UNITED STATES v. MORRISON
SUPREME COURT OF THE UNITED STATES
529 U.S. 598
May 15, 2000
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OPINION: CHIEF JUSTICE REHNQUIST/O'CONNOR/SCALIA/KENNEDY/THOMAS...In these cases we consider the constitutionality of *42 U.S.C. § 13981*, which provides a **federal civil remedy for the victims of gender-motivated violence**...Petitioner Christy Brzonkala enrolled at Virginia Polytechnic Institute (Virginia Tech) in the fall of 1994. In September of that year, Brzonkala met respondents Antonio Morrison and James Crawford, who were both students at Virginia Tech and members of its varsity football team. Brzonkala alleges that, within 30 minutes of meeting Morrison and Crawford, they assaulted and repeatedly raped her. After the attack, Morrison allegedly told Brzonkala, "You better not have any...diseases." In the months following the rape, Morrison also allegedly announced in the dormitory's dining room that he "liked" to get girls drunk and... The omitted portions, quoted verbatim in the briefs on file with this Court, consist of boasting, debased remarks about what Morrison would do to women, vulgar remarks that cannot fail to shock and offend. Brzonkala alleges that this attack caused her to become severely emotionally disturbed and depressed. She sought assistance from a university psychiatrist, who prescribed antidepressant medication. Shortly after the rape Brzonkala stopped attending classes and withdrew from the university.

In early 1995, Brzonkala filed a complaint against respondents under Virginia Tech's Sexual Assault Policy. During the school-conducted hearing on her complaint, Morrison admitted having sexual contact with her despite the fact that she had twice told him "no." After the hearing, Virginia Tech's Judicial Committee found insufficient evidence to punish Crawford, but found Morrison guilty of sexual assault and sentenced him to immediate suspension for two semesters.

Of course, understand that, so far, this is not a criminal proceeding. It is a university disciplinary proceeding. To this point, we do not know if Morrison or Crawford were prosecuted. But, regardless of the constitutional issues, this appears to be a university initiated punishment for confessed wrongdoing! Two semesters off? Then, he is apparently welcome back to school? What am I missing?

Virginia Tech's dean of students upheld the judicial committee's sentence. However, in July 1995,

Virginia Tech informed Brzonkala that Morrison intended to initiate a court challenge to his conviction under the Sexual Assault Policy. University officials told her that a second hearing would be necessary to remedy the school's error in prosecuting her complaint under that policy, which had not been widely circulated to students. The university therefore conducted a second hearing under its Abusive Conduct Policy, which was in force prior to the dissemination of the Sexual Assault Policy. Following this second hearing the Judicial Committee again found Morrison guilty and sentenced him to an identical 2-semester suspension. This time, however, the description of Morrison's offense was, without explanation, changed from "sexual assault" to "using abusive language."

Morrison appealed his second conviction through the university's administrative system. On August 21, 1995, Virginia Tech's senior vice president and provost set aside Morrison's punishment. She concluded that it was "excessive when compared with other cases where there has been a finding of violation of the Abusive Conduct Policy." Virginia Tech did not inform Brzonkala of this decision. After learning from a newspaper that Morrison would be returning to Virginia Tech for the fall 1995 semester, she dropped out of the university.

Although not likely relevant, it appears there is something missing in the narrative. Shortly after the incident in September of 1994, “Brzonkala...withdrew from the university.” Compare that with “After learning from a newspaper that Morrison would be returning to Virginia Tech for the fall 1995 semester, she dropped out of the university.” She must have “withdrawn,” then reapplied, then “dropped out.”

In December 1995, Brzonkala sued Morrison, Crawford, and Virginia Tech in the United States District Court..., alleg[ing] that Morrison's and Crawford's attack violated §13981 and that Virginia Tech's handling of her complaint violated Title IX of the Education Amendments of 1972. Morrison and Crawford moved to dismiss this complaint on the grounds that it failed to state a claim and that §13981's civil remedy is **unconstitutional**. The United States...intervened to defend §13981's constitutionality.

The District Court...concluded that Congress lacked authority to enact [§13981] under either the Commerce Clause or §5 of the Fourteenth Amendment...The...Court of Appeals...affirmed...[W]e granted certiorari.

Section 13981 was part of the Violence Against Women Act of 1994. It states that "persons within the United States shall have the right to be free from crimes of violence motivated by gender." To enforce that right, subsection (c) declares:

> A person (including a person who acts under color of any statute, ordinance, regulation, custom, or usage of any State) who commits a crime of violence motivated by gender and thus deprives another of the right declared in subsection (b) of this section shall be liable to the party injured, in an action for the recovery of

> compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate.

Section 13981 defines a "crime" of violence motivated by "gender" as "a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim's gender." It also provides that the term "crime of violence" includes...

> (A)...an act or series of acts that would constitute a felony against the person or that would constitute a felony against property if the conduct presents a serious risk of physical injury to another, and that would come within the meaning of State or Federal offenses described in section 16 of Title 18, whether or not those acts have actually resulted in criminal charges, prosecution, or conviction and whether or not those acts were committed in the special maritime, territorial, or prison jurisdiction of the United States; and
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> (B) includes an act or series of acts that would constitute a felony described in subparagraph (A) but for the relationship between the person who takes such action and the individual against whom such action is taken.

Is this really necessary? It sounds like a showboating Congress making us all feel good by making it a "crime to commit a crime," doesn't it? How about simply enforcing the laws on the books? Victims of crime already have the right to bring a civil action for damages against perpetrators. Virginia doesn't need D.C. to get involved with its criminal laws. Nor does Indiana or Idaho or Arizona or Wyoming or California or Texas or Maine or Florida or Vermont or Ohio or .....

...Although the...language of §13981 covers a wide swath of criminal conduct, Congress placed some limitations on the section's federal civil remedy. Subsection (e)(1) states that "nothing" in this section entitles a person to a cause of action under subsection (c) of this section for random acts of violence unrelated to gender or for acts that cannot be demonstrated, by a preponderance of the evidence, to be motivated by gender." Subsection (e)(4) further states that §13981 shall not be construed "to confer on the courts of the United States jurisdiction over any State law claim seeking the establishment of a divorce, alimony, equitable distribution of marital property, or child custody decree."

EVERY LAW ENACTED BY CONGRESS MUST BE BASED ON ONE OR MORE OF ITS POWERS ENUMERATED IN THE CONSTITUTION. "THE POWERS OF THE LEGISLATURE ARE DEFINED AND LIMITED; AND THAT THOSE LIMITS MAY NOT BE MISTAKEN OR FORGOTTEN, THE CONSTITUTION IS WRITTEN." *Marbury v. Madison*.

I think we have a tendency to forget that Congress has limits. That is why I say frequently that the Constitution is a document of limits. In fact, if it were otherwise (e.g., if Congress could pass legislation with no thought to limiting principles), then we would not need its rules.

Congress explicitly identified the sources of federal authority on which it relied in enacting §13981. It said that a "federal civil rights cause of action" is established "pursuant" to the affirmative power of Congress...under section 5 of the Fourteenth Amendment to the Constitution, as well as under section 8 of Article I of the Constitution." We address Congress' authority to enact this remedy under each of these constitutional provisions in turn...

Brzonkala and the United States rely upon the [Commerce Clause.] As we discussed at length in *Lopez* [1], our interpretation of the Commerce Clause has changed as our Nation has developed...[I]n the years since *NLRB v. Jones & Laughlin Steel Corp.*, Congress has had considerably greater latitude in regulating conduct and transactions under the Commerce Clause than our previous case law permitted.

Lopez emphasized, however, that even under our modern, expansive interpretation of the Commerce Clause, Congress' regulatory authority is not without effective bounds...Petitioners...seek to sustain §13981 as a regulation of activity that substantially affects interstate commerce...In *Lopez*, we held that the Gun-Free School Zones Act of 1990, which made it a federal crime to knowingly possess a firearm in a school zone, exceeded Congress' authority under the Commerce Clause. Several significant considerations contributed to our decision.

First, we observed that §922(q) was "a criminal statute that by its terms has nothing to do with 'commerce' or any sort of economic enterprise, however broadly one might define those terms."

...[The dissents] downplay the role that the economic nature of the regulated activity plays in our Commerce Clause analysis. But a fair reading of *Lopez* shows that the non-economic, criminal nature of the conduct at issue was central to our decision in that case...("In a sense any conduct in this interdependent world of ours has an ultimate commercial origin or consequence, but we have not yet said the commerce power may reach so far.") *Lopez*'s review of Commerce Clause case law demonstrates that in those cases where we have sustained federal regulation of intrastate activity based upon the activity's substantial effects on interstate commerce, the activity in question has been some sort of **economic endeavor**...

[O]ur decision in *Lopez* rested in part on the fact that the link between gun possession and a substantial effect on interstate commerce was attenuated...We rejected these "costs of crime" and "national productivity" arguments because they would permit Congress to "regulate not only all violent crime, but all activities that might lead to violent crime, regardless of how tenuously they relate to interstate commerce." We noted that..., **"Under these theories..., it is difficult to perceive**

[1]Case 1-20 on this website.

any limitation on federal power..."

With these principles underlying our Commerce Clause jurisprudence as reference points, the proper resolution of the present case is clear. **Gender-motivated crimes of violence are not, in any sense of the phrase, economic activity...**In contrast with the lack of congressional findings that we faced in *Lopez*, §13981 *is* supported by numerous findings regarding the serious impact that gender-motivated violence has on victims and their families. But the existence of congressional findings is not sufficient, by itself, to sustain the constitutionality of Commerce Clause legislation. As we stated in *Lopez*, "Simply because Congress may conclude that a particular activity substantially affects interstate commerce does not necessarily make it so." Rather, "whether particular operations affect interstate commerce sufficiently to come under the constitutional power of Congress to regulate them is ultimately a judicial rather than a legislative question, and can be settled finally only by this Court."

...Congress found that gender-motivated violence **affects interstate commerce** "by deterring potential victims from traveling interstate, from engaging in employment in interstate business, and from transacting with business, and in places involved in interstate commerce;...by diminishing **national productivity**, increasing medical and other costs, and decreasing the supply of and the demand for interstate products."

Again, under these theories, literally nothing would be sacred as beyond the reach of Congressional regulation. That may or may not be a good idea, but it is not in line with the Constitution.

...**If accepted, petitioners' reasoning would allow Congress to regulate any crime as long as the nationwide, aggregated impact of that crime has substantial effects on employment, production, transit, or consumption. Indeed, if Congress may regulate gender-motivated violence, it would be able to regulate murder or any other type of violence since gender-motivated violence, as a subset of all violent crime, is certain to have lesser economic impacts than the larger class of which it is a part.**

Petitioners' reasoning, moreover, will not limit Congress to regulating violence but may, as we suggested in *Lopez*, be applied equally as well to family law and other areas of traditional state regulation since the aggregate effect of marriage, divorce, and child rearing on the national economy is undoubtedly significant...

We accordingly reject the argument that Congress may regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce. The Constitution requires a distinction between what is truly national and what is truly local. In recognizing this fact we preserve one of the few principles that has been consistent since the Clause was adopted. The regulation and punishment of intrastate violence that is not directed at the instrumentalities, channels, or goods involved in interstate commerce has always been the province of the

States...Indeed, we can think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims. *Lopez*...

Because we conclude that the Commerce Clause does not provide Congress with authority to enact §13981, we address petitioners' alternative argument that the section's civil remedy should be upheld as an exercise of Congress' remedial power under §5 of the Fourteenth Amendment. As noted above, Congress expressly invoked the Fourteenth Amendment as a source of authority to enact §13981...

The lengthy §5-Fourteenth-Amendment-issue is omitted here.

Petitioner Brzonkala's complaint alleges that she was the victim of a brutal assault. But Congress' effort in §13981 to provide a federal civil remedy can be sustained neither under the Commerce Clause nor under §5 of the Fourteenth Amendment. If the allegations here are true, no civilized system of justice could fail to provide her a remedy for the conduct of respondent Morrison. **But under our federal system that remedy must be provided by the Commonwealth of Virginia, and not by the United States.** The judgment of the Court of Appeals is Affirmed.

CONCURRENCE: JUSTICE THOMAS...[Not Provided.]

DISSENT: JUSTICE SOUTER/STEVENS/GINSBURG/BREYER...Our cases, which remain at least nominally undisturbed, stand for the following propositions. Congress has the power to legislate with regard to activity that, in the aggregate, has a substantial effect on interstate commerce. The fact of such a substantial effect is not an issue for the courts in the first instance, but for the Congress, whose institutional capacity for gathering evidence and taking testimony far exceeds ours. By passing legislation, Congress indicates its conclusion, whether explicitly or not, that facts support its exercise of the commerce power. The business of the courts is to review the congressional assessment, not for soundness but simply for the rationality of concluding that a jurisdictional basis exists in fact...

One obvious difference from *Lopez* is the mountain of data assembled by Congress, here showing the effects of violence against women on interstate commerce. Passage of the Act in 1994 was preceded by four years of hearings, which included testimony from physicians and law professors; from survivors of rape and domestic violence; and from representatives of state law enforcement and private business. The record includes reports on gender bias from task forces in 21 States, and we have the benefit of specific factual findings in the eight separate Reports issued by Congress and its committees over the long course leading to enactment...

Sorry, but I just do not have the patience nor energy to carry on, page after page, with the dissent's effort to tie crimes against women to a nationwide impact upon the economy. I am sure there is such a connection, just as I am sure that would be true of literally any new crime Congress wished to enact. If the Dissenters and enough of the rest of the Country really do believe that we need MORE national power and LESS state power, Article V provides the steps on how to get that done. Until then, the power of Congress to regulate commerce among the several states is an enumerated power and, therefore, a limited power.