

Sec. 2—Judicial Power and Jurisdiction Cl. 2—Original and Appellate Jurisdiction

prevented.¹²⁰³ The Court seemed to experience no difficulty in upholding the Act,¹²⁰⁴ and it has liberally applied it through the years.¹²⁰⁵

Congress's power to confer, withhold, and restrict jurisdiction is clearly revealed in the Emergency Price Control Act of 1942¹²⁰⁶ and in the cases arising from it. Fearful that the price control program might be nullified by injunctions, Congress provided for a special court in which persons could challenge the validity of price regulations issued by the government with appeal from the Emergency Court of Appeals to the Supreme Court. The basic constitutionality of the Act was sustained in *Lockerty v. Phillips*.¹²⁰⁷ In *Yakus v. United States*,¹²⁰⁸ the Court upheld the provision of the Act which conferred exclusive jurisdiction on the special court to hear challenges to any order or regulation and foreclosed a plea of invalidity of any such regulation or order as a defense to a criminal proceeding under the Act in the regular district courts. Although Justice Rutledge protested in dissent that this provision conferred jurisdiction on district courts from which essential elements of the judicial power had been abstracted,¹²⁰⁹ Chief Justice Stone for the Court declared that the provision presented no novel constitutional issue.

The Theory Reconsidered

Despite the breadth of the language of many of the previously cited cases, the actual holdings constitute something less than an affirmance of plenary congressional power to do anything it desires by manipulation of jurisdiction, and, indeed, the cases reflect certain limitations. Setting to one side various formulations that lack textual and subsequent judicial support, such as mandatory vest-

¹²⁰³ 47 Stat. 70 (1932), 29 U.S.C. §§ 101–115.

¹²⁰⁴ In *Lauf v. E.G. Shinner & Co.*, 303 U.S. 323, 330 (1938), the Court simply declared: "There can be no question of the power of Congress thus to define and limit the jurisdiction of the inferior courts of the United States."

¹²⁰⁵ *E.g.*, *New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552 (1938); *Brotherhood of Railroad Trainmen v. Chicago River & I. R.R.*, 353 U.S. 30 (1957); *Boys Markets v. Retail Clerks Union*, 398 U.S. 235 (1970).

¹²⁰⁶ 56 Stat. 23 (1942).

¹²⁰⁷ 319 U.S. 182 (1943).

¹²⁰⁸ 321 U.S. 414 (1944).

¹²⁰⁹ 321 U.S. at 468. In *United States v. Mendoza-Lopez*, 481 U.S. 828 (1987), purportedly in reliance on *Yakus* and other cases, the Court held that a collateral challenge must be permitted to the use of a deportation proceeding as an element of a criminal offense where effective judicial review of the deportation order had been denied. A statutory scheme similar to that in *Yakus* was before the Court in *Adamo Wrecking Co. v. United States*, 434 U.S. 275 (1978), but statutory construction enabled the Court to pass by constitutional issues that were not perceived to be insignificant. *See esp. id.* at 289 (Justice Powell concurring). *See also* *Harrison v. PPG Industries*, 446 U.S. 578 (1980), and *id.* at 594 (Justice Powell concurring).