

Commerce Clause Interpretation

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Rooted in Article I, Section 8, Clause 3 of the U.S. Constitution, the Commerce Clause balances state and federal powers. During the 20th century, this balance transformed with the introduction of the aggregation principle. This principle posits that Congress can regulate even individual activities if they notably impact interstate commerce when taken in the aggregate. Cases such as *Wickard v. Filburn* (1942) reinforced this, with Congress's right to regulate a single farmer's wheat production upheld due to its potential cumulative effect on commerce. *Heart of Atlanta Motel, Inc. v. United States* (1964) and *Katzenbach v. McClung* (1964) further solidified this expansive Commerce Clause interpretation, with Congress's authority to address discrimination in public accommodations and restaurants, respectively, based on their broader implications for interstate commerce. By examining Chief Justice Rehnquist's standard in *United States v. Lopez*, Justice Breyer's opposition to it, Chief Justice Roberts' endorsement in *National Federation of Independent Business v. Sebelius*, and Justice Ginsburg's reservations in the same case, I conclude that, contrary to Rehnquist's intentions, the standard faces significant limitations in addressing the intricate challenges and nuances of our contemporary society.

The Rehnquist Standard and *United States v. Lopez*

The scrutinization of the broad interpretation of the Commerce Clause appeared in the landmark case *United States v. Lopez* (1995). Alfonso Lopez, a high school senior, had brought a firearm into a school zone, prompting a legal challenge against the *Gun-Free School Zones Act of 1990* (*United States v. Lopez*, 1995). The heart of the dispute revolved around whether the act's prohibition on firearms in school zones was sufficiently related to interstate commerce to be within the bounds of Congress's constitutional authority.

In *United States v. Lopez* (1995), Chief Justice William Rehnquist reshaped the understanding of the Commerce Clause by introducing a standard that required any activity to have a direct and significant economic linkage, surpassing local concerns, to be regulated under this clause. Rehnquist had concerns about unchecked federal overreach that might infringe upon traditional state authority, fearing an expansive interpretation of the Commerce Clause that could erode states' rights and individual liberties (*Lopez*, 1995). Illustrating this, he stated, “The possession of a gun in a local school zone is not an economic activity that might... substantially affect interstate commerce” (*Lopez*, 1995, p. 242). This stance contrasts with the *Wickard* case, where a farmer's surplus wheat production was deemed influential on interstate commerce (*Lopez*, 1995). The slippery slope proposition is central to Rehnquist's viewpoint: unchecked expansion of federal jurisdiction under the Commerce Clause could blur the distinction between federal and state authorities (*Lopez*, 1995). Delving deeper into this, he emphasized that an overly broad interpretation of the Commerce Clause might lead Congress to assume the “general police power of the sort retained by the States” (*Lopez*, 1995, p. 242). This underlines his opinion that the Constitution aims to delineate powers, safeguarding the “police power” that the states hold from federal overreach. Hence, the majority deemed the *Gun-Free School Zones Act of 1990* unconstitutional under the Commerce Clause.

Conversely, in his dissent, Justice Breyer offered a dynamic view of the Commerce Clause, which is more compelling for understanding the intricacies of modern society. He criticized the majority for being overly restrictive, potentially oversimplifying the complexities of today's interconnected world (*Lopez*, 1995). Breyer's understanding of the commerce clause rested on three principles. First, he emphasized the 'aggregation principle,' asserting that even

minor local activities could, when accumulated, have a significant influence on interstate commerce (*Lopez*, 1995). He championed a comprehensive assessment that considered the collective effect of similar actions rather than individual occurrences (*Lopez*, 1995). Next, Breyer challenged the majority's potential return to an antiquated distinction between “direct” and “indirect” commerce effects. Criticizing this narrow view, Breyer wrote that we should not be trapped or limited by “nomenclature such as ‘production’ and ‘indirect’ and foreclose consideration of the actual effects of the activity in question upon interstate commerce” (*Lopez*, 1995, p. 267). This illustrates his argument against getting limited by outdated terminology and stresses the necessity to gauge real-world consequences rather than merely categorizing actions. Lastly, Breyer proposed a “rational basis” approach, suggesting that Congress be allowed the discretion to discern how local activities might broadly influence interstate commerce (*Lopez*, 1995). He underscored the inconsistencies in the majority's approach, which seemed out of sync with modern Supreme Court precedents.

Obamacare Case

National Federation of Independent Business v. Sebelius (2012) illuminated the contentious ground where interpretations of the Rehnquist standard and the Commerce Clause clashed.

Chief Justice John Roberts, writing for the majority, adopted Rehnquist's stance and contended that Congress exceeded its authority under the Commerce Clause when implementing the individual mandate by introducing a sharp differentiation between economic “activity” and “inactivity.” He clarified, “The individual mandate...compels individuals to become active in commerce by purchasing a product, on the ground that their failure to do so affects interstate

commerce” (*National Federation of Independent Business v. Sebelius*, 2012, p. 20). Roberts contended that the mandate does not merely regulate existing economic activity but coerces individuals into participating. He further stressed the mandate's disproportionate impact on young adults, who, while typically healthier, are coerced into allocating finances toward a service they might infrequently use, thereby challenging their economic prosperity (*Sebellius*, 2012). He invoked an analogy, suggesting a future where mandates might intrude into personal choices, like a directive to make one eat vegetables to underscore the potential dangers of unchecked federal mandates (*Sebellius*, 2012).

Conversely, Justice Ginsburg's dissent presented a view that, while not opposing the Rehnquist standard outright, questioned the majority's take on the Commerce Clause. She emphasized the healthcare system's intricate interconnectedness, pointing out that choosing not to have health insurance is not merely a personal decision but one with wider ramifications (*Sebellius*, 2012). She stated, “Given these far-reaching effects on interstate commerce, the decision to forgo insurance is hardly inconsequential or equivalent to ‘doing nothing,’ ... it is, instead, an economic decision Congress has the authority to address under the Commerce Clause” (*Sebellius*, 2012, pp. 16-17). In her perspective, choosing not to insure remains personal and affects the broader healthcare system, shifting financial burdens onto those insured. To Ginsburg, this significant economic fallout would justify Congressional oversight. Responding to Roberts’s concerns, Ginsburg introduced the “broccoli horrible” analogy to refute the slippery slope argument. She distinguished between universal healthcare needs and individual dietary choices, highlighting the systemic costs endured by others when one is uninsured (*Sebellius*, 2012). Ginsburg concluded her argument by invoking the principle of democracy, stating,

“Supplementing these legal restraints is a formidable check on congressional power: the democratic process” (*Sebellius*, 2012, p. 30). This encapsulates the idea that if a law is unpopular or perceived as overreaching, the public has the power to elect representatives who can revise or repeal it, emphasizing that the ultimate check on legislative power rests with the people.

Conclusion

As discussed through landmark cases, the interpretation of the U.S. Constitution's Commerce Clause underscores the enduring tension between preserving state rights and accommodating the complexities of modern commerce. The Rehnquist standard, championed further by Roberts, emphasizes clear boundaries to prevent federal overreach, while perspectives from justices like Breyer and Ginsburg advocate for a more expansive understanding, recognizing the intricacies of our complex world.

References

Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964).

Katzenbach v. McClung, 379 U.S. 294 (1964).

National Federation of Independent Business v. Sebelius, 567 U.S. 519 (2012).

United States v. Lopez, 514 U.S. 549 (1995).

Wickard v. Filburn, 317 U.S. 111 (1942).