state commerce.'"[770] Judicial review is narrow. Congress' determination of an "effect" must be deferred to if it is rational, and Congress must have acted reasonably in choosing the means.[771]

Sometimes considered a fourth category, a still more potent engine of regulation has been the expansion of the class-of-activities standard, which began in the "affecting commerce" cases. In *Perez v. United States*,[772] the Court sustained the application of a federal "loan-sharking" law to a local culprit. The Court held that, although individual loan-sharking activities might be intrastate in nature, Congress has the power to determine that the activity was within a class which did affect interstate commerce, thus affording Congress the opportunity to regulate the entire class. Although the *Perez* Court and the congressional findings emphasized that loan-sharking was generally part of organized crime operating on a national scale and that loan-sharking was commonly used to finance organized crime's national operations, subsequent cases do not depend upon a defensible assumption of relatedness in the class.

Thus, the Court applied the federal arson statute to the attempted "torching" of a defendant's two-unit apartment building. The Court merely pointed to the fact that the rental of real estate "unquestionably" affects interstate commerce, and that "the local rental of an apartment unit is merely an element of a much broader commercial market in real estate."[773] The apparent test of whether aggregation of local activity can be said to affect commerce was made clear next in an antitrust context.[774]

In a case allowing the continuation of an antitrust suit challenging a hospital's exclusion of a surgeon from practice in the hospital, the Court observed that in order to establish the required jurisdictional nexus with commerce, the appropriate focus is not on the actual effects of the conspiracy, but instead is on the possible consequences for the affected market if the conspiracy is successful. The

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[770] Hodel v. Virginia Surface Mining & Recl. Ass'n, 452 U.S. 264 (1981) (quoting United States v. Wrightwood Dairy Co., 315 U.S. 110, 119 (1942)).

[771] 452 U.S. at 276, 277. The scope of review is restated in Preseault v. ICC, 494 U.S. 1, 17 (1990). Then-Justice Rehnquist, concurring in the two *Hodel* cases, objected that the Court was making it appear that no constitutional limits existed under the Commerce Clause, whereas in fact it was necessary that a regulated activity must have a *substantial* effect on interstate commerce, not just *some* effect. He thought it a close case that the statutory provisions here met those tests. 452 U.S. at 307–13.

[772] 402 U.S. 146 (1971).

[773] Russell v. United States, 471 U.S. 858, 862 (1985). In a later case the Court avoided the constitutional issue by holding the statute inapplicable to the arson of an owner-occupied private residence.

[774] Summit Health, Ltd. v. Pinhas, 500 U.S. 322 (1991). *See also* Jones v. United States, 529 U.S. 848 (2000) (an owner-occupied building is not "used" in interstate commerce within the meaning of the federal arson statute).