September 21, 2012 (/full-blog/2012/09/the-commerce-clause-american-farmer-and.html)

# The Commerce Clause, the American Farmer, and the Role of Wickard v. Filburn in the Healthcare Decision (/full-blog/2012/09/the-commerce-clause-american-farmer-and.html)

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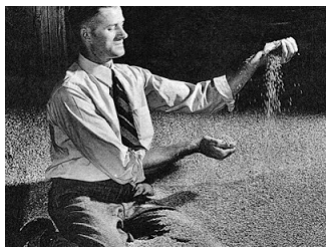

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By: Jocelyn Arlinghaus, Staff Member

Roscoe Filburn was a fifth generation small town farmer from Montgomery County, Ohio.[1] A hard working American farmer during the wake of The Great Depression, he raised dairy cattle, sold milk, and harvested eggs to sell to local citizens.[2] In addition, he planted wheat each fall to harvest the following summer for personal uses such as feeding his livestock, making flour for his family, and replanting for the following growing season.[3] In 1938, Congress passed the Agriculture Reform Act with the goal of controlling the crop supply and stabilizing plummeting commodity prices.[4] The Act encouraged farmers to purchase wheat by limiting the amount they were allowed to grow themselves and assessing penalties for cultivating over the allotted amount. While the terms of the Act allowed Filburn to cultivate 11.1 acres of wheat, he harvested 23 acres and was assessed a penalty of forty-nine cents on each extra bushel – totaling a fine of $117.11.[5]

Filburn challenged the assessment under the Commerce Clause, arguing that it went beyond the scope of Congress' power.[6] While Congress has long been granted the power to regulate all instrumentalities of interstate commerce, Filburn argued that it had no business regulating local operations that had only an indirect effect upon interstate commerce.[7] Because Filburn was growing wheat merely for personal use, he argued that the law was unconstitutional as applied to him.[8] The case eventually made its way to the Supreme Court where, in one of the most influential Supreme Court cases in history, the Court upheld the law against Filburn.[9] Writing for the unanimous Court, Justice Robert H. Jackson reasoned that even though Filburn did not sell wheat on an open market and "though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce."[10] Thus the Court concluded that even though Filburn didn't buy or sell wheat, he still impacted the wheat market.[11] Every bushel he grew was a bushel he didn't buy, which ultimately affected the price of wheat on the market.[12]

Wickard v. Filburn formed the basis for the Supreme Court's modern understanding of the scope of Congress' power under the Commerce Clause.[13] 70 years in the books, the case took center stage as a controlling precedent in the Supreme Court's healthcare decision, announced on June 28, 2012.[14] In Filburn, Congress' limitation on the amount of wheat that could be cultivated in a certain year was within the scope of their power to regulate interstate commerce even though Filburn grew wheat for personal use and did not buy or sell it on the national market.[15] Along these lines, the Court considered whether the Commerce Clause could be applied to uphold the individual healthcare mandate and require citizens to purchase health insurance.

The Supreme Court devoted three days to oral arguments, much of which was centered on the respective opponents' interpretations of Filburn.[16] Supporters of the healthcare mandate argued that Filburn has vested in the federal government the authority to regulate individuals' choices in matters affecting the national economy.[17] If the government had the authority to make farmers purchase wheat or pay a penalty, certainly it could mandate that individuals obtain health insurance or be subject to a penalty.[18] Further, supporters drew an analogy between the wheat in Filburn and an individuals' decision to go without healthcare, suggesting that allowing individuals to go without healthcare significantly impacts the national economy by raising insurance rates and forcing hospitals to pay for the medical care of those that cannot afford it.[19] Opponents of the law told a much different tale. They argued that there was a significant difference in the practice of offering an *incentive* to encourage farmers to buy wheat by imposing penalties for growing their own and the practice of forcing people to buy health insurance or face a penalty.[20]

In a 5-4 split on this issue, the Supreme Court refused to extend the government's power under the Commerce Clause to the individual healthcare mandate.[21] Chief Justice John Roberts distinguished Filburn, arguing that the farmer was *actively* growing wheat and choosing to participate in the activity of farming while those not buying health insurance weren't doing anything.[22] While the law in Filburn regulated economic *activity*, the individual mandate penalized economic *inactivity*. The *inactivity* of refusing to purchase health insurance did not invoke the Commerce Clause in the same way as did the *act (http://www.blogger.com/blogger.g?blogID=8202935745006855383)ivity* of harvesting wheat. After addressing the remaining issues, the Court ultimately held that while the Commerce Clause could not be invoked, the individual mandate was valid under the government's taxing authority.[23]

Filburn died in 1987 at the age of 85.[24] One can only imagine that he would have been pleased to a see a small piece of the broad precedent chipped away. Since his time, legal scholars continue to question the principles upon which his case rested, namely the expansion of Congress' power under the Commerce Clause to regulate noncommercial activity.[25] Meanwhile, American farmers have resisted the individual healthcare mandate on grounds that the expenses that it will impose will create significant financial hardships for them.[26] They continue to push for additional action to address these remaining concerns.[27] Stay tuned.

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[1] Jim Chen, *Filburn's Legacy*, 52 Emory L.J. 1719, 1733 (2003).

[2] *Id.* at 1734.

[3] *Id.*

[4] *See id.*

[5] *Id.* at 1734, 1736.

[6] Ariane de Vogue, *Long-Dead Ohio Farmer, Roscoe Filburn, Plays Crucial Role in Health Care Fight*, ABC News (Jan. 30, 2012), http://abcnews.go.com/Politics/long-dead-ohio-farmer-roscoe-filburn-plays-crucial/story?id=15460050#.UFd8SY2PXg8 (http://abcnews.go.com/Politics/long-dead-ohio-farmer-roscoe-filburn-plays-crucial/story?id=15460050#.UFd8SY2PXg8).

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Wickard v. Filburn*, 317 U.S. 111, 125 (1942).

[11] David Kestenbaum, *The Farmer and the Commerce Clause*, National Public Radio (July 05, 2012, 03:06 AM), http://www.npr.org/blogs/money/2012/07/05/156232075/the-farmer-and-the-commerce-clause (http://www.npr.org/blogs/money/2012/07/05/156232075/the-farmer-and-the-commerce-clause)

[12] *Id.*

[13] Adam Liptak, *At Heart of Health Law Clash, a 1942 Case of a Farmer's Wheat*, The New York Times (March 19, 2012), http://www.nytimes.com/2012/03/20/us/politics/at-center-of-health-care-fight-roscoe-filburns-1942-commerce-case.html?pagewanted=all&_moc.semityn.www (http://www.nytimes.com/2012/03/20/us/politics/at-center-of-health-care-fight-roscoe-filburns-1942-commerce-case.html?pagewanted=all&_moc.semityn.www)

[14] *Id.*

[15] Kestenbaum, *supra* note 11.

[16] Liptak, *supra* note 13.

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] Kestenbaum, *supra* note 11.

[22] *Id.*

[23] *Id.*

[24] Chen, *supra* note 1, at 1768.

[25] *See* Alex Kreit, *Why is Congress Still Regulating Noncommercial Activity?*, 28 Harv. J.L. & Pub. Pol.'y 169 (2004).

[26] *Healthcare Decision Handed Down*, Southern Farmer (June 28, 2012), http://farmprogress.com/story-healthcare-decision-handed-down-0-61006 (http://farmprogress.com/story-healthcare-decision-handed-down-0-61006)

[27] *Id.*

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631 SOUTH LIMESTONE, LEXINGTON, KY
40508 (859) 257-4747 BLOG.KJEANRL@GMAIL.COM (MAILTO:BLOG.KJEANRL@GMAIL.COM)