

## SUMMARY

This diploma thesis aims to analyze the issue of one of the most significant congressional powers found in Article I., Section 8 of the U.S. Constitution. Congressional power to regulate interstate commerce has been instrumental to the federal government's legislative efforts in many areas of law. This constitutional provision enabled the Congress to react to the changing conditions and new problems the country has been facing, especially in the area of working conditions, civil rights, criminal justice or even environmental law and many others. The expansion of power of the federal government, however, was not always greeted with enthusiasm, especially in the first three decades of the 20th century, before the Supreme Court began to read the commerce power much more broadly, to the point that it ceased to be a factual limitation of its powers. This trend was meant to be stopped by the New Federalism movement and the five new conservative justices who issued rulings that limited the scope of the Commerce Clause. However, this group of justices proved to be very inconsistent in its own approach toward this constitutional provision and eventually fell apart, which rendered Rehnquist's attempted constitutional revolution with respect to state's rights partly a failure. As the new Court membership under the leadership of John Roberts expresses little interest in this area of federalism, the future of the Commerce Clause seems safe in the sense that I believe that no decisions that would further limit the scope of the commerce power seem likely, especially given the fact that the longest serving justices are all conservatives and might be replaced by liberally leaning justices by the Democratic administration.

The first chapter of the thesis analysed the two basic concepts of constitutional interpretation, that being „originalism“ and „Living Constitution“. The chapter dealt with ideas, as well as methods employed by the two approaches. In addition, it also explored the arguments used by their main proponents. This basic outline of interpretative approaches seems useful especially given the fact that these two interpretative concepts are related to broader issues analysed in the second and third chapter of this thesis.

The second chapter dealt with the historic framework of the Commerce Clause, including the motivations that led the Founding Fathers to incorporating it into the Constitution. The chapter compares the form of the commerce power, or lack thereof, in the Articles of Confederation and the U.S. Constitution. In order to understand the context and reasoning of the Court under the leadership of William Rehnquist and John Roberts, the chapter also explores the development of the Court's jurisprudence in this area.

The last chapter finally compares the approaches of the two courts. It provides the political context of the new jurisprudence and introduces its justices and then analyses their decisions. The author concludes that the efforts of the Rehnquist Court to redefine the scope of the commerce power were not entirely successful. The main reasons for this failure were the internal ideological conflicts within the group of conservative justices, the resistance of the general public to the limit of the federal government's ability to solve the nation's problems, especially after several events in the country's history that required a quick and forceful federal response. The author also concludes that the Rehnquist Court's new limits to the commerce power were insufficient to provide for major changes in the relationship between the federal government and the states as no case since the New Deal has been explicitly overturned. In other words, the Congress could still very easily pass the constitutional muster by only providing that the regulated item or activity sometime during its existence passed state borders. In author's opinion, the Court would have to adopt a new, much more restrictive and detailed test, where simply satisfying the jurisdictional element would be insufficient. The author points out that the Roberts Court has shown little interest in Commerce Clause cases, which may be due to the lack of the public's encouragement to the redefinition of American federalism since its fulfillment would mean a major overhaul of laws that the public has relied upon throughout the last 80 years. The author further concludes that the decision in the case of health care reform will eventually have little impact and that future restrictions on the commerce power seem unlikely.