



‘Commerce clause’: Americans are getting the business

By Jim Waters

In a speech on the United States Senate floor, Sen. Rand Paul, R-Ky., joked that the definition of the Constitution’s “commerce clause” expanded so much during the past 70 years that “you can drive a truck through it now — it’s so big.”

The **commerce clause** enables Congress “to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.”

Congress often sidesteps the 10th Amendment — states’ rights — by using the commerce clause to justify interfering in the activities of states and their citizens. Give activist judges an assist on these slam-dunks against freedom.

Yes, individual freedom and the sovereignty of states shrinks in direct correlation to the widening swath of business activity covered by the commerce clause.

Much of this “expansion” — better described as “folly” — finds its roots on the farm of Roscoe Filburn from Montgomery County, Ohio, in 1940. He harvested 462 bushels of wheat off 23 acres he planted.

But Roscoe was given a wheat acreage allotment of only 11.1 acres under President Franklin D. Roosevelt’s New Deal Agricultural Adjustment Act of 1938. Under it, the federal government set production quotas for wheat. Filburn planted nearly 12 acres more than his allotment.

The Agricultural Conservation Committee for Montgomery County fined Filburn for exceeding his quota of wheat, 239 extra bushels — even though he never took the wheat off of his property and never tried to sell it. He simply wanted to feed his livestock with it.

He sued the commission and the case went all the way to the U.S. Supreme Court, **Wickard v. Filburn**. The 1942 court ruling (8-0) upheld the decision against Filburn based on Article 1, Section 8 of the Constitution — the commerce clause.

The legal logic: The majority held that even though the wheat never left Filburn’s farm, much less the state, it affected the national economy, and hence was beholden to federal regulation.

Thus, the commerce clause acorn grew into an oak — from punishing a farmer in middle America who farmed more acreage than his allotment to a federal health care policy that forces individuals to buy health insurance or face fines, penalties and perhaps even jail time.

Both actions — and many in between — flowed from politicians and judges shallow in constitutional knowledge, who embrace the precedent set in Farmer Filburn’s case.

The mindset reveals a fundamental misunderstanding of the purpose of the Constitution.

“Madison wrote that (they) would not have enumerated these specific powers and given them to the federal government if (they had) intended for there to be no restraint,” Paul said in his speech, and he is right.

So it should be clear even to the densest among us that using this very limited clause to greatly expand federal powers is unconstitutional.

Instead, I side with Judge Roger Vinson, the federal judge in Florida who **recently ruled against the federal health care law**, reminding us: “It is difficult to imagine that a nation which began, at least in part, as the result of opposition to a British mandate giving the East India Company a monopoly and imposing a nominal tax on all tea sold in America would have set out to create a government with the power to force people to buy tea in the first place.”

“If Congress can penalize a passive individual for failing to engage in commerce, the enumeration of powers in the Constitution would have been in vain for it would be ‘difficult to perceive any limitation on federal power,’ and we would have a Constitution in name only.”

Maybe that oak tree is starting to fall. But it sure would have been easier just to smash the acorn, wouldn't it?

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