Liberty Tree

Vol. 24, No. 12 — December 2022

DOJ deFACEs LIFE's defenders ...

Part II: Perverting the Commerce Clause

In our November issue, we investigated the history of the "Freedom of Access to Clinic Entrances" (FACE) Act, the 1994 legislation which federally criminalizes acts of force, threat of force, or physical obstruction, attempts to injure, intimidate or "interfere with" people who are obtaining or providing "reproductive health services," or are "exercising" their First Amendment right of religious freedom at a place of religious worship. We saw that the congressional promoters of death for the unborn "found," as reported in the Senate Report, that such acts affect interstate commerce by causing women to travel interstate to seek abortions.

The seditious FACE Act is currently being used by the thugs at the U.S. Department of [In]Justice to persecute those who try to protest against abortion, who pray or sing in front of abortuaries, or who attempt to counsel women to turn away from a true crime, the evil of killing their own offspring. One such thug is Vanita Gupta, Associate Attorney General, who stated, at the DOJ's "Civil Rights Division" 65th anniversary on December 6th, that the Supreme Court's repudiation of the infamous and immoral decision of *Roe v. Wade* in early 2022 "dealt a devastating blow to women throughout the country, taking away the constitutional right to abortion and increasing the urgency of our work, including enforcement of the FACE Act, to ensure continued lawful access to reproductive services."[1]

No right to abortion

On June 24, 2022, the decision in *Dobbs v. Jackson Women's Health Organization* was released by the Supreme Court, after a February draft was leaked on May 2nd. This reversal of *Roe v. Wade* surveyed the history of the common law and legislative enactments, from centuries ago to the 20th century, and declared that, just as assisted suicide was always considered a crime, so too was abortion:

> The inescapable conclusion is that a right to abortion is not deeply rooted in the Nation's history and traditions. On the contrary, an unbroken tradition of prohibiting abortion on pain of criminal punishment persisted from the earliest days of the common law until 1973. The Court in Roe could have said of abortion exactly what Glucksberg [Washington v. Glucksberg, 521 U.S. 702(1997)] said of assisted suicide: "Attitudes toward [abortion] have changed since [13th century legal writer Henry de] Bracton, but our laws have consistently condemned, and continue to prohibit, [that practice]."[2]

As established in the decision, *at no time* in the history of the common law was abortion ever considered a right. Thus, since the Constitution itself makes no reference to abortion, no such right is even implicitly protected by any constitutional provision. None of the framers of the Constitution, the Bill of Rights, or the Fourteenth Amendment would have considered abortion a *right*, since it had

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Defacing pregancy centers: Similar to Antifa and BLM rioters, a group calling itself "Jane's Revenge" has vandalized pregnancy services across the nation. Mountain Area Pregnancy Services of Ashville, North Carolina was damaged on or about June 7, 2022 with a message that read, "if abortions aren't safe, neither are you!" Ironically, abortions are not safe for the unborn, nor for their mothers, and *never have been*. Despite this group's criminal activity, no arrests have been made under the FACE Act for these clear violations.

1. www.justice.gov/opa/speech/associate-attorney-general-vanita-gupta-delivers-remarks-civil-rights-divisions-65th
2. *Dobbs v. Jackson Women's Health Organization*, 597 U.S._____ (2022). Justice Alito's decision points out that by the late 1950s at least 46 States prohibited abortion "however and whenever performed" except if necessary to save "the life of the mother," and at the time *Roe* was decided, thirty States still prohbited abortion at all stages. All emphases added throughout this article, unless otherwise noted.

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traditionally never been so thought. It follows that *all* references to rights, then, in the Constitution, *never* include a right to an abortion. Such did not *exist* at common law.[3]

Still attacking the right to life

The *Dobbs* decision effectively announces that the judiciary will not support federal government interference in State laws criminalizing abortion, because the Constitution reserves the abortion issue to the States for determination. *Dobbs* does *not* state, however, that the unborn have a right to life. Nevertheless, following this decision, thirteen States' laws banned abortions to varying degrees, based on "triggers" making them effective the instant *Roe v. Wade* was overturned. As of August 2022, there are only six States in which the laws allow abortion at all stages of pregnancy — Alaska, Colorado, New Jersey, New Mexico, Oregon and Vermont. The death cult is mounting challenges to laws banning abortion, so some of the State laws banning abortion may be on hold for some time.

Tyrant Gupta, along with Attorney General Merrick Garland, the DOJ's "Reproductive Rights Task Force,"[4] and HHS Secretary Xavier Becerra, have been busy working to undermine the will of the people, acting through their State legislatures, to ban abortions. For example, using the federal Emergency Medical Treatment and Labor Act (EMTALA), the DOJ sued Idaho to force the performance of abortions in order to "stabilize" the health of patients arriving at emergency rooms of hospitals who receive Medicare funds.[5] As it stands, Idaho law only allows abortion to prevent the death of a pregnant woman (or in cases where rape or incest was reported to a specific government agency), and the DOJ wants it to be performed to 'stabilize the health' of a pregnant woman. Undoubtedly, stabilization is to be defined in expansive ways, including mental or emotional health. In any event, the death cult has a clear interest in a single payer, federal health care system (such as Medicare) to establish abortion and assisted suicide as national "healthcare," thereby removing decisions about abortion from the States.

Meanwhile, the FACE Act has been repeatedly and seditiously held by the Circuit Courts of Appeals as constitutional, so the enraged Gupta and her fellow DOJ terrorists are determined to use it to prosecute as many prolife protestors they can. Twenty-six people have been indicted by the DOJ this year, compared to only four in 2021. And the "enforcement" of FACEA is egregiously lopsided: radical abortion rights group Jane's Revenge has claimed credit for vandalizing or firebombing around 18 prolife clinics since May 2022, but no arrests or indictments have occurred![6]

Associate Attorney General **Vanita Gupta**, who bears a strange and unfortunate resemblence to another (fictional) tyrant (see inset).

Complicit courts

Following the passage of FACEA in 1994, the DOJ began immediately prosecuting protestors alleged to have used force, threats, or intimidation against abortionists or their "patients." Accused defendants challenged the constitutionality of FACEA, arguing that it violates the First Amendment, because the nature of such protests is political speech, and that it exceeds the Commerce Clause power of the Congress, in that it does not regulate "economic activity." To date, all of the federal courts of appeal who have considered these questions in criminal cases have decided against the defendants, and the Supreme Court has not yet accepted even one case concerning FACEA.

Courts have overruled First Amendment defenses on the grounds that FACE criminalizes the interference with or obstruction of reproductive health services, regardless if the motivation for doing so is opposition to abortion or not. "Thus, 'pro-choice' protestors as well as 'pro-life' protestors come within the terms of the statute. It applies [presumably equally] to those who would interfere with the provision of counseling at a clinic in which patients are encouraged not to have abortions." *U.S. v. Weslin*, 156 F.3d 292, 296-297 (2d Cir. 1998). It would appear from the federal circuit decisions that the adoption of the broad phrase "reproductive health services" in H.R. 796 rather than the narrow term "abortion" in S. 636 before the passage of FACEA saved the Act from First Amendment challenges. There are specific occasions upon which a First Amendment defense could still likely be raised by a criminal defendant, however, depending on circumstances — for example,

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3. Conceivably, State Constitutions can be amended to declare abortion a right, if so ratified by the people, and that is one area in which the death cult will be very active now. But how can it be a right "reserved to States respectively, and to the people" under the Tenth Amendment, if the framers would not have considered it a right at all?
4. www.justice.gov/opa/pr/justice-department-announces-reproductive-rights-task-force
5. www.justice.gov/opa/pr/justice-department-sues-idaho-protect-reproductive-rights
6. www.foxnews.com/politics/doj-official-says-dobbs-decision-ramps-up-urgency-enforce-face-act-protect-reproductive-services. However, the FBI's director *claims* that since the *Dobbs* decision, about 70 percent of abortion-related cases being investigated concern attacks on prolife groups. www.foxnews.com/politics/pro-life-centers-targeted-70-abortion-related-violent-threats-dobbs-decision-fbi.

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if charges are laid against persons who did no more than passively sing hymns in front of an abortuary.

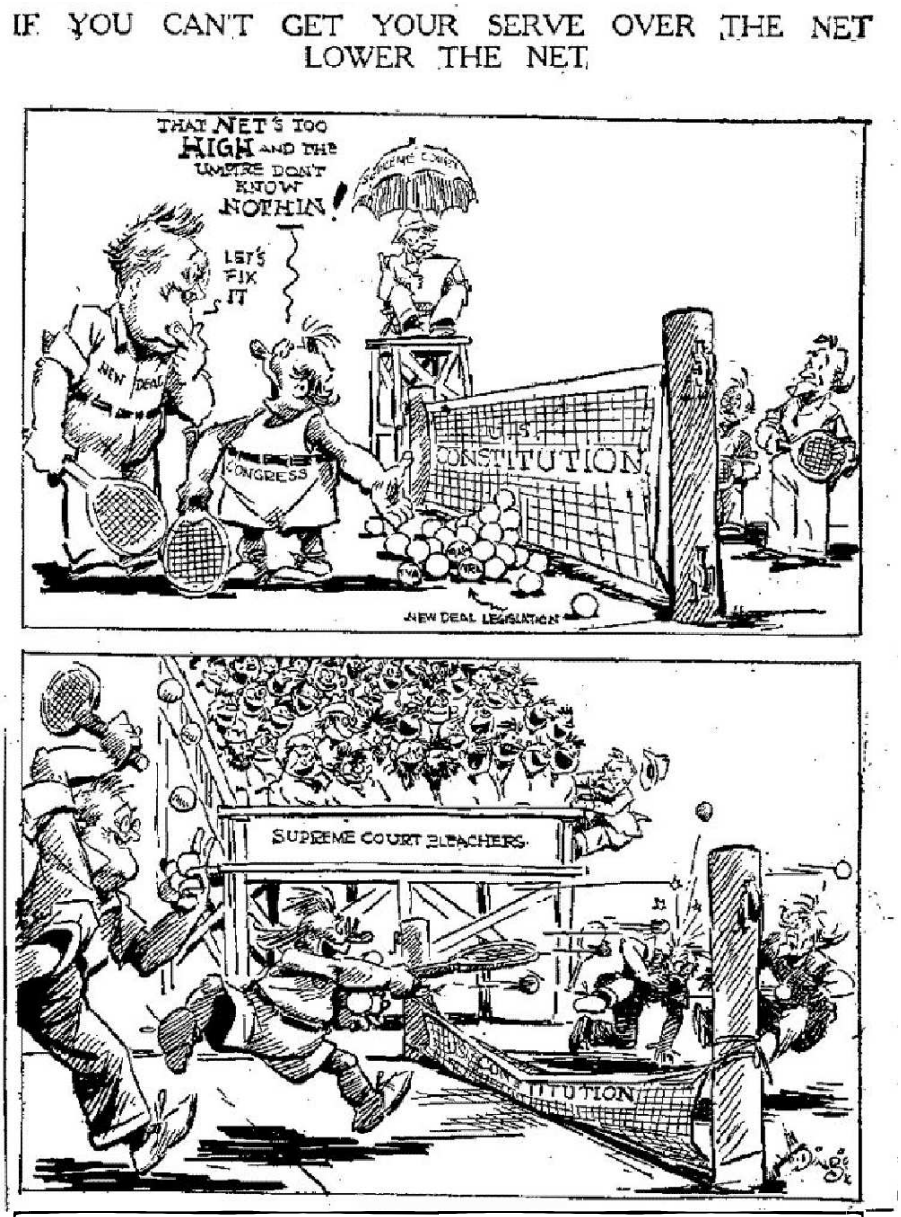
The truly seditious decisions of the circuit courts concerning FACEA, however, are those that have determined that the Act is a valid exercise of federal legislative power under the Commerce Clause and the Necessary and Proper Clause. In order to grasp how lawless these decisions are, it behooves us to trace a little of the history of the abuse of the Commerce Clause. For it is the deliberate misapplication of the commerce power under which the federal government has become a massive administrative state intruding on every aspect of Americans' lives. Whenever Congress seeks to legislate civil or criminal statutes in an area reserved to the States, it simply pulls out the Commerce Clause power to grease the skids.

Circumventing 'commerce'

Prosecuting crimes against persons and property, particularly those which occur within the boundaries of a State — essentially what the FACE Act attempts to do — is reserved under our federal system to the jurisdiction of the States. Despite this, the Supreme Court has increasingly upheld the federal government in concurrently prosecuting these types of crimes, as long as Congress claims it's only exercising an enumerated power, and such crimes are essential and appropriate to exercising that power.

While the Art. 1, Sec. 8 power "To declare War" has been abused in this fashion, the power "To regulate Commerce ... among the several States" has been abused, in peacetime, to much greater lengths.

When the Constitution was written and ratified, the term 'commerce' was defined in legal terms as: "Commerce, *(Commercium)* Traffick, Trade or Merchandise in Buying and Selling of Goods. See *Merchant*."[7]



A prescient political cartoon circa 1937 depicts FDR with his "New Deal" and his tennis partner Congress discussing how to beat their opponents, Uncle Sam and the people of America. The tennis balls are all of the New Deal programs they want to "serve up" to the American people, but the Constitution bars them from getting those smash serves across. Congress complains: "That net's [the Constitution's] too high and the umpire [Supreme Court] don't know nothin!" FDR replies: "Let's fix it." Once the Supreme Court becomes a crowd of spectators rather than an umpire, the Constitutional net falls, and the legislative and executive branches gleefully destroy the little people with their programs.

Commerce, then, means the buying and selling of physical personal property (goods). But does everyone who buys and sells goods engage in commerce? It seems not. The legal definition of Merchant, referred to in the definition of Commerce, from the same dictionary, makes this clear:

> Merchant, (Mercator) Is one that buys and trades in any Thing: And as Merchandise includes all Goods and Wares exposed to Sale in Fairs or Markets. ... every one that buys and sells is not at this Day under the Denomination of a Merchant; only those who traffick in the Way of Commerce, by Importation or Exportation, or carry on Business by Way of Emption [buying], Vendition [selling], Barter, Permutation or Exchange, and which make it their Living to buy and sell, by a continued Assiduity, or frequent Negotiation, in the Mystery [i.e., skill] of Merchandising, are esteemed Merchants. Those that buy Goods, to reduce them by their own Art or Industry, into other Forms than they are of, and then to sell

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7. Giles, Jacob. *A New Law-Dictionary*. (8th Ed., 1762).

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> them, are Artificers and not Merchants: Bankers, and such as deal by Exchange, are properly called Merchants.

Artificers, then, are those who buy raw commodities and manufacture further goods; they are not merchants. Similarly, farmers and miners are producers, and tradesmen are skilled workers, *not merchants egaged in commerce.*[8]

Justice Owen J. Roberts, the "switch in time" who set America firmly on the path to communism.

The buying and selling of goods between the States, however, necessarily occurs through various means and physical channels, so the power to regulate commerce has been held to cover navigable waters, highways, and air traffic, and such instrumentalities as land vehicles, ships, and airplanes.

Congress began to stray outside of regulating interstate commerce and its channels and instrumentalities with such acts as the Anti-Trust Act. But then came the New Deal. Under Franklin D. Roosevelt (FDR) — a member of the financial elite — Congress passed a barrage of alleged economic reforms between 1933 and 1939, ostensibly to ease the depression. These "reforms" included federal regulation of industry, agriculture, finance, labor, water power, labor, and housing, all of which vastly increased the administrative welfare state.

At first, the Supreme Court *struck down* many of these "reforms" — including the railroad retirement plan, a precursor of social security — as unconstitutional. Frustrated, FDR orchestrated the infamous "switch in time that saved nine."

Switching to communism

In February of 1937, Roosevelt announced a court packing plan, the Judicary Reorganization Bill, to add up to six justices to the Supreme Court. Conveniently, a few weeks later, Justice Owen Roberts "switched" from being 'conservative' to 'progressive,' enabling a 5-4 majority to conclude Congress acted *within* its constitutional power when it passed the National Labor Relations Act. In *National Labor Relations Board v. Jones & Laughlin Steel Corporation*, 301 U.S. 1 (1937), the court held that production employee firings which occurred inside a State at a local manufacturing plant had the potential to "affect" interstate commerce, even *indirectly*, so federal regulation of employer-employee relations was allowed. Now, agriculture and manufacture could be regulated, so long as Congress or the courts deemed "commerce" affected.

Among the many seditious decisions which followed *NLRB v. Jones*, the notorious, unanimously decided *Wickard v. Filburn,* 317 U.S. 111 (1942) monstrously inflated the alleged meaning of the commerce power. Even when a farmer *grew wheat for his own use,* and such wheat was *never bought or sold* or entered the 'streams of commerce,' the court said that such farmer's use of his own property affected the price of wheat in the national economy! Hey presto, all private acts, if viewed through the lens of the hypothetical *aggregate* effect of those acts, could potentially affect prices in the nation, so all private acts can be regulated! And it's suddenly Congress' job to *stimulate* commerce, too, not just regulate it! (Any questions why Americans are now trampled by the federales at every turn?)

Shortly after the FACE Act was passed, the Supreme Court summarized its never-overruled inflations of the Commerce Clause:

> [W]e have identified three broad categories of activity that Congress may regulate under its commerce power. First, Congress may regulate the use of the channels of interstate commerce. (" '[T]he authority of Congress to keep the channels of interstate commerce free from immoral and injurious uses has been frequently sustained, and is no longer open to question' " (*Caminetti* v. *United States,* 242 U. S. 470, 491 (1917))). Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, *even though the threat may come only from intrastate activities.* Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce, *i. e.,* those activities that *substantially affect* interstate commerce.[9]

If *any* activity Congress deems to "affect" interstate commerce — even if the activity is "noneconomic" — can be regulated, why did the framers enumerate other commerce-related powers in the Constitution?

Given the orginal meaning of 'commerce,' it is clear that the majority of federal regulations and crimes today are unconstitutional. Changing the definition of a word used in the Constitution from its original meaning *amends* the Constitution without going through the amendment process, *i.e.,* it is sedition. Courts who declare the FACE Act constitutional are thus outside this nation's supreme law.

Having briefly described the existing perversion of the Commerce Clause, we will take a further look at how the FACE Act violates the Constitution in the next installment.

8. For an extensive survey of the legal terrain prior to the Constitution, and a resulting explanation of the original meaning of the term commerce, see Natelson, Robert G. *The Legal Meaning of "Commerce" in the Commerce Clause*, 80 St. John's Law Review 789 (2006).
9. *United States v. Lopez*, 514 U.S. 549, 558-559 (1995) (cleaned up, with many citations omitted).