

Sec. 8—Powers of Congress

Cl. 3—Power to Regulate Commerce

essary and Proper Clause may not have been directly cited, but the dictates of Chief Justice Marshall have been used to justify more expansive applications of the commerce power.⁷⁶⁴

The seminal case in this category is, of course, *Wickard v. Filburn*,⁷⁶⁵ where the Court sustained federal regulation of a crop of wheat grown on a farm and intended solely for home consumption. The premise was that even if the wheat was never marketed, it still supplied a need which otherwise could only be satisfied in the market, and that if prices rose it might be induced onto the market. “Even activity that is purely intrastate in character may be regulated by Congress, where the activity, combined with like conduct by others similarly situated, affects commerce among the States or with foreign nations.”⁷⁶⁶ Coverage under federal labor and wage-and-hour laws after the 1930s showed the reality of this doctrine.⁷⁶⁷

In upholding federal regulation of strip mining, the Court demonstrated the breadth of the “affects” standard. One case dealt with statutory provisions designed to preserve “prime farmland.” The trial court had determined that the amount of such land disturbed annually amounted to 0.006% of the total prime farmland acreage in the nation and thus that the impact on commerce was “infinitesimal” or “trivial.” Disagreeing, the Court said: “A court may invalidate legislation enacted under the Commerce Clause only if it is clear that there is no rational basis for a congressional finding that the regulated activity affects interstate commerce, or that there is no reasonable connection between the regulatory means selected and the asserted ends.”⁷⁶⁸ Moreover, “[t]he pertinent inquiry therefore is not how much commerce is involved but whether Congress could rationally conclude that the regulated activity affects interstate commerce.”⁷⁶⁹

In a companion case, the Court reiterated that “[t]he denomination of an activity as a ‘local’ or ‘intrastate’ activity does not resolve the question whether Congress may regulate it under the Commerce Clause. As previously noted, the commerce power ‘extends to those activities intrastate which so affect interstate commerce, or the exertion of the power of Congress over it, as to make regulation of them appropriate means to the attainment of a legitimate end, the effective execution of the granted power to regulate inter-

⁷⁶⁴ See, e.g., *United States v. Darby*, 312 U.S. 100, 115–16 (1941).

⁷⁶⁵ 317 U.S. 111 (1942).

⁷⁶⁶ *Fry v. United States*, 421 U.S. 542, 547 (1975).

⁷⁶⁷ See *Maryland v. Wirtz*, 392 U.S. 183, 188–93 (1968).

⁷⁶⁸ *Hodel v. Indiana*, 452 U.S. 314, 323–24 (1981).

⁷⁶⁹ 452 U.S. at 324.