

Sec. 8—Powers of Congress

Cl. 3—Power to Regulate Commerce

The powers thus granted are not confined to the instrumentalities of commerce, or the postal service known or in use when the Constitution was adopted, but they keep pace with the progress of the country, and adapt themselves to the new developments of times and circumstances. They extend from the horse with its rider to the stage-coach, from the sailing-vessel to the steamboat, from the coach and the steamboat to the railroad, and from the railroad to the telegraph, as these new agencies are successively brought into use to meet the demands of increasing population and wealth. They were intended for the government of the business to which they relate, at all times and under all circumstances. As they were intrusted to the general government for the good of the nation, it is not only the right, but the duty, of Congress to see to it that intercourse among the States and the transmission of intelligence are not obstructed or unnecessarily encumbered by State legislation.

Thus, when modern means of communication became available, there seemed little question that Congress could regulate them. The Radio Act of 1927⁷⁵⁶ whereby “all forms of interstate and foreign radio transmissions within the United States, its Territories and possessions” were brought under national control, affords such an illustration. Based on the forward-looking doctrine as stated in *Pensacola Telegraph Co.*, the measure met no serious constitutional challenge either on the floors of Congress or in the courts.⁷⁵⁷

Regulation of objects or persons that cross state lines is not limited to those actively crossing, but can extend to an object or person that has already crossed state lines or will do so in the future. In *United States v. Sullivan*,⁷⁵⁸ the Court sustained a conviction of misbranding under the Federal Food, Drug, and Cosmetic Act. Sullivan, a Columbus, Georgia druggist, had bought a properly labeled 1,000-tablet bottle of sulfathiazole from an Atlanta wholesaler. The bottle had been shipped to the Atlanta wholesaler by a Chicago supplier six months earlier. Three months after Sullivan received the bottle, he made two retail sales of 12 tablets each, placing the tablets in boxes not labeled in strict accordance with the law. Upholding the conviction, the Court concluded that there was no question of “the constitutional power of Congress under the Commerce Clause to regulate the branding of articles that have completed an interstate shipment and are being held for future sales in purely local or intrastate commerce.”⁷⁵⁹

⁷⁵⁶ Act of March 28, 1927, 45 Stat. 373, superseded by the Communications Act of 1934, 48 Stat. 1064, 47 U.S.C. §§ 151 *et seq.*

⁷⁵⁷ “No question is presented as to the power of the Congress, in its regulation of interstate commerce, to regulate radio communication.” Chief Justice Hughes speaking for the Court in *Federal Radio Comm’n v. Nelson Bros. Bond & Mortgage Co.*, 289 U.S. 266, 279 (1933). *See also* *Fisher’s Blend Station v. Tax Comm’n*, 297 U.S. 650, 654–55 (1936).

⁷⁵⁸ 332 U.S. 689 (1948).

⁷⁵⁹ 332 U.S. at 698–99.