115 S.Ct. 1624
Supreme Court of the United States

UNITED STATES, Petitioner
v.
Alfonso LOPEZ, Jr.

No. 93-1260. | Argued Nov. 8, 1994. | Decided April 26, 1995.

Defendant was convicted in the United States District Court for the Western District of Texas, H.F. Garcia, J., of possessing firearm in school zone in violation of Gun-Free School Zones Act, and he appealed. The Court of Appeals for the Fifth Circuit, Garwood, Circuit Judge, 2 F.3d 1342, reversed and remanded with directions, and government petitioned for certiorari review. After granting certiorari, 114 S.Ct. 1536, the United States Supreme Court, Chief Justice Rehnquist, held that Gun-Free School Zones Act, making it federal offense for any individual knowingly to possess firearm at place that individual knows or has reasonable cause to believe is school zone, exceeded Congress' commerce clause authority, since possession of gun in local school zone was not economic activity that substantially affected interstate commerce.

Affirmed.

Justice Kennedy filed concurring opinion in which Justice O'Connor joined.

Justice Thomas filed concurring opinion.

Justices Stevens and Souter filed dissenting opinions.

Justice Breyer filed dissenting opinion, in which Justices Stevens, Souter and Ginsburg joined.

West Headnotes (6)

[1] Commerce
Commerce among the states

Test for determining whether activity is within Congress' power to regulate under commerce clause is whether it substantially affects interstate commerce. U.S.C.A. Const. Art. 1, § 8, cl. 3.

159 Cases that cite this headnote

[2] Commerce
Commerce among the states

Where economic activity substantially affects interstate commerce, federal legislation regulating that activity will be sustained. U.S.C.A. Const. Art. 1, § 8, cl. 3.

486 Cases that cite this headnote

[3] **Criminal Law**
States
States
Police power

Under federal system, states possess primary authority for defining and enforcing criminal law.

26 Cases that cite this headnote

[4] **Commerce**
Weapons and explosives
Weapons
Violation of other rights or provisions

Gun-Free School Zones Act, which makes it federal offense for any individual knowingly to possess firearm in place that individual believes or has reasonable cause to believe is school zone, exceeded Congress' commerce clause authority; Act was criminal statute that by its terms had nothing to do with "commerce" or any sort of economic enterprise, however broadly defined; possession of gun in local school zone was not economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce; and statute contained no jurisdictional element to ensure, through case-by-case inquiry, that possession of firearm had any concrete tie to interstate commerce. U.S.C.A. Const. Art. 1, § 8, cl. 3; 18 U.S.C.(1988 Ed.) § 922(q)(1)(A).

1517 Cases that cite this headnote

[5] **Commerce**
Commerce among the states

Congress normally is not required to make formal findings as to substantial burdens that activity has on interstate commerce to establish constitutionality of legislation under commerce clause. U.S.C.A. Const. Art. 1, § 8, cl. 3.

177 Cases that cite this headnote

[6] Commerce
Subjects and regulations in general

Congressional authority under commerce clause to regulate numerous commercial activities that substantially affect interstate commerce and also affect educational process, though broad, does not include authority to regulate each and every aspect of local schools. U.S.C.A. Const. Art. 1, § 8, cl. 3.

774 Cases that cite this headnote

West Codenotes

Prior Version Held Unconstitutional
18 U.S.C.A. § 922(q)(1)(A).

****1625 *549 *Syllabus**

After respondent, then a 12th-grade student, carried a concealed handgun into his high school, he was charged with violating the Gun-Free School Zones Act of 1990, which forbids "any individual knowingly to possess a firearm at a place that [he] knows ... is a school zone," 18 U.S.C. § 922(q)(1)(A). The District Court denied his motion to dismiss the indictment, concluding that § 922(q) is a constitutional exercise of Congress' power to regulate activities in and affecting commerce. In reversing, the Court of Appeals held that, in light of what it characterized as insufficient congressional findings and legislative history, § 922(q) is invalid as beyond Congress' power under the Commerce Clause.

Held: The Act exceeds Congress' Commerce Clause authority. First, although this Court has upheld a wide variety of congressional Acts regulating intrastate economic activity that substantially affected interstate commerce, the possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, have such a substantial effect on interstate commerce. Section 922(q) is a criminal statute that by its terms has nothing to do with "commerce" or any sort of economic enterprise, however broadly those terms are defined. Nor is it an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated. It cannot, therefore, be sustained under the Court's cases upholding regulations of activities that arise out of or are connected with a commercial transaction, which, viewed in the aggregate, substantially affects interstate commerce. Second, § 922(q) contains no jurisdictional element that would ensure, through case-by-case inquiry, that the firearms possession in question has the requisite nexus with interstate commerce. Respondent was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce. To uphold the Government's contention that § 922(q) is justified because firearms possession in a local school zone does indeed substantially affect interstate commerce would require this Court to pile inference upon inference in a manner that would bid fair to convert congressional Commerce Clause ***550** authority to a general police power of the sort held only by the States. Pp. 1626-1634.

2 F.3d 1342, (CA5 1993), affirmed.

REHNQUIST, C.J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. KENNEDY, J., filed a concurring opinion, in which O'CONNOR, J., joined, *post,* p. 1634. THOMAS, J., filed a concurring opinion, *post,* p. 1642. STEVENS, J., *post,* p. 1651, and SOUTER, J., *post,* p. 1651,

filed dissenting opinions. BREYER, J., filed a dissenting opinion, in which STEVENS, SOUTER, and GINSBURG, JJ., joined, *post,* p. 1657.

Attorneys and Law Firms

Drew S. Days, III, New Haven, CT, for petitioner.

John R. Carter, Georgetown, TX, for respondent.

Opinion

****1626** ***551** Chief Justice REHNQUIST delivered the opinion of the Court.

In the Gun-Free School Zones Act of 1990, Congress made it a federal offense "for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone." 18 U.S.C. § 922(q)(1)(A) (1988 ed., Supp. V). The Act neither regulates a commercial activity nor contains a requirement that the possession be connected in any way to interstate commerce. We hold that the Act exceeds the authority of Congress "[t]o regulate Commerce ... among the several States...." U.S. Const., Art. I, § 8, cl. 3.

On March 10, 1992, respondent, who was then a 12th-grade student, arrived at Edison High School in San Antonio, Texas, carrying a concealed .38-caliber handgun and five bullets. Acting upon an anonymous tip, school authorities confronted respondent, who admitted that he was carrying the weapon. He was arrested and charged under Texas law with firearm possession on school premises. See Tex.Penal Code Ann. § 46.03(a)(1) (Supp.1994). The next day, the state charges were dismissed after federal agents charged respondent by complaint with violating the Gun-Free School Zones Act of 1990. 18 U.S.C. § 922(q)(1)(A) (1988 ed., Supp. V).[1]

A federal grand jury indicted respondent on one count of knowing possession of a firearm at a school zone, in violation of § 922(q). Respondent moved to dismiss his federal indictment on the ground that § 922(q) "is unconstitutional as it is beyond the power of Congress to legislate control over our public schools." The District Court denied the motion, concluding that § 922(q) "is a constitutional exercise of Congress' well-defined power to regulate activities in and affecting ***552** commerce, and the 'business' of elementary, middle and high schools ... affects interstate commerce." App. to Pet. for Cert. 55a. Respondent waived his right to a jury trial. The District Court conducted a bench trial, found him guilty of violating § 922(q), and sentenced him to six months' imprisonment and two years' supervised release.

On appeal, respondent challenged his conviction based on his claim that § 922(q) exceeded Congress' power to legislate under the Commerce Clause. The Court of Appeals for the Fifth Circuit agreed and reversed respondent's conviction. It held that, in light of what it characterized as insufficient congressional findings and legislative history, "section 922(q), in the full reach of its terms, is invalid as beyond the power of Congress under the Commerce Clause." 2 F.3d 1342, 1367-1368 (1993). Because of the importance of the issue, we granted certiorari, 511 U.S. 1029, 114 S.Ct. 1536, 128 L.Ed.2d 189 (1994), and we now affirm.

We start with first principles. The Constitution creates a Federal Government of enumerated powers. See Art. I, § 8. As James Madison wrote: "The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite." The Federalist No. 45, pp. 292-293 (C. Rossiter ed. 1961). This constitutionally mandated division of authority "was adopted by the Framers to ensure protection of our fundamental liberties." *Gregory v. Ashcroft,* 501 U.S. 452, 458, 111 S.Ct. 2395, 2400, 115 L.Ed.2d 410 (1991) (internal quotation marks omitted). "Just as the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front." *Ibid.*

The Constitution delegates to Congress the power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." ***553** Art. I, § 8, cl. 3. The Court, through Chief Justice Marshall, first defined the nature of Congress' ****1627** commerce power in *Gibbons v. Ogden,* 9 Wheat. 1, 189-190, 6 L.Ed. 23 (1824):

> "Commerce, undoubtedly, is traffic, but it is something more: it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse."

The commerce power "is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution." *Id.,* at 196. The *Gibbons* Court, however, acknowledged that limitations on the commerce power are inherent in the very language of the Commerce Clause.

> "It is not intended to say that these words comprehend that commerce, which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States. Such a power would be inconvenient, and is certainly unnecessary.
> "Comprehensive as the word 'among' is, it may very properly be restricted to that commerce which concerns more States than one.... The enumeration presupposes something not enumerated; and that something, if we regard the language, or the subject of the sentence, must be the exclusively internal commerce of a State." *Id.,* at 194-195.

For nearly a century thereafter, the Court's Commerce Clause decisions dealt but rarely with the extent of Congress' power, and almost entirely with the Commerce Clause as a limit on state legislation that discriminated against interstate commerce. See, *e.g., Veazie v. Moor,* 14 How. 568, 573-575, 14 L.Ed. 545 (1853) (upholding a state-created steamboat monopoly ***554** because it involved regulation of wholly internal commerce); *Kidd v. Pearson,* 128 U.S. 1, 17, 20-22, 9 S.Ct. 6, 9-10, 32 L.Ed. 346 (1888) (upholding a state prohibition on the manufacture of intoxicating liquor because the commerce power "does not comprehend the purely internal domestic commerce of a State which is carried on between man and man within a State or between different parts of the same State"); see also L. Tribe, American Constitutional Law 306 (2d ed. 1988). Under this line of precedent, the Court held that certain categories of activity such as "production," "manufacturing," and "mining" were within the province of state governments, and thus were beyond the power of Congress under the Commerce Clause. See *Wickard v. Filburn,* 317 U.S. 111, 121, 63 S.Ct. 82, 87, 87 L.Ed. 122 (1942) (describing development of Commerce Clause jurisprudence).

In 1887, Congress enacted the Interstate Commerce Act, 24 Stat. 379, and in 1890, Congress enacted the Sherman Antitrust Act, 26 Stat. 209, as amended, 15 U.S.C. § 1 *et seq.* These laws ushered in a new era of federal regulation under the commerce power. When cases involving these laws first reached this Court, we imported from our negative Commerce Clause cases the approach that Congress could not regulate activities such as "production," "manufacturing," and "mining." See, *e.g., United States v. E.C. Knight Co.,* 156 U.S. 1, 12, 15 S.Ct. 249, 253-254, 39 L.Ed. 325 (1895) ("Commerce succeeds to manufacture, and is not part of it"); *Carter v. Carter Coal Co.,* 298 U.S. 238, 304, 56 S.Ct. 855, 869, 80 L.Ed. 1160 (1936) ("Mining brings the subject matter of commerce into existence. Commerce disposes of it"). Simultaneously, however, the Court held that, where the interstate and intrastate aspects of commerce were so mingled together that full regulation of interstate commerce required incidental regulation of intrastate commerce, the Commerce Clause authorized such regulation. See, *e.g., Shreveport Rate Cases,* 234 U.S. 342, 34 S.Ct. 833, 58 L.Ed. 1341 (1914).
In *A.L.A. Schechter Poultry Corp. v. United States,* 295 U.S. 495, 550, 55 S.Ct. 837, 851-52, 79 L.Ed. 1570 (1935), the Court struck down regulations that ***555** fixed the hours and wages of individuals employed by an intrastate business because the activity being regulated related to interstate commerce only indirectly. In doing so, the Court characterized the distinction between ****1628** direct and indirect effects of intrastate transactions upon interstate commerce as "a fundamental one, essential to the maintenance of our constitutional system." *Id.,* at 548, 55 S.Ct., at 851. Activities that affected interstate commerce directly were within Congress' power; activities that affected interstate commerce indirectly were beyond Congress' reach. *Id.,* at 546, 55 S.Ct., at 850. The justification for this formal distinction was rooted in the fear that otherwise "there would be virtually no limit to the federal power and for all practical purposes we should have a completely centralized government." *Id.,* at 548, 55 S.Ct., at 851.
Two years later, in the watershed case of *NLRB v. Jones & Laughlin Steel Corp.,* 301 U.S. 1, 57 S.Ct. 615, 81 L.Ed. 893 (1937), the Court upheld the National Labor Relations Act against a Commerce Clause challenge, and in the process, departed from the distinction between "direct" and "indirect" effects on interstate commerce. *Id.,* at 36-38, 57 S.Ct., at 623-624 ("The question [of the scope of Congress' power] is necessarily one of degree"). The Court held that intrastate activities that "have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions" are within Congress' power to

grown wheat in this sense competes with wheat in commerce." 317 U.S., at 128, 63 S.Ct., at 90-91.

[3] [4] Section 922(q) is a criminal statute that by its terms has nothing to do with ****1631** "commerce" or any sort of economic enterprise, however broadly one might define those terms.3 Section 922(q) is not an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated. It cannot, therefore, be sustained under our cases upholding regulations of activities that arise out of or are connected with a commercial transaction, which viewed in the aggregate, substantially affects interstate commerce.

Second, § 922(q) contains no jurisdictional element which would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce. For example, in *United States v. Bass,* 404 U.S. 336, 92 S.Ct. 515, 30 L.Ed.2d 488 (1971), the Court interpreted former 18 U.S.C. § 1202(a), which made it ***562** a crime for a felon to "receiv [e], posses[s], or transpor[t] in commerce or affecting commerce ... any firearm." 404 U.S., at 337, 92 S.Ct., at 517. The Court interpreted the possession component of § 1202(a) to require an additional nexus to interstate commerce both because the statute was ambiguous and because "unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance." *Id.,* at 349, 92 S.Ct., at 523. The *Bass* Court set aside the conviction because, although the Government had demonstrated that Bass had possessed a firearm, it had failed "to show the requisite nexus with interstate commerce." *Id.,* at 347, 92 S.Ct., at 522. The Court thus interpreted the statute to reserve the constitutional question whether Congress could regulate, without more, the "mere possession" of firearms. See *id.,* at 339, n. 4, 92 S.Ct., at 518, n. 4; see also *United States v. Five Gambling Devices,* 346 U.S. 441, 448, 74 S.Ct. 190, 194, 98 L.Ed. 179 (1953) (plurality opinion) ("The principle is old and deeply imbedded in our jurisprudence that this Court will construe a statute in a manner that requires decision of serious constitutional questions only if the statutory language leaves no reasonable alternative"). Unlike the statute in *Bass,* § 922(q) has no express jurisdictional element which might limit its reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce.

[5] Although as part of our independent evaluation of constitutionality under the Commerce Clause we of course consider legislative findings, and indeed even congressional committee findings, regarding effect on interstate commerce, see, *e.g., Preseault v. ICC,* 494 U.S., at 17, 110 S.Ct., at 924-925, (1990), the Government concedes that "[n]either the statute nor its legislative history contain[s] express congressional findings regarding the effects upon interstate commerce of gun possession in a school zone." Brief for United States 5-6. We agree with the Government that Congress normally is not required to make formal findings as to the substantial burdens that an activity has on interstate commerce. See *McClung,* 379 U.S., at 304, 85 S.Ct., at 383-384; ***563** see also *Perez,* 402 U.S., at 156, 91 S.Ct., at 1362 ("Congress need [not] make particularized findings in order to legislate"). But to the ****1632** extent that congressional findings would enable us to evaluate the legislative judgment that the activity in question substantially affected interstate commerce, even though no such substantial effect was visible to the naked eye, they are lacking here.4

The Government argues that Congress has accumulated institutional expertise regarding the regulation of firearms through previous enactments. Cf. *Fullilove v. Klutznick,* 448 U.S. 448, 503, 100 S.Ct. 2758, 2787, 65 L.Ed.2d 902 (1980) (Powell, J., concurring). We agree, however, with the Fifth Circuit that importation of previous findings to justify § 922(q) is especially inappropriate here because the "prior federal enactments or Congressional findings [do not] speak to the subject matter of section 922(q) or its relationship to interstate commerce. Indeed, section 922(q) plows thoroughly new ground and represents a sharp break with the long-standing pattern of federal firearms legislation." 2 F.3d, at 1366.

The Government's essential contention, *in fine,* is that we may determine here that § 922(q) is valid because possession of a firearm in a local school zone does indeed substantially affect interstate commerce. Brief for United States 17. The Government argues that possession of a firearm in a school zone may result in violent crime and that violent crime can be expected to affect the functioning of the national economy in two ways. First, the costs of violent ***564** crime are substantial, and, through the mechanism of insurance, those costs are spread throughout the population. See *United States v. Evans,* 928 F.2d 858, 862 (CA9 1991). Second, violent crime reduces the willingness of individuals to travel to areas within the country that are perceived to be unsafe. Cf. *Heart of Atlanta Motel,* 379 U.S., at 253, 85 S.Ct., at 355. The Government also argues that the presence of guns in schools poses a substantial threat to the educational process by threatening the learning environment. A handicapped educational process, in turn, will result in a less productive citizenry. That, in turn, would have an adverse effect on the Nation's economic well-being. As a result, the Government argues that Congress could rationally have concluded that § 922(q) substantially affects interstate commerce.

We pause to consider the implications of the Government's arguments. The Government admits, under its "costs of crime" reasoning, that Congress could regulate not only all violent crime, but all activities that might lead to violent crime, regardless of how tenuously they relate to interstate commerce. See Tr. of Oral Arg. 8-9. Similarly, under the Government's "national productivity" reasoning, Congress could regulate any activity that it found was related to the economic productivity of individual citizens: family law (including marriage, divorce, and child custody), for example. Under the theories that the Government presents in support of § 922(q), it is difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement or education where States historically have been sovereign. Thus, if we were to accept the Government's arguments, we are hard pressed to posit any activity by an individual that Congress is without power to regulate.

Although Justice BREYER argues that acceptance of the Government's rationales would not authorize a general federal police power, he is unable to identify any activity that the States may regulate but Congress may not. Justice BREYER posits that there might be some limitations on Congress' ***565** commerce power, such as family law or certain aspects of education. *Post,* at 1661-1662. These suggested limitations, when viewed in light of the dissent's expansive analysis, are devoid of substance.

Justice BREYER focuses, for the most part, on the threat that firearm possession in ****1633** and near schools poses to the educational process and the potential economic consequences flowing from that threat. *Post,* at 1659-1662. Specifically, the dissent reasons that (1) gun-related violence is a serious problem; (2) that problem, in turn, has an adverse effect on classroom learning; and (3) that adverse effect on classroom learning, in turn, represents a substantial threat to trade and commerce. *Post,* at 1661. This analysis would be equally applicable, if not more so, to subjects such as family law and direct regulation of education.

For instance, if Congress can, pursuant to its Commerce Clause power, regulate activities that adversely affect the learning environment, then, *a fortiori,* it also can regulate the educational process directly. Congress could determine that a school's curriculum has a "significant" effect on the extent of classroom learning. As a result, Congress could mandate a federal curriculum for local elementary and secondary schools because what is taught in local schools has a significant "effect on classroom learning," cf. *post,* at 1661, and that, in turn, has a substantial effect on interstate commerce.

[6] Justice BREYER rejects our reading of precedent and argues that "Congress ... could rationally conclude that schools fall on the commercial side of the line." *Post,* at 1664. Again, Justice BREYER's rationale lacks any real limits because, depending on the level of generality, any activity can be looked upon as commercial. Under the dissent's rationale, Congress could just as easily look at child rearing as "fall[ing] on the commercial side of the line" because it provides a "valuable service-namely, to equip [children] with the skills they need to survive in life and, more specifically, in the workplace." *Ibid.* We do not doubt that Congress ***566** has authority under the Commerce Clause to regulate numerous commercial activities that substantially affect interstate commerce and also affect the educational process. That authority, though broad, does not include the authority to regulate each and every aspect of local schools.

Admittedly, a determination whether an intrastate activity is commercial or noncommercial may in some cases result in legal uncertainty. But, so long as Congress' authority is limited to those powers enumerated in the Constitution, and so long as those enumerated powers are interpreted as having judicially enforceable outer limits, congressional legislation under the Commerce Clause always will engender "legal uncertainty." *Post,* at 1664. As Chief Justice Marshall stated in *McCulloch v. Maryland,* 4 Wheat. 316, 4 L.Ed. 579 (1819):

> "Th[e] [federal] government is acknowledged by all to be one of enumerated powers. The principle, that it can exercise only the powers granted to it ... is now universally admitted. But the question respecting the extent of the powers actually granted, is perpetually arising, and will probably continue to arise, as long as our system shall exist." *Id.,* at 405.

See also *Gibbons v. Ogden,* 9 Wheat., at 195 ("The enumeration presupposes something not enumerated"). The Constitution mandates this uncertainty by withholding from Congress a plenary police power that would authorize enactment of every type of legislation. See Art. I, § 8. Congress has operated within this framework of legal uncertainty ever since this Court determined that it was the Judiciary's duty "to say what the law is." *Marbury v. Madison,* 1 Cranch 137, 177, 2 L.Ed. 60 (1803) (Marshall, C.J.). Any possible benefit from eliminating this "legal uncertainty" would be at the expense of the Constitution's system of enumerated powers.

In *Jones & Laughlin Steel,* 301 U.S., at 37, 57 S.Ct., at 624, we held that the question of congressional power under

the Commerce Clause "is necessarily one of degree." To the same effect ***567** is the concurring opinion of Justice Cardozo in *Schechter Poultry:*

> "There is a view of causation that would obliterate the distinction between what is national and what is local in the activities of commerce. Motion at the outer rim is communicated perceptibly, though minutely, to recording instruments at the center. A society such as ours 'is an elastic medium which transmits all tremors throughout its territory; the only question is of their size.' " 295 U.S., at 554, 55 S.Ct., at 853 ****1634** (quoting *United States v. A.L.A. Schechter Poultry Corp.,* 76 F.2d 617, 624 (CA2 1935) (L. Hand, J., concurring)).

These are not precise formulations, and in the nature of things they cannot be. But we think they point the way to a correct decision of this case. The possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce. Respondent was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce.

To uphold the Government's contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States. Admittedly, some of our prior cases have taken long steps down that road, giving great deference to congressional action. See *supra,* at 1629. The broad language in these opinions has suggested the possibility of additional expansion, but we decline here to proceed any further. To do so would require us to conclude that the Constitution's enumeration of powers does not presuppose something not enumerated, cf. *Gibbons v. Ogden, supra,* at 195, and that there never will be a distinction between what is ***568** truly national and what is truly local, cf. *Jones & Laughlin Steel, supra,* at 30, 57 S.Ct., at 621. This we are unwilling to do.

For the foregoing reasons the judgment of the Court of Appeals is

Affirmed.

Justice KENNEDY, with whom Justice O'CONNOR joins, concurring.

The history of the judicial struggle to interpret the Commerce Clause during the transition from the economic system the Founders knew to the single, national market still emergent in our own era counsels great restraint before the Court determines that the Clause is insufficient to support an exercise of the national power. That history gives me some pause about today's decision, but I join the Court's opinion with these observations on what I conceive to be its necessary though limited holding.

Chief Justice Marshall announced that the national authority reaches "that commerce which concerns more States than one" and that the commerce power "is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution." *Gibbons v. Ogden,* 9 Wheat. 1, 194, 196, 6 L.Ed. 23 (1824). His statements can be understood now as an early and authoritative recognition that the Commerce Clause grants Congress extensive power and ample discretion to determine its appropriate exercise. The progression of our Commerce Clause cases from *Gibbons* to the present was not marked, however, by a coherent or consistent course of interpretation; for neither the course of technological advance nor the foundational principles for the jurisprudence itself were self-evident to the courts that sought to resolve contemporary disputes by enduring principles.

Furthermore, for almost a century after the adoption of the Constitution, the Court's Commerce Clause decisions did not concern the authority of Congress to legislate. Rather, ***569** the Court faced the related but quite distinct question of the authority of the States to regulate matters that would be within the commerce power had Congress chosen to act. The simple fact was that in the early years of the Republic, Congress seldom perceived the necessity to exercise its power in circumstances where its authority would be called into question. The Court's initial task, therefore, was to elaborate the theories that would permit the States to act where Congress had not done so. Not the least part of the problem was the unresolved question whether the congressional power was exclusive, a question reserved by Chief Justice Marshall in *Gibbons v. Ogden, supra,* at 209-210.

At the midpoint of the 19th century, the Court embraced the principle that the States and the National Government both have authority to regulate certain matters absent the ****1635** congressional determination to displace local law