50</sup> the Supreme Court declared insurance to be a matter of interstate commerce and, therefore, not capable of being regulated by the states. Later Congress, through the McCarran-Ferguson Act of 1945,<sup>51</sup> delegated back to the states the primary responsibility for supervision of insurance. Congress, however, retained the ultimate authority to legislate on insurance matters and it is this authority that would be the basis for any federal regulation of insurance.<sup>52</sup> Several examples of federal regulation of insurance support the position taken by the minority: the National Flood Program, Federal Riot Reinsurance, and Federal Crime Insurance.<sup>53</sup>

The proponents of S. 354 argue that the Constitution contains three clauses which support the power of Congress to provide for insurance covering automobile accidents. First of all, section 8 of article 1 provides that

---

47. Janata, *National No-Fault Motor Vehicle Act*, 41 INS. COUNSEL J. 211, 212 (1974) [hereinafter cited as Janata].

48. *Hearings*, *supra* note 10 at 1330; Janata, *supra* note 47 at 212.

49. JUDICIARY REPORT, *supra* note 3 at 40 (minority view).

50. 322 U.S. 533 (1944).

51. 15 U.S.C.A. §§1011-15 (Rev. 1963).

52. See 15 U.S.C.A. §1012(b) (Rev. 1963); *cf.* *Prudential Ins. Co. v. Benjamin*, 328 U.S. 408 (1946).

53. See JUDICIARY REPORT, *supra* note 3 at 40.



Congress shall have the power to regulate commerce among the several states. Part 3 provides that Congress shall have the power to establish post-offices and post-roads and part 8 provides that Congress shall have the power to make all laws which will be necessary and proper for carrying into execution the foregoing powers. In reply to Mr. Janata's point, the proponents state:

[A] high proportion of the inter-state movement of persons is conducted . . . in private automobiles. Any factor which impairs the efficient handling of such inter-state traffic, or which results in injuries which are not properly compensated, constitutes a burden on interstate commerce.<sup>54</sup>

They add that for many years, beginning with the establishment of the National Road early in the 19th century, Congress has provided for the building of post-roads and a very high proportion of the inter-state highways in this country have been built or aided with funds appropriated by Congress.<sup>55</sup> Having been instrumental in the construction of these roads, Congress can appropriately exercise authority to provide for the effective handling of problems which occur because of the existence of such roads.<sup>56</sup>

#### IV. THE FEDERAL ACT VIOLATES THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT ON THE GROUND THAT IT DEPRIVES VICTIMS OF THE RIGHT TO SUE IN TORT.

Mr. Janata argues that the common law system which guarantees a redress for injuries is a vested right which cannot be altered without denial of due process.<sup>57</sup> He makes the point that the application of Titles II or III of S. 354, denying a cause of action in certain instances and requiring citizens to purchase insurance to protect themselves, is substantially less valuable than the common law right to sue for injuries.<sup>58</sup>

The proponents of S. 354 argue that the Constitution permits legislative substitution of the right to recover first party benefits for the rights to sue in tort for damages.<sup>59</sup> They cite *Munn v. Illinois*,<sup>60</sup> a Supreme Court case of 1876. There the court said that

[a] person has no property, no vested interest, in any rule of the common law . . . Rights of property which have been created by the common law cannot be taken away without due process; but the law itself, as a rule of conduct, may be changed at the will, or even at the whim of the legislature.<sup>61</sup>

---

54. *Hearings, supra* note 10 at 750 (Griswold's statement); see JUDICIARY REPORT, *supra* note 49 at 6-7.

55. See *Hearings, supra* note 10 at 750-51.

56. *Id.*

57. Janata, *supra* note 47 at 212-14.

58. *Id.*

59. *Hearings, supra* note 10 at 770-71.

60. 94 U.S. 113 (1876).

61. *Id.* at 134.

The proponents then cite workmen's compensation as the outstanding example of rules of law being eliminated by the legislature.<sup>62</sup> Workmen's compensation, like no-fault, substitutes first party recovery for tort rights. The leading case is *New York Central R.R. v. White*.<sup>63</sup> In *New York Central* it was stated:

No person has a vested interest in any rule of law entitling him to insist that it shall remain unchanged for his benefit.

.....  
The statute under consideration sets aside one body of rules only to establish another system in its place. If the employee is no longer able to recover as much as before in case of being injured through the employer's negligence, he is entitled to moderate compensation in all cases of injury, and has a certain and speedy remedy without the difficulty and expense of establishing negligence or proving the amount of damages.<sup>64</sup>

In summary, then, the proponents compare the federal no-fault provisions with workmen's compensation and conclude that S. 354 is a reasonable means of reaching the permissible legislative objectives of the statute.

#### V. THE CLASSIFICATION ESTABLISHED BY S. 354 VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FIFTH AMENDMENT.

The foundation of the equal protection guarantee is that all persons are to be treated alike under like circumstances and conditions.<sup>65</sup> The application of S. 354 violates the constitutional principle of equality of protection by creating artificial, unreasonable and arbitrary classes within a class.<sup>66</sup> It does this in two ways. First, the states in complying with section 204B of the bill would create arbitrary formulas for computing benefits which would unreasonably discriminate against accident victims who happened to live in states with a low average per-capita income. For example, the high income victim in a low-income state would be able to recover less of his true loss than a person with the same income in a high-income state. This is discriminatory on its face and is not rationally related to the objective of providing prompt and adequate benefits for all persons injured in motor vehicle accidents.<sup>67</sup> Second, S. 354 violates the equal protection clause in denying recovery for pain and suffering in cases of minor injuries. States complying with section 206A would unfairly discriminate against

62. See, e.g., N.Y. WORKMAN'S COMP. LAW §§1-401 *et seq.* (McKinney 1965). Some have argued that the workman's compensation analogy is not applicable to federal no-fault. See Note, *No-Fault Motor Vehicle Insurance: A Constitutional Perspective*, 46 ST. JOHN'S L. REV. 104, 111 (1971). But see Pinnick v. Cleary, 360 Mass. 1, 271 N.E.2d 592, 606 (1971) (comparing no-fault with workman's compensation laws).

63. 243 U.S. 188 (1917).

64. *Id.* at 204. See Pinnick v. Cleary, 360 Mass. 1, 271 N.E.2d 592 (1971).

65. See *Truax v. Corrigan*, 257 U.S. 312 (1921); *Duncan v. Missouri*, 152 U.S. 377 (1894).

66. This is asserted in *Janata*, *supra* note 47 at 215.

67. *Id.*

the accident victim who through good fortune is not seriously injured.<sup>68</sup>

The proponents of S. 354 argue that the equal protection question has been eliminated because of the 1970 *Dandridge v. Williams*<sup>69</sup> decision. In *Dandridge*, the Court sustained a state ceiling on welfare payments to large families. The effect of the ceiling was to discriminate in favor of children of relatively small families. The state provision had been attacked on equal protection grounds. The Court held that

[a] State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some "reasonable basis," it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality."<sup>70</sup>

Section 206 of the Act defines the circumstances in which actions for pain and suffering may lie. They are permitted only in cases of death, serious and permanent disfigurement, other serious and permanent injury or more than six months continuous disability. The proponents argue that there is nothing in this classification which is in any way suspect.

It does not depend on any personal factor, such as age, sex, race, national origin, or on economic condition. It is simply a practical line, designed to provide benefits for automobile injuries with a minimum of litigation. . . .<sup>71</sup>

The bill's goal is also to preserve traditional remedies in the relatively few more serious cases.

Studies have indicated that the time and money spent on investigation and settlement of small claims is wholly disproportionate to the injuries involved.<sup>72</sup> The delays and costs burden the courts, the insurance industry and ultimately the public, as well as the person injured in motor vehicle accidents.<sup>73</sup> Similarly, when the alleged tort victim's claim for pain and suffering is small, he is not seriously affected when he is required to accept basic no-fault personal injury protection as a substitute.

The proponents suggest that the factors selected by Congress—death, serious and permanent disfigurement and other serious and permanent injury, and more than six months total disability— reflect serious amounts of pain and suffering. The absence of all of these four factors indicates that the likelihood of substantial pain and suffering is small. No fairer or more practical criteria have been suggested. Consequently, the classifications

---

68. *Id.*

69. 397 U.S. 471 (1970).

70. *Id.* at 485.

71. *Hearings, supra* note 10 at 784-85 (Griswold statement).

72. *See, e.g.,* UNITED STATES DEPARTMENT OF TRANSPORTATION, MOTOR VEHICLE CRASH LOSSES AND THEIR COMPENSATION (1971).

73. *Id.*

selected by Congress do not violate the equal protection concept contained in the fifth amendment.<sup>74</sup>

If S. 354 becomes law, it will face numerous serious constitutional challenges.<sup>75</sup> More importantly, it will meet several critical policy attacks. States are presently experimenting with reparation plans, but the conclusions from their different approaches have not been evaluated.

The federal plan will have a far-reaching impact on state-federal relations, the cost of automobile insurance, and the scope of available legal services. In short, the plan will affect every automobile driver to some degree. The proposal raises challenging policy questions, such as where the line should be drawn between tort suits and first party benefits, what damages should be recoverable under the plan, and what should be done in states where constitutional provisions seem to prohibit elimination of the right to sue.

The most important issue, then, is not whether the federal government has the constitutional power to adopt and enforce S. 354. The most important issue is whether the federal plan makes good sense at this time. Should such a radical step be taken before the state experiments have been studied? The states have only begun to adopt no-fault plans in the last few years. Good sense seems to indicate that Congress wait a few more years and study the impact of the state plans before passing a bill as extreme as S. 354.

---

74. The Massachusetts court rejected the equal protection attack on Massachusetts' no-fault Motor Vehicle Act. *See Pinnick v. Cleary*, 360 Mass. 1, 271 N.E.2d 592, 609 (1971). *See also McGowan v. Maryland*, 366 U.S. 420, 425-26 (1961); *Watson v. Maryland*, 218 U.S. 173, 178 (1910).

75. The House version of S. 354 died in the House of Representatives Commerce and Finance subcommittee on November 26, 1974. *See* 17 ASSOC. OF AM. TRIAL LAWYERS NEWS LETTER (No. 10, Dec. 1974). Proponents have evidently begun anew as federal no-fault hearings are being held in the Senate Commerce Committee. *Atlanta Journal*, §D at 10, col. 7 (April 22, 1975).

