

## Decision Excerpts

To accompany *How Interpretation of the Commerce Power Has Changed Over Time*

---

### ***Hammer v. Dagenhart (1918)***

The power essential to the passage of this act, the Government contends, is found in the commerce clause of the Constitution which authorizes Congress to regulate commerce with foreign nations and among the states.

In *Gibbons v. Ogden* . . . Chief Justice Marshall, speaking for this court, and defining the extent and nature of the commerce power, said, “It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed.” In other words, the power is one to control the means by which commerce is carried on, which is directly the contrary of the assumed right to forbid commerce from moving and thus destroy it as to particular commodities.

. . . The thing intended to be accomplished by this statute [Federal Child Labor Act] is the denial of the facilities of interstate commerce to those manufacturers in the States who employ children within the prohibited ages. The act in its effect does not regulate transportation among the States, but aims to standardize the ages at which children may be employed in mining and manufacturing within the States.

Over interstate transportation, or its incidents, the regulatory power of Congress is ample, but the production of articles, intended for interstate commerce, is a matter of local regulation.

That there should be limitations upon the right to employ children in mines and factories in the interest of their own and the public welfare, all will admit.

It may be desirable that such laws be uniform, but our Federal Government is one of enumerated powers. . . .

. . . The control by Congress over interstate commerce cannot authorize the exercise of authority not entrusted to it by the Constitution. . . . The maintenance of the authority of the states over matters purely local is as essential to the preservation of our institutions as is the conservation of the supremacy of the federal power in all matters entrusted to the Nation by the Federal Constitution.

For these reasons we hold that this law exceeds the constitutional authority of Congress.

**Has the Court’s decision in this case increased Congress’s power or held it in check?**