

Law and the Public's Health

The Commerce Clause—one of the most important sources of congressional legislative powers in the U.S. Constitution—is the subject of this installment of *Law and the Public's Health*. Commerce Clause jurisprudence, and its evolution through key Supreme Court decisions governing its application to major population health challenges, constitutes a basic building block of public health policy and practice.

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THE U.S. CONSTITUTION'S COMMERCE CLAUSE, THE SUPREME COURT, AND PUBLIC HEALTH

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The U.S. Constitution's Commerce Clause¹ represents one of Congress's most important sources of legislative powers. Although the Commerce Clause's text neither explicitly mentions nor even alludes to public health, its interpretation by the U.S. Supreme Court has played a key role in either promoting or hindering efforts to achieve landmark legislation affecting the public's health. Most recently, the Commerce Clause has figured prominently in lawsuits challenging the validity of the Patient Protection and Affordable Care Act (PPACA).^{2,3} The constitutional litigation concerning health-care reform has brought increased attention to the complex nature of the Commerce Clause and its relationship to the public's health.⁴

The Supreme Court's interpretation of the Commerce Clause is complex and evolving, and the Court's decisions have important implications for public health policy and practice. While Congress can use the Commerce Clause to justify some public health-related legislation, courts may invalidate such legislation as exceeding Congress's power under the Commerce Clause. This article provides historical context and describes recent developments in Supreme Court jurisprudence in the context of public health intervention. We then discuss how these decisions will affect ongoing judicial treatment of other public health endeavors.

THE SUPREME COURT'S INTERPRETATION OF THE COMMERCE POWER

Congress can only act using powers enumerated in the Constitution.⁵ In addition, the 10th Amendment reserves to states those powers not specifically granted to Congress nor denied to the states. The Commerce Clause, however, vests potentially broad authority in Congress to pursue legislative reforms addressing a wide range of matters.

The Commerce Clause states that "Congress shall have the Power . . . to regulate Commerce . . . among the several States . . ."¹ Congress has relied upon this provision to enact legislation covering public health priorities as diverse as drug labeling;⁶ environmental protection;⁷ laws regulating child labor, the minimum wage, and conditions of employment;⁸ and laws aimed at remedying gender-motivated violence.⁹

The Supreme Court's Commerce Clause jurisprudence can be divided into several distinct phases. From the earliest days of the nation to the late 19th century, the Court generally moved toward a more expansive interpretation of the Commerce Clause, as the role of the federal government in addressing the needs of a maturing nation became clearer.¹⁰ But in the decades preceding the New Deal, the Supreme Court, operating in a more *laissez-faire* social and economic environment, interpreted the scope of the Commerce Clause more narrowly, striking down numerous laws intended to protect the public's health.¹¹

For example, in *A.L.A. Schechter Poultry Corporation v. U.S.*, the Supreme Court invalidated federal legislation establishing certain labor conditions and regulating the sale of unhealthy chickens. Although the law was aimed at preventing the movement of dangerous foods in interstate commerce, the Court overturned the law, holding that it interfered with labor conditions related to purely intrastate business activities.¹²