# The True Meaning And Original Intent Of The "Commerce Clause"

The Commerce Clause is only sixteen words long, and it provides that Congress shall have the power:

> "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." (Constitution for the United States of America, Article I, § 8, cl. 3.)

There is considerable historical evidence that in the early years of the Union, the word "commerce" was understood to encompass trade, and the intercourse, traffic, or exchange of goods; in short, "the activities of buying and selling that come after production and before the goods come to rest."

In a frequently cited Harvard Law Review article, a Constitutional scholar painstakingly tallied each appearance of the word "commerce" in Madison's notes on the Constitutional Convention and in The Federalist [*Papers*], and discovered that in none of the ninety-seven appearances of that term is it ever used to refer unambiguously to activity beyond trade or exchange. … (further examining each and every use of the word that appeared in the state ratification convention reports and finding "the term was uniformly used to refer to trade or exchange"). Even a Constitutional scholar who has argued for an expansive interpretation of the Commerce Clause has acknowledged that when the Constitution was drafted and ratified, commerce "was the practical equivalent of the word 'trade.'" (See Robert L. Stern, That Commerce Which Concerns More States than One, 47 Harv. L. Rev. 1335, 1346 (1934)).

As Alexander Hamilton intimated in The Federalist [*Papers*] No. 34, at 212-13, "commerce" did not at that time encompass manufacturing or agriculture by noting that the "encouragement of agriculture and manufactures" was to remain an object of state expenditure. This interpretation of "commerce" as being primarily concerned with the commercial intercourse associated with the trade or exchange of goods and commodities is consistent with the original purpose of the Commerce Clause.

**There is no doubt historically that the primary purpose behind the Commerce Clause was to give Congress power to regulate commerce so that it could eliminate the trade restrictions and barriers by and between the states that had existed under the Articles of Confederation. Such obstructions to commerce were destructive to the Union and believed to be precursors to war.**

The Supreme Court explained this rationale in H.P. Hood & Sons, Inc. v. Du Mond, 336 U.S. 525, 533-34, 69 S. Ct. 657, 93 L. Ed. 865 (1949), as follows:

> "When victory relieved the Colonies from the pressure for solidarity that war had exerted, a drift toward anarchy and commercial warfare between states began . . . [E]ach state would legislate according to its estimate of its own interests, the importance of its own products, and the local advantages or disadvantages of its position in a political or commercial view. This came to threaten at once the peace and safety of the Union. The sole purpose for which Virginia initiated the movement which ultimately produced the Constitution was to take into consideration the trade of the United States; to examine the relative situations and trade of the said states; to consider how far a uniform system in their commercial regulation may be necessary to their common interest and their permanent harmony and for that purpose the General Assembly of Virginia in January of 1786 named commissioners and proposed their meeting with those from other States.
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> The desire of the Forefathers to federalize regulation of foreign and interstate commerce stands in sharp contrast to their jealous preservation of power over their internal affairs. No other federal power was so universally assumed to be necessary, no other state power was so readily relin[q]uished. There was no desire to authorize federal interference with social conditions or legal institutions of the states. Even the Bill of Rights amendments were framed only as a limitation upon the powers of Congress. The states were quite content with their several and diverse controls over most matters but, as Madison has indicated, "want of a general power over Commerce led to an exercise of this power separately, by the States, which not only proved abortive, but engendered rival, conflicting and angry regulations."

The foregoing is a frequently repeated history lesson from the Supreme Court. In his concurring opinion in the landmark 1824 case of Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1 (1824), for example, Justice Johnson provided a similar historical summary:

> "For a century the States [as British colonies] had submitted, with murmurs, to the commercial restrictions imposed by the parent State; and now, finding themselves in the unlimited possession of those powers over their own commerce, which they had so long been deprived of, and so earnestly coveted, that selfish principle which, well controlled, is so salutary, and which, unrestricted, is so unjust and tyrannical, guided by inexperience and jealousy, began to show itself in iniquitous laws and impolitic measures, from which grew up a conflict of commercial regulations, destructive to the harmony of the States, and fatal to their commercial interests abroad. This was the immediate cause that led to the forming of a convention." [Gibbons, supra, 22 U.S. at 224.]

In the Supreme Court's 1888 decision in Kidd v. Pearson, 128 U.S. 1, 9 S. Ct. 6, 32 L. Ed. 346 (1888), Justice Lamar noted that "it is a matter of public history that the object of vesting in congress the power to regulate commerce . . . among the several states was to insure uniformity for regulation against conflicting and discriminatory state legislation." (See Kidd, supra, 128 U.S. at 21.) More recently, Justice Stevens has advised that when "construing the scope of the power granted to Congress by the Commerce Clause . . . [i]t is important to remember that this clause was the Framers' response to the central problem that gave rise to the Constitution itself," that is, the Founders had "'**set out only to find a way to reduce trade restrictions.**'" (See EEOC v. Wyoming, 460 U.S. 226, 244-45, 103 S. Ct. 1054, 75 L. Ed. 2d 18 (1983) (Stevens, J., concurring)).

The foregoing history is so "widely shared" that Constitutional scholars with opposing views on the Commerce Clause readily agree on this point. Compare Stern, supra, at page 1344: ("There can be no question, of course, that in 1787 [when] the framers and ratifiers of the Constitution . . . considered the need for regulating 'commerce with foreign nations and among the several states,' they were thinking only in terms of . . . the removal of barriers obstructing the physical movements of goods across state lines."), with the Bork & Troy Whitepaper: "Boundaries of the Commerce Clause", at pages 858 and 865 ("One thing is certain: the Founders turned to a federal commerce power to carve stability out of this commercial anarchy" and "keep the States from treating one another as hostile foreign powers"; in short, "the Clause was drafted to grant Congress the power to craft a coherent national trade policy, to restore and maintain viable trade among the states, and to prevent interstate war."). Hamilton and Madison both shared this concern that conflicting and discriminatory state trade legislation "would naturally lead to outrages, and these to reprisals and wars." (See The Federalist [*Papers*] No. 7, at 37 (Hamilton) and The Federalist No. 42, at 282 (Madison) (referencing the "unceasing animosities" and "serious interruptions of the public tranquility" that would inevitably flow from the lack of national commerce power).

The original meaning and intent of the "Commerce Clause" has been intentionally perverted by certain attorneys, judges, justices and professors of law since at least 1891 after the creation of The National Conference of Commissioners On Uniform State Laws in Saratoga, New York. In 1991, they wrote:

… "There were at least two methods for unifying the legal systems of the states**. State law could be preempted by the Federal Government through repeal of the Tenth Amendment, or by expansive interpretation of the commerce clause and other expressed powers delegated to Congress.**" …

(Pages 3 of the Preface in "A CENTURY OF SERVICE - A CENTENNIAL HISTORY OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS" - written by Walter P. Armstrong, Jr., published by West Publishing Company in 1991. (No ISBN provided)

For over a 120 years, the NCCUSL and others have worked to destroy our American "compound republic"!

**Note:** Much of the forgoing was taken from, or based upon part of the "ORDER GRANTING SUMMARY JUDGMENT" by Judge Roger Vinson, of the UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA, PENSACOLA DIVISION, in Case No.: 3:10-cv-91-RV/EMT – Jan. 31, 2011.