

The Breakfast Club

Constitutional Minute for 27 April 2021

What is Commerce?

“The Congress shall have Power ...to regulate **Commerce** with foreign Nations, and among the several States, and with the Indian Tribes” (Article 1, Section 8).

“Commerce: In a general sense, an interchange or mutual change of goods, wares, productions, or property of any kind, between nations or individuals,...” (Webster’s 1828 Dictionary, emphasis added)

This clause is in the Constitution to regulate (i.e., make regular) commerce between the several states which, during the Articles of Confederation period, was disrupted by the states placing tariffs on each other’s goods.

“The interfering and unneighbourly regulations of some States, contrary to the true spirit of the Union, have in different instances given just cause of umbrage and complaint to others...”
Alexander Hamilton, Federalist 22.

In 1938, Congress passed the Agricultural Adjustment Act. One of its provisions, in an attempt to keep the price of wheat high, set limits to the amount of wheat farmers could grow. Farmer Roscoe Filburn admitted growing more wheat than his allotment, explaining that the additional wheat was not sold on the open market but instead was used to feed his own livestock. He was fined and sued the government, arguing that the AAA’s limits were an unconstitutional application of the interstate commerce clause. He won in District Court and the government appealed to the Supreme Court.

The Supreme Court rejected Filburn’s argument and stated that if Filburn had not grown the additional wheat, he would have bought wheat on the open market, thus his actions, especially if combined with similar actions by other farmers, would have “a substantial economic effect” on the interstate commerce in wheat, therefore the limitations were consistent with the Commerce Clause.

After Wickard v. Filburn, the Commerce Clause was used to justify many different regulations on “commerce” and businesses in general.

The cost of unnecessary regulations is calculated to add \$2Trillion to the cost of doing business in the U.S., a cost that is simply passed on to the consumer in the form of increased prices for goods and services.

Congress can regulate any aspect of any business in America since a “connection” to an interstate commerce transaction can easily be made.

Welcome to the Regulatory State!

How do we fix this? Amend the Constitution to define the term and set limits to what constitutes “interstate commerce.”

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