

**TO REGULATE COMMERCE WITH FOREIGN NATIONS,  
AND INTERSTATE COMMERCE AMONG BETWEEN  
THE SEVERAL STATES, AND WITH THE INDIAN TRIBES"**  
**House Joint Resolution 3**

1. Who I am?
2. Thanks to committee and Legislative Services and any supporters.
3. What is language of the bill?
  - a. "To regulate Commerce with foreign Nations, and **interstate commerce among between** the several States, and with the Indian Tribes".
4. Justice Roberts, in an opinion concurred in by 6 of the other justices, stated in *NFIB v Sebelius*, "The States are separate and independent sovereigns. Sometimes they have to act like it."
5. The Commerce Clause empowers Congress "[t]o regulate Commerce ... among the several States," Art. I, § 8, cl. 3. The modern law of what has come to be called the dormant Commerce Clause is driven by concern about economic protectionism-that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors. The point is to effectuate the Framers' purpose to `prevent a State from retreating into economic isolation that had plagued relations among the Colonies and later among the States under the Articles of Confederation.
6. The law has had to respect a cross purpose as well, for the Framers' distrust of economic Balkanization was limited by their federalism favoring a degree of local autonomy.
7. In 1985, in *Garcia v. San Antonio Metropolitan Transit Authority*, the US Supreme Court, construed the Commerce Clause to give vast power to the Federal Government, reduced the role of the States in the federal system to the structure of the Federal Government itself.
8. This was followed in 2005 by *Gonzales v. Raich*, in which Justice Scalia made the problem worse by concurring that, "activities that 'substantially affect' interstate commerce - - are not themselves part of interstate commerce, and thus the power to regulate them cannot come from the Commerce Clause alone. Rather - - Congress's regulatory authority over intrastate activities that are not themselves part of interstate commerce (including activities that have a substantial effect on interstate commerce) derives from the Necessary and Proper Clause. And

the category of "activities that substantially affect interstate commerce," - - The authority to enact laws necessary and proper for the regulation of interstate commerce is not limited to laws governing intrastate activities that substantially affect interstate commerce. Where necessary to make a regulation of interstate commerce effective, Congress may regulate even those intrastate activities that do not themselves substantially affect interstate commerce.

9. In 2009, the Montana Legislature passed the Montana Firearms Freedom Act. The purpose of this act was to regulate guns manufactured and kept within Montana state lines under a less restrictive regulatory regime than federal law provides. To ensure that Montanans could enjoy the benefits of this less restrictive state regulation, the Montana Shooting Sports Association filed a declaratory judgment claim in federal court.

10. The lawsuit's importance is not limited to Montana, as seven other states have passed laws similar to the MFFA and 20 states have introduced such legislation. The goal here is to reinforce state regulatory authority over commerce that is by definition intrastate, to take back some of the ground occupied by modern Commerce Clause jurisprudence.

11. HJ3 is intended to advance the limitation on the over-reaching Commerce Clause that is being challenged by the Montana Firearms Freedom Act.

12. If this resolution is successful in having the Commerce Clause of the U.S. Constitution amended, I foresee:

- a. Increase ability to raise agriculture in Montana. In *Wickard v. Filburn*, a 1942 the US Supreme Court used the Commerce Clause to justify wheat quotas.
- b. An increased ability to protect our environment. Professor Jonathan H. Adler, Case Western Reserve University School of Law, states:
  - i. "- - most recognize excessive centralization as a fundamental problem with the existing regulatory regime. Current environmental programs exhibit most of the failings of Soviet-style command-and-control systems: excessive rigidity, inefficiency, diminishing marginal returns, poor prioritization, and so on."
- c. As reported in Professor Adler's, *Let Fifty Flowers Bloom: Transforming the States into Laboratories of Environmental Policy*, David Schoenbrod, a former attorney with the Natural Resources Defense Council concludes, "The popular desire for a clean environment can be realized with far more common sense by returning control to local government." He also is reported to have said EPA's role in environmental policy should be relegated to that of

a technical advisor, controller of interstate externalities, and little else.

- d. Professor Adler also states, "It typically costs \$25 million to \$30 million to clean up a single site in the federal Superfund program, and the average cleanup time is about 10 years. By comparison, Minnesota is cleaning up sites for less than \$5 million each and completing cleanups in only a few years.

13. Items that were in existence prior to the 1942 expansion of the Commerce Clause will not be effected by putting sideboards on the clause. Some of these items include the railroads, power lines, shipping by barges on our rivers, canals, lakes and oceans, national parks and national forests.

Please support freedom and limited government by passing House Joint Resolution number 3.