



BOX 7-9

Evolution of Interstate Commerce Doctrine

Marshall Interpretation

Gibbons v. Ogden (1824)
Marshall opinion for a 6–0 Court

Commerce begins in one state and ends in another. It does not stop when the act of crossing a state border is completed. Commerce occurring within a state may be part of a larger interstate process.

Shreveport Doctrine

Shreveport Rate Case (1914)
Hughes opinion for a 7–2 Court

Congress may regulate intrastate commerce when it is intertwined with interstate commerce and when a failure to regulate intrastate commerce would injure interstate commerce.

Stream of Commerce Doctrine

Swift & Company v. United States
(1905)
Holmes opinion for a 9–0 Court
Stafford v. Wallace (1922)
Taft opinion for a 7–1 Court

An article in interstate commerce does not lose its status until it reaches its final destination. Stopping along the way to its terminal sale does not remove an article from the stream of interstate commerce.

Manufacturing Excluded from Interstate Commerce

United States v. E. C. Knight Co. (1895)
Fuller opinion for an 8–1 Court
Schechter Poultry v. United States
(1935)
Hughes opinion for a 9–0 Court
Carter v. Carter Coal Co. (1936)
Sutherland opinion for a 5–4 Court

Manufacturing, processing, and mining activities are local by nature and not a part of interstate commerce. Their effect on interstate commerce is indirect. That an article is intended for interstate commerce does not make its manufacture part of interstate commerce. "Commerce succeeds to manufacture, and is not a part of it."

Modern Interpretation of Interstate Commerce

NLRB v. Jones & Laughlin Steel Corporation (1937)
Hughes opinion for a 5–4 Court

Congress may enact all appropriate legislation to protect, advance, promote, and ensure interstate commerce. "Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions, Congress cannot be denied the power to exercise that control."

United States v. Darby (1941)
Stone opinion for an 8–0 Court

"The power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those intrastate activities that so affect interstate commerce or the exercise of the

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Modern Interpretation of Interstate Commerce

	power of Congress over it as to make regulation of them an appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce."
<i>Wickard v. Filburn</i> (1942) Jackson opinion for a 9-0 Court	Even if an activity is local and not regarded as commerce, "it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce, and this is irrespective of whether such effect is what might at some earlier time have been defined as 'direct' or 'indirect' . . . That [an individual's] own contribution [to interstate commerce] may be trivial by itself is not enough to remove him from the scope of federal regulation where [his] contribution, taken together with that of many others similarly situated, is far from trivial."
<i>Gonzales v. Raich</i> (2005) Stevens opinion for a 6-3 Court	"In assessing the scope of Congress' authority under the Commerce Clause, we stress that the task before us is a modest one. We need not determine whether [the] activities, taken in the aggregate, substantially affect interstate commerce in fact, but only whether a 'rational basis' exists for so concluding."

Modern Commerce Power Limitations

<i>United States v. Lopez</i> (1995) Rehnquist opinion for a 5-4 Court	Federal legislation is constitutionally suspect if it does not regulate an economic activity that, in the aggregate, substantially affects interstate commerce.
<i>United States v. Morrison</i> (2000) Rehnquist opinion for a 5-4 Court	
<i>National Federation of Independent Business v. Sebelius</i> (2012) Roberts opinion for a 5-4 Court	"The power to regulate commerce presupposes the existence of commercial activity to be regulated." Congress cannot compel individuals "to become active in commerce by purchasing a product," even if their failure to do so affects interstate commerce.