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DOES THE "INTERSTATE COMMERCE" CLAUSE AUTHORIZE CONGRESS TO FORCE US TO BUY HEALTH INSURANCE?

By Publius Huldah

Bill O'Reilly of Fox News recently asked attorneys Megyn Kelly and Lis Wiehl whether Congress has authority under the Constitution to require us to buy health insurance. Wiehl said Congress has the power under the "interstate commerce" clause; but Kelly said it would take "days and weeks of research" to answer the question.

Let us see if ***we*** can walk through this question to the answer in five minutes. Article I, §8, clause 3, U.S. Constitution, says,

"The Congress shall have Power…To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;"

What does "regulate Commerce among the several States" mean?

First: What is "commerce"? Because words change meaning throughout time ["gay" once meant "jovial & lighthearted"], we must consult an old dictionary. Webster's American Dictionary (1828) defines *commerce* as:

"…an interchange or mutual change of goods, wares, productions, or property of any kind, between nations or individuals… by barter, or by purchase and sale; trade; traffick… inland commerce…is the trade in the exchange of commodities between citizens of the same nation or state."

So! "Commerce" is the buying and selling of goods.

"Regulate" meant "to make regular – consistent". It did not mean to prohibit or dictate conformity.

Now, we must find out what "regulate Commerce among the several States" means. Two readily available authorities tell us: The Federalist Papers, written during 1787-1788 by Alexander Hamilton, James Madison, and John Jay, in order to explain the Constitution to the People and induce them to ratify it; and The Records of the Federal Convention of 1787 kept by James Madison.

These authorities prove that the purposes of the "interstate commerce" clause are **(1) to prohibit the States from imposing tolls and tariffs on articles of import and export – goods & commodities – merchandize – as they are transported through the States for purposes of buying and selling; and (2) to permit the federal government to impose duties on imports and exports, both inland and abroad.**

In Federalist No. 22 (4th para), Hamilton says:

"The interfering…regulations of some States…have… given just cause of…complaint to others, and…if not restrained by a national control, would be multiplied… till they became… serious sources of animosity and… impediments to the intercourse between the different parts of the Confederacy. 'The commerce of the German empire…is in continual trammels from the multiplicity of…duties which the several princes and states exact upon the merchandises passing through their territories, by means of which the…navigable rivers [of] …Germany…are rendered almost useless.' Though the…people of this country might never permit this…to be… applicable to us, yet we may…expect, from the…conflicts of State regulations, that the citizens of each would…come to be…treated by the others in no better light…"

In Federalist No. 42 (9th para), Madison says:

"…A very material object of this power [to regulate commerce] was the relief of the States which import and export through other States, from the improper contributions levied on them by the latter. Were these at liberty to regulate the trade between State and State…ways would be found out to load the articles of import and export, during the passage through their jurisdiction, with duties which would fall on the makers of the latter and the consumers of the former…"

See also Federalist No. 44 (8th para) and Federalist No. 56 (6th para), to the same effect.

Madison's Records of the Federal Convention of 1787 show:

Thursday, August 16, 1787:

"…Mr. Madison. 1. the power of taxing exports is proper in itself, and as the States cannot with propriety exercise it separately, it ought to be vested in them collectively…3. it would be unjust to the States whose produce was exported by their neighbours, to leave it subject to be taxed by the latter. This was a grievance which had already filled [New Hampshire, Connecticut, New Jersey, Delaware, and N. Carolina] with loud complaints, as it related to imports, and they would be equally authorized by taxes by the States on exports…"

See also Tuesday, August 21, 1787 for Mr. Ellsworth's comment that *"the power of regulating trade between the States will protect them against each other"*, and Tuesday, August 28, 1787 for Gouverneur Morris' comment that *"the power to regulate trade between the States was necessary to prevent the Atlantic States from taxing the Western States."*

So! The evidence is ample, clear and unambiguous! Furthermore, five clauses in the Constitution: Art. I, §8, cl.1; Art. I, § 9, cl.5; Art. I, § 9, cl.6; Art. I, §10, cl.2; & Art. I, §10, cl.3, give express effect to these two purposes of the "interstate commerce" clause.

The clause is *not* a blank check for Congress to fill out any way it wants! In Federalist No. 45 (last para), Madison said the regulation of commerce was a power not held under the Articles of Confederation, but was an addition *"from which no apprehensions are entertained"*. Ours is a Constitution of enumerated powers only!

But today, the clause is cited as authority for federal takeover of *medical care!* This **redefinition of the clause** resulted from a radical transformation in judicial philosophy. Two cases illustrate this transformation:

In Bailey v. Drexel Furniture Co. (1922), the Supreme Court reviewed a federal excise tax on profits from sales of child-made products. The Court said *"**the so-called tax is a penalty to coerce people of a State to act as Congress wishes them to act** in respect of a matter **completely the business of the state government under the Federal Constitution**"* (p 39), and:

"…Grant the validity of this law, and all that Congress would need to do, hereafter, in seeking to take over to its control any one of the great number of subjects of public interest, jurisdiction of which the States have never parted with, and which are reserved to them by the Tenth Amendment, would be to enact a detailed measure of complete regulation of the subject and enforce it by a so-called tax upon departures from it. ***…such…would…break down all constitutional limitation of the powers of Congress and completely wipe out the sovereignty of the States…"*** (p 38)

But, then CORRUPTION took over the minds of the Supreme Court. The Justices realized THEY were the Foxes that had TAKEN OVER guarding the Hen-house. They could TAKE any Powers they wanted.

So, in Wickard v. Filburn (1942), the Court said the "commerce clause" extends to *local intrastate activities* which "affect" interstate commerce, **even if the activities aren't "commerce"!** The Court also asserted that Congress has power to regulate prices of commodities and the practices which affect such prices!

Thus, if you have tomato plants in your back yard for use solely in your own kitchen, you are "affecting" "interstate commerce" and are subject to regulation by Congress. The court's reasoning is this: If you weren't growing tomatoes in your back yard, you'd be buying them on the market. If you were buying them on the market, some of what you bought might come from another State. So! By not buying them on the market, you are "affecting" "interstate commerce" because you didn't buy something you otherwise would have bought. See? **And we have to stand up when these people walk into a room!**

Charles Evans Hughes (Chief Justice,1930-1941) said the Constitution is "what the judges say it is."

This is how the concept of a Constitution with an objective meaning easily learned from an old American dictionary, The Federalist Papers, & Madison's Records of the Federal Convention of 1787, was taken away from us; and replaced with the judges' claim that the Constitution is *an evolutionary document* which means whatever ***they*** say it means.

The reason it would take Megyn Kelly "days and weeks of research" to answer the question – instead of the five minutes it took us, is because she would search Supreme Court opinions to analyze the evolution of *their* "commerce clause jurisprudence" to try to figure out how *they* would answer the question.

They have taken our Constitution away from us. Let us demand its Restoration.

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