

THE SUPREME COURT, JUDICIAL ACTIVISM, JUDICIAL SELF-RESTRAINT, AND THE COMMERCE POWER: A CASE STUDY

Below is a list of some of the most significant Supreme Court Cases regarding Congress's use of its Article I, Section 8 power to regulate interstate commerce. As you read, don't worry about memorizing these cases (unless we specifically cover one of them in class, such as *Gibbons*). Instead, simply try to get a sense of whether, in any given case, the Supreme Court is *deferring* to the will of Congress (i.e., exercising judicial self-restraint) or instead *overriding* Congress with its own view of what the government's role should be in regulating the economy (i.e., judicial activism). In cases that seem similar, but in which the Court reaches different conclusions, ask yourself how this can be.

Gibbons v. Ogden, 22 U.S. 1 (1824) (expands Congress's commerce power):

Q. Can Congress regulate the navigation of steamboats that travel between or among states?

A. Yes.

Reasoning: With respect to "commerce," the Court held that this word includes more than mere buying and selling of goods; "commerce" also includes "intercourse" and the "rules for carrying on that intercourse." This broader definition includes navigation.

Note: Keep in mind that Chief Justice John Marshall, remembering Valley Forge, wished to ensure that the United States had a very strong national government. Might this have something to do with his decision?

United States v. E. C. Knight Co., 156 U.S. 1 (1895) (restricts Congress's commerce power):

Q: Can Congress use the Commerce Clause to regulate *manufacture* of goods (in this case, sugar)?

A. No.

Reasoning: "That which belongs to commerce is within the jurisdiction of the United States, but that which does not belong to commerce is within the jurisdiction of the police power of the State. . . . Doubtless the power to control the manufacture of a given thing involves [interstate commerce] in a certain sense[], but . . . affects it only incidentally and indirectly."

Swift & Co. v. United States, 196 U.S. 375 (1905) (expands Congress's commerce power):

Q: Can Congress use the Commerce Clause to regulate an aspect of business that has a direct impact on the stream of interstate commerce (in this case, slaughterhouses)?

A. Yes.

Reasoning: If a stage in manufacturing or processing is merely a step on the path from production (cow) to finished product that flows between states (meat), it is part of the "stream of commerce" and may be regulated by Congress.

Note: Compare the *Knight* and *Swift* decisions. Do you notice anything interesting or puzzling?

Hammer v. Dagenhart, 247 U.S. 251 (1918) (restricts Congress's commerce power):

Q: Can Congress use the Commerce Clause to prohibit a company's use of child labor in the manufacture of goods?

A. No.

Reasoning: Labor conditions are matters internal to states, and goods produced by laborers aren't certain ever to move across state lines. Thus, Congress may not use the commerce power to regulate labor.

United States v. Darby Lumber Co., 312 U.S. 100 (1941) (expands Congress's commerce power):

Q: Can Congress use the Commerce Clause to prohibit a company's use of child labor in the manufacture of goods?

A. No (overruling *Hammer v. Dagenhart*).

Reasoning: The earlier distinction between manufacturing and commerce was wrong. Congress may use the commerce power to reach anything even remotely related to interstate commerce.

Wickard v. Filburn, 317 U.S. 111 (1942) (greatly expands Congress's commerce power):

Q: Can Congress use the interstate commerce power to regulate purely intrastate economic activity that might have an effect on interstate commerce?

A. Yes.

Reasoning: Farmer Filburn was growing wheat on his own land to feed to himself and his own farm animals; in other words he wasn't buying it or selling it, i.e. engaging in commerce. Nevertheless, the Court found that "even if [Filburn's] activity be local 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" since Filburn wouldn't be buying wheat on the market and thus affecting that market.

Note: Under *Wickard v. Filburn*, is *anything* beyond the reach of Congress's commerce power at this point? If not, what has become of federalism, and do delegated powers even matter anymore since Congress can do anything?

United States v. Lopez, 514 U.S. 549 (1995) (restricts Congress's commerce power):

Q. Can Congress use the interstate commerce power to regulate an activity (in this case banning the practice of carrying guns near schools) that isn't economic and has no effect on interstate commerce?

A. No.

Reasoning: The Court reasoned that if Congress could regulate something so far removed from commerce, then it could regulate anything, and since the Constitution clearly creates Congress as a body with enumerated powers, this could not be so.

Note: Under *Wickard v. Filburn*, are you convinced that carrying guns (or not) near a school has no effect on interstate commerce? If you are—if you believe carrying guns has no effect on commerce—then how, exactly, is carrying a gun different from growing wheat?