

HOUSE JOINT RESOLUTION 614

By Elam

A RESOLUTION to encourage Congress to return to a more original understanding of the Commerce Clause of the United States Constitution.

WHEREAS, the Commerce Clause in Article I, Section 8, of the United States Constitution gives Congress the power to "regulate commerce ... among the several states;" thereby withholding exclusively for the states the power to regulate commerce within each state; and

WHEREAS, the Commerce Clause has been a powerful and influential aspect of the governance and economic development of this nation since the adoption of the United States Constitution at the end of the 18th century; and

WHEREAS, the development of the Commerce Clause as originally interpreted in cases such as *Gibbons v Ogden*, 22 U.S. 1 (1824), *Brown v Maryland*, 29 U.S. 419 (1827) and *Cooley v Board of Wardens of the Port of Philadelphia*, 53 U.S. 299 (1851), preserved regulation of commerce from federal control by upholding the exclusive right of states to regulate commerce occurring solely within their borders; and

WHEREAS, during the New Deal era the Supreme Court of the United States departed from the earlier and more original understanding of the Commerce Clause and its well considered protection of state authority over intra-state commerce beginning with the case of *NLRB v Jones & Laughlin Steel Corporation*, 301 U.S. 1 (1937) and culminating in *Wickard v Filburn*, 317 U.S. 111 (1942); and

WHEREAS, *Wickard v Filburn* held that wheat grown by a farmer for consumption on the farmer's own land was within the reach of Congress' regulation because such wheat would have had a substantial effect on interstate commerce; and

WHEREAS, this New Deal era departure from earlier traditions and precedents has continued to present day so that Congress now regulates commerce occurring entirely within a state to the detriment of each state and the country; and

WHEREAS, the enactment of federal health care reform is justified by some with invocations of the Commerce Clause as interpreted in light of *Wickard v Filburn* and its progeny all the way to the recent case of *Gonzales v Raich*; 545 U.S. 1 (2005); and

WHEREAS, it is time for this New Deal era deviation from earlier interpretations of the Commerce Clause to be repudiated; and

WHEREAS, if Congress did not act to usurp the legitimate sovereignty of states in our federal system through overly expansive assertions of federal power, then federal courts would have no further encroachments which they could uphold under the over expansive assertions of Congressional power under the Commerce Clause represented by *Wickard v Filburn* and similar cases; and

WHEREAS, if federal courts will not repudiate this unjustified federal encroachment on the rightful prerogatives of the states under the federal Constitution, then Congress should voluntarily act to return to a more original understanding of the Commerce Clause by refusing to enact legislation that unjustifiably impinges on the legitimate sovereignty of states under the federal Constitution; now, therefore,

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE ONE HUNDRED SEVENTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, THE SENATE CONCURRING, that this body does strongly encourage the Congress of the United States to return to a more original understanding of the Commerce Clause as represented by Supreme Court cases decided before the era of the New Deal.

BE IT FURTHER RESOLVED, that a certified copy of this resolution be prepared and transmitted to members of the Tennessee Congressional delegation for appropriate action.