

A Primer on the Commerce Clause

One of the most contentious issues in the history of American public policy is the meaning of [Article 1 Section 8 of the Constitution](#), usually dubbed “the Commerce Clause.” The Commerce Clause enumerates specific Congressional powers and responsibilities. The 10th Amendment (1791) clarified that any “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.” While this would seem to create a bright line between Congressional (federal) and state powers, it has been a legal battleground extending to the present—indeed, the foundation of the argument against Obama’s health plan is a “commerce clause” claim that Congress has no authority to penalize citizens for failing to engage in commerce (that is, failing to buy health insurance).

Here is a snapshot legal history of the commerce clause and its changing meaning. Click on any of the cases for further background. From the summary page for each case, you can get the full text of the Court’s decision by choosing “Opinion” in the “Case Basics” box at left.

[Gibbons v Ogden](#) (1824)

In this dispute over the state of New York’s regulation of coastal shipping, the Court clarified the meaning of the commerce clause, arguing that *“the power to regulate commerce extends to every species of commercial intercourse between the United States and foreign nations, and among the several States. It does not stop at the external boundary of a State. But it does not extend to a commerce which is completely internal. . . . The power to regulate commerce is general, and has no limitations but such as are prescribed in the Constitution itself.”*

[United States v. E.C. Knight Co](#) (1895)

The late 19th century saw a flurry of legislative activity which reasserted Congressional power, including the Interstate Commerce Act (1877) regulating interstate transportation and the Sherman Antitrust Act (1890) prohibiting combinations (trusts or monopolies) in restraint of trade. The Knight case checked this power, concluding that the combination of sugar refineries occurred within a state, and did not constitute “interstate commerce.”

[Lochner v. New York](#) (1905)

While the issue in *Lochner* (challenged a New York law regulating the hours worked by bakers) was freedom of contract, the decision—striking down the law—had clear implications for the commerce clause. Working conditions (wages, hours) did not constitute interstate commerce.

[Hammer v Dagenhart](#) (1918)

This case struck down a federal law which prohibited the interstate shipment of goods produced by child labor. The Court held that production at a given location was not “commerce” (understood to mean the movement of goods).

[Schechter Poultry Corp. v. United States](#) (1935)

In response to the Great Depression, new federal legislation (the 1933 National Recovery Act) sought to establish new regulatory standards for business—setting wages, hours of work, prices, and the like. The Court held that the law “exceeds the power of Congress to regulate interstate commerce and invades the power reserved exclusively to the States.”

[National Labor Relations Board v Jones & Laughlin](#) (1937)

The narrow view of the commerce clause argued in *Schechter* was reversed just two years later. In this case, the Court upheld the National Labor Relations Act of 1935 on the grounds that labor relations were directly related to interstate commerce.

[Wickard v. Filburn](#) (1942)

The New Deal's redefinition of the commerce clause was capped in *Wickard*, which upheld agricultural production quotas. Even though the farmer (Filburn) used the surplus harvest to feed his own poultry and livestock, the Court held that it could still “exerts a substantial economic effect on interstate commerce.”

[United States v. Lopez](#) (1995)

After the New Deal, there were no significant challenges to the commerce clause for more than 50 years. In *Lopez*, however, the Court struck down the federal “Guns-Free School Act” (1990) on the grounds that possession of a firearm was not “interstate” commerce.

[Gonzales v Raich](#) (2005)

While state law in California (the 1996 Compassionate Use Act) legalized marijuana for medical use, the federal Drug Enforcement Agency continue to enforce the federal Controlled Substances Act—an extension of the commerce power. Here, the Supreme Court reaffirmed the commerce power, arguing that even local cultivation and use of marijuana represented a “class of activity” which had a “substantial impact” on interstate commerce.