

Handout A: Background Essay—Expansion of Congressional Power Answer Key

1. James Madison asserted that, “It [the Interstate Commerce Clause] was intended as a negative and preventive provision against injustice among the States themselves, rather than as a power to be used for the positive purposes of the General Government, in which alone, however, the remedial power could be lodged.” In other words, it was a grant for Congress to regulate the commerce between the states not as a general grant of power.
2. Prior to the twentieth century, the Commerce Clause was narrowly interpreted to give Congress authority to regulate interstate commerce between the states. Beginning during the New Deal, the Supreme Court allowed Congress to exercise just about any power under the Commerce Clause for the next sixty years. The Congress could also delegate its regulatory authority to bureaucratic agencies in the executive branch. The legislative powers of Congress were greatly increased as a result.
3. The Supreme Court in *U.S. v. Lopez* (1995) restricted the authority of Congress to legislate broadly under the Commerce Clause. Moreover, the House of Representatives instituted a change in house rules to mandate that any legislation must be based upon a constitutional provision authorizing it.

Handout B: Timeline of Changing Commerce Powers of Congress Answer Key

Commerce Act of 1887: The law allowed Congress and an executive branch agency, the Interstate Commerce Commission (ICC), to regulate private railroads engaged in interstate commerce. It expanded the powers of Congress under the Commerce Clause.

***Swift v. U.S.* (1905):** The Supreme Court permitted the regulation of meatpackers, who operated within states, because they were part of a “current of commerce,” that flowed between parties in multiple states. This expanded the powers of Congress under the Commerce Clause.

***Lochner v. New York* (1905):** The Supreme Court ruled that individuals had the liberty to sell their labor for any rate they deemed acceptable and invalidated a New York state law that restricted the number of hours that bakery employees could work. This did not increase the powers of Congress under the Commerce Clause.

***West Coast Hotel v. Parrish* (1937):** the Supreme Court upheld a Washington State minimum wage law and was the decisive case that expanded congressional power under the Commerce Clause.

***U.S. v. Darby Lumber* (1941):** The Supreme Court upheld the Fair Labor Standards Act of 1938 and allowed Congress to regulate any production process of any goods that would be eventually shipped across state lines. This case allowed virtually unlimited congressional authority under the Commerce Clause.

U.S. v. Lopez (1995): Invalidated an act forbidding the possession of firearms near schools under the Commerce Clause. The Court rejected the constitutionality of the law and restrained the powers of Congress under the Commerce Clause for the first time since the New Deal.

Rule XII, clause 7 of 114th U.S. Congress (2010): Required that each bill or joint resolution introduced in the House of Representatives be accompanied by a statement citing the power granted to Congress in the Constitution to enact the proposed law. This meant to restrict the powers of Congress under the Commerce Clause.

Handout F: Interpreting Commerce Law Answer Key

Scenario 1: The law requiring participation in Little League baseball probably would have been ruled unconstitutional before 1850 because it was local activity unrelated to commerce; possibly upheld in 1950 because the courts widely interpreted the Commerce Clause; and probably ruled unconstitutional in 2000 because the courts restricted the understanding of commerce after *U.S. v. Lopez* (1995).

Scenario 2: The law regulating the commerce and health of animals within the boundaries of a state would most likely have been ruled unconstitutional in 1850 because the trade was intrastate rather than the constitutional standard of interstate and health regulations were part of states' "police powers;" most likely upheld in 1950 because of the expansive understanding of commerce and the requirements of public health regulation; and probably ruled unconstitutional in 2000 because the courts left intrastate trade and public health regulations more to the states.

Handout I: Comparing Laws Answer Key

1. The Affordable Care Act of 2010 is many times longer than the Homestead Act of 1862.
2. The nineteenth century language of the Homestead Act of 1862 is difficult but much simpler and more easily understood than the complicated legal and bureaucratic language of the Affordable Care Act of 2010.
3. Modern laws are much more complicated, lengthy, and difficult for ordinary Americans than earlier laws of a century ago.