

So here I am... Discussing a position about legal rulings. I am not a lawyer. I thought about being one. My dad said I should have been one.

I am not a lawyer.

I took some time to dig into the 10th Amendment. I have found a glut of information on the subject and wanted to share.

I have received a great deal of contention and support on my last article. I had talked about a few points, but was pounded on my assertion of the 10th Amendment being at the heart of the "healthcare" debate. I decided it was time to dig in to understand what the 10th Amendment may mean for this debate in regard to **mandated coverage for all**.

Simple point of argument... Mandatory Coverage. That is all I am looking at. When the federal government dictates to the people that they must purchase insurance or be fined, the Congress has inducted its right using implied powers from the Commerce Clause in the Constitution.

What I found was complicated and at times difficult to understand. If you are a lawyer or law student and understand this subject- PLEASE WEIGH IN!

The 10th Amendment and the Commerce Clause

I have learned that there are two areas of consideration. One is the 10th Amendment; the other is The Commerce Clause in the Constitution. It was put in to fix issues with the Articles of Confederation. (Sleepy yet?)

The Commerce Clause states that Congress has the right "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes".

The 10th Amendment states "The 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."

Got it? Two different areas of the Constitution.

What Does the Court Say About the Commerce Clause?

The Supreme Court has ruled on the congressional power of interstate commerce regulation repeatedly. In a decision from 1918- *Hammer v Dagenhart*- The court took the position that when goods, services or commerce was used to produce "evil" between states- ie.. rotten food, prostitutes, liquor.. The congress could regulate. The court said in each instance that the weight of the permissible regulation was based on the weight of the issue. *(I understand that this was a 1918 decision and that the court has changed or modified position on the subject multiple times. I am simply trying to set the stage for some points.)*

Below is an excerpt from the ruling:

'In each of these instances the use of interstate transportation was necessary to the accomplishment of harmful results. In other words, although the power over interstate transportation was to regulate, that could only be accomplished by prohibiting the use of the facilities of interstate commerce to effect the evil intended.'

Essentially, the court has said Congress can regulate. Based on the above statement, the implied ability to **create barriers** through regulation is a concern for the court. Once Congress has overstepped the regulation boundary by preventing a business or commerce from being successful- they have violated the Constitution according to the 1918 ruling.

Here is more direct language from the ruling:

*"In interpreting the Constitution it must never be forgotten that **the nation is made up of states** to which are entrusted the powers of local government. And to them and to the people the powers not expressly delegated to the national government are reserved.*

The power of the states to regulate their purely internal affairs by such laws as seem wise to the local authority is inherent and has never been surrendered to the general government."

I wanted to show how much detail, thought and cultural interpretation went into the 1918 ruling. It is important. I have found that the Court repeatedly changes position over the last 100 years.



Where are we now??

Subsequent rulings in regard to Interstate Commerce found that Congress had more rights than in the past.

In *Katzenbach v. McClung*- 1964, the Court found that Congress can have regulatory right over local business if that business effects interstate trade.

See summarized opinion from the Court thanks to [Lawnix](#):

"The Commerce Clause grants Congress the power to regulate local business activity if any part of it affects interstate commerce, if the aggregate of activity of that industry has a substantial effect on interstate commerce."

In 1995, *US v Lopez*- the Court heard a challenge on the limitation of Congress in regard to the Commerce Clause. Here is the opinion in summary from Lawnix again:

"The three broad categories of activity that Congress may regulate under its commerce power are: a) the use of the channels of interstate commerce; b) Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities; and c) Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce."

What Does the Court Say About the 10th Amendment?

There is a fantastic [article](#) on Jrank.org regarding the history of the 10th Amendment. I have quoted some of the best parts below:

"National League of Cities v. Usery (1976)... The Tenth Amendment enjoyed a brief resurgence in 1976 when the Supreme Court held that the application of the FAIR LABOR STANDARDS ACT of 1938 (29 U.S.C.A. §§ 201 et seq.) to state and local governments was unconstitutional... If Congress may withdraw from the states the authority to make such fundamental employment decisions, the Court concluded, "there would be little left of the states' separate and independent existence," or of the Tenth Amendment.

National League of Cities proved to be an unworkable constitutional precedent. It cast doubt on congressional authority to regulate many aspects of local affairs that most of society had come to rely upon.

*The Supreme Court eliminated these concerns by overturning National League of Cities in Garcia v. San Antonio Metropolitan Transit Authority (1985). In reaching this decision, the Court said that **if certain states are worried about the extent of federal authority over a particular local matter, the residents of such states should contact their senators and representatives who are constitutionally authorized to narrow federal regulatory power through appropriate legislation. JUDICIAL REVIEW of federal regulations under the Tenth Amendment, the Supreme Court suggested, is not the proper vehicle to achieve this end.***

The Bottom Line

The latest ruling from 25 years ago regarding the 10th Amendment states that the court is not responsible for interpreting the constitutionality of congressional regulation and that the people

should take this up with their legislators. That ruling feels like a cop-out and a waste of the judiciary branch's check against the legislative branch. BUT- it is precedent and that hold a great deal of weight regarding Supreme Court opinion.

The most interesting item to note is that the court has changed position on the matter multiple times over the last 150 years. About every 25 years or so. (Which is why I wanted to point out the position in 1918.) Most notably there is a complete change in interpretation from the 70's to the 80's... Based on history, we may be ready for a new ruling on this type of legislative authority from Congress.

I guess this means- we will never know what will happen until the court takes a look. Many states are beginning to prepare legislation and will be filing law suits post haste. What I have noticed is that there is not a precedence for the Congress forcing the purchase of a product or service on people or companies with monetary fines for non-compliance. We are in uncharted waters.