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The Supreme Court and *The Federalist*: A Supplement, 1996-2001*

BY BUCKNER F. MELTON, JR.**
& JENNIFER J. MILLER***

I. INTRODUCTION

Five years ago the *Kentucky Law Journal* published *The Supreme Court and The Federalist: A Citation List and Analysis, 1789-1996*.¹ That Article is in essence a Shepard's-style guide to every occasion on which the United States Supreme Court had quoted or cited one or more of the essays known as *The Federalist* through its October 1995 term. The Article also contains some basic analysis of which justices had been citing which *Federalist* essays, and how often they had done so.

As any judge or lawyer knows, Shepard's volumes need updating, and the original Article is no exception to the rule. The Court has continued to rely upon this most important of all commentaries on the federal Constitution, quoting and citing it in some of the most important and high profile cases it has decided during the five years since the Article's publication. Among them, for instance, are cases as crucial and diverse as *Clinton v. City of New York*,² *Alden v. Maine*,³ *United States v. Morrison*,⁴ and, still more recently, *Bush v. Gore*.⁵ Thus, the Court is continuing the

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¹ Buckner F. Melton, Jr., *The Supreme Court and The Federalist: A Citation List and Analysis, 1789-1996*, 85 KY. L.J. 243 (1996-97).

² *Clinton v. City of New York*, 524 U.S. 417 (1998).

³ *Alden v. Maine*, 527 U.S. 706 (1999).

⁴ *United States v. Morrison*, 120 S. Ct. 1740 (2000).

⁵ *Bush v. Gore*, 121 S. Ct. 525 (2000).

trend that the original Article revealed. That Article's statistics clearly reveal that the number of citations had shot up in recent decades.⁶ Before the 1960s, the Court rarely cited *The Federalist* even a score of times in any given year, although few terms went by without *The Federalist* making an appearance in at least an opinion or two.⁷ But by the 1980s the Court was quoting and citing the essays nearly twice as often as at any time before, and sometimes the annual number of citations jumped to far higher levels.⁸

Compared to the aggregate of statutes and cases cited, these are small numbers. But they compare favorably to the frequency of citation of particular cases, statutes, or regulations, as well as to that of constitutional amendments and clauses. This comparison shows the esteem in which the Court still holds these essays more than two centuries after Alexander Hamilton, James Madison, and John Jay first wrote them. Few Supreme Court cases of *The Federalist*'s vintage have fared as well as these essays have. Still fewer historical sources of law or older commentaries have had such an excellent track record. The Court has cited everything from Magna Carta,⁹ Glanville,¹⁰ Bracton,¹¹ and Coke upon Littleton¹² to Blackstone,¹³ Kent,¹⁴ Story,¹⁵ and even various Anti-Federalist writings.¹⁶ Even such interesting sources as the Code of Hammurabi¹⁷ and the Laws of

⁶ Melton, *supra* note 1, at 338-39.

⁷ This is especially true in recent decades. Since America's entry into World War II, only three years have gone by in which the Court has failed to cite *The Federalist* at all. *See id.*

⁸ *Id.*

⁹ *See, e.g.,* Seminole Tribe of Fla. v. Florida, 517 U.S. 44, 135 n.32 (1996) (Souter, J., dissenting); Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc., 492 U.S. 257, 268-73 (1989).

¹⁰ *See, e.g.,* Ubarri v. Laborde, 214 U.S. 168, 172 (1909).

¹¹ *See, e.g.,* Washington v. Glucksberg, 521 U.S. 702, 711 (1997).

¹² *See, e.g.,* Morgan v. Illinois, 504 U.S. 719, 727 (1992).

¹³ *See, e.g.,* U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 799 (1995).

¹⁴ *See, e.g.,* Michael H. v. Gerald D., 491 U.S. 110, 125 (1989) (Scalia, J.); Reid v. Covert, 354 U.S. 1, 10 n.13 (1957) (Black, J.) (plurality opinion).

¹⁵ *See, e.g.,* Nixon v. United States, 506 U.S. 224, 249-50 (1993) (White, J., concurring in the judgment); Morrison v. Olson, 487 U.S. 654, 671 (1988).

¹⁶ *See, e.g.,* Garcia v. San Antonio Metro. Transit Auth., 469 U.S. 528, 568-69 & n.14 (1985) (Powell, J., dissenting). For a short guide to Anti-Federalist writings, see Melton, *supra* note 1, at 247 n.19.

¹⁷ *See* Furman v. Georgia, 408 U.S. 238, 333 n.41 (1972) (Marshall, J., concurring).

Oleron¹⁸ appear in Supreme Court opinions. But with the possible exception of Blackstone, the Court's reliance on these sources has never been as frequent, as steady, and as multifaceted as it has been in the case of *The Federalist*. The essays hold a special attraction for the Court and the fascination is widespread among justices past and present. Ideology and interpretive approach have little bearing on how often a justice appeals to the essays. John Paul Stevens, Sandra Day O'Connor, and Antonin Scalia are all among the heaviest users of *The Federalist* in the Court's entire history.¹⁹

If citations provide any clue as to how important an authority is, *The Federalist* remains a very important authority. In recent decades, of course, many writers have claimed that the Court's decisions are increasingly unprincipled,²⁰ and, if that is true, guides to the use of "authority" are not very helpful to litigants since authority does not determine unprincipled outcomes. The Court seems aware that it must give at least the appearance of making principled decisions, and the classical way for a common law jurist to do that is to rely on *stare decisis* and precedent. Court-watchers pay close attention to what the "Supremes" are citing, especially in the last twenty years.²¹ The importance of the cited materials may be merely a fiction, but if so, the fiction is an important one. And on occasion *The Federalist* indisputably assumes center stage in Supreme Court jurispru-

¹⁸ See, e.g., *Vaughan v. Atkinson*, 369 U.S. 527, 532 n.4 (1962); *The "North Star,"* 106 U.S. 17, 21 (1882).

¹⁹ See Melton, *supra* note 1, at 340-43.

²⁰ See, e.g., Nelson Lund, *Rational Choice at the Office of Legal Counsel*, 15 CARDOZO L. REV. 437, 461 (1993); Cedric Merlin Powell, *The Mythological Marketplace of Ideas: R.A.V., Mitchell, and Beyond*, 12 HARV. BLACK LETTER L.J. 1, 35-36 (1995); Pamela J. Stephens, *Sovereignty and Personal Jurisdiction Doctrine: Up the Stream of Commerce Without a Paddle*, 19 FLA. ST. U. L. REV. 105, 106 (1991).

²¹ See, e.g., LEE EPSTEIN ET AL., *THE SUPREME COURT COMPENDIUM: DATA, DECISIONS, AND DEVELOPMENTS* (2d ed. 1996); SUPREME COURT OF THE UNITED STATES 1789-1980: AN INDEX TO OPINIONS ARRANGED BY JUSTICE (Linda A. Blandford & Patricia Russell Evans eds., 1983). A useful guide for those researching pre-twentieth century Court opinions is MORRIS L. COHEN & SHARON HAMBY O'CONNOR, *A GUIDE TO THE EARLY REPORTS OF THE SUPREME COURT OF THE UNITED STATES* (1995); see also Donald J. Kochan, *Pages Per Term in the United States Reports and Converting Supreme Court Citations to Term Announced: A Statistical Research Tool*, 1998 DET. C.L. MICH. ST. U. L. REV. 1091; Louis J. Sirico, Jr. & Jeffrey B. Margulies, *The Citing of Law Reviews by the Supreme Court: An Empirical Study*, 34 UCLA L. REV. 131 (1986).

dence. The best example came in the 1997 case of *Printz v. United States*,²² when the majority and the dissenters engaged in a protracted, in-depth debate over the correct interpretation of several of the essays' passages.²³ For at least one of the justices, in fact, *The Federalist* was dispositive in that instance. "In deciding these cases, which I have found closer than I had anticipated," wrote Justice Souter in dissent, "it is *The Federalist* that finally determines my position."²⁴ Thus, *The Federalist* is still alive and well in Supreme Court jurisprudence.

The widespread citation of *The Federalist* means that litigants need to be careful in how they read and use the essays. Just as the Constitution, in the words of Charles Evans Hughes, "is what the judges say it is,"²⁵ so, too, do *The Federalist* essays mean what the Court says they mean. Supreme Court litigants continue to cite the essays very heavily—scores or even hundreds of times in the past five years alone.²⁶ For these litigants, studying what the Court has to say about them is at least as important as studying *The Federalist's* actual words. Of course, given the strong ideological split on today's Supreme Court bench, *The Federalist* may mean quite different things depending on who is citing it.²⁷ But the same

²² *Printz v. United States*, 521 U.S. 898 (1997).

²³ *See id.* at 910-16; *id.* at 943-47 (Stevens, J., dissenting); *id.* at 971-76 (Souter, J., dissenting); *id.* at 977 (Breyer, J., dissenting).

²⁴ *Id.* at 971 (Souter, J., dissenting).

²⁵ Charles E. Hughes, *Speech to the Elmira, New York, Chamber of Commerce* (May 3, 1907), in 1 MERLO J. PUSEY, CHARLES EVANS HUGHES 204 (1951).

²⁶ *See, e.g.*, Brief for the State of Alabama, By and Through its Attorney General and Secretary of State, as Amicus Curiae, Supporting Reversal at 30, *Bush v. Gore*, 121 S. Ct. 525 (2000) (No. 00-949) (citing THE FEDERALIST NO. 45, at 291 (James Madison) (Clinton Rossiter ed., 1961)); Reply Brief of Petitioner at 15, *Carmell v. Texas*, 120 S. Ct. 1620 (2000) (No. 98-7540) (citing THE FEDERALIST NO. 84 (Alexander Hamilton)); Brief of Amicus Curiae in Support of Respondent at 2, *Alden v. Maine*, 527 U.S. 706 (1999) (No. 98-436) (citing THE FEDERALIST NO. 81 (Alexander Hamilton)); Brief for the United States at 15, *City of Boerne v. Flores*, 521 U.S. 507 (1997) (No. 95-2074) (citing THE FEDERALIST NO. 78, at 490 (Alexander Hamilton) (Henry Cabot Lodge ed., 1888)); *id.* at 34 (citing THE FEDERALIST NO. 10 (James Madison)). Many, many other examples exist.

²⁷ *Compare Printz*, 521 U.S. at 910-16 (reasoning that various passages of *The Federalist* do not support federal delegation of federal power to state officials absent state consent) *with id.* at 943-48 (Stevens, J., dissenting) (arguing that these passages do allow such delegation without state consent) *and id.* at 971-76 (Souter, J., dissenting) (same). A further argument against clarity is *The Federalist* itself, as the work of three different authors, written in some haste, is inherently internally

thing happens with cases, and statutes, and even constitutional clauses. Different Courts and different justices have used *The Federalist* in different ways. But that is all the more reason for litigants to understand the various spins that the Court may put on a particular *Federalist* essay. Certainly litigants think *The Federalist* important, despite the various uses that various justices find for it; a simple LEXIS or Westlaw search will show that Supreme Court briefs have cited the various essays thousands of times, in hundreds of cases, in the last decade or so alone. The lawyers who write these briefs need to know how the Court is using *The Federalist*, and, as with any other authority, they need to be sure that their understanding is up to date.

Here, then, is a supplement to the original Article, which carries its coverage through June 2001. The organization is the same as that of the original Article. Each case that quotes or cites *The Federalist* has a number. The cases are in alphabetical order, and their numbers are sequential, taking up where the original Article's numbering left off. A subject index and an index of citation by essay number appear after the main list of cases. These are comprehensive, indexing both the cases in this supplement as well as the cases in the original Article; they thus supercede the original indices. As before, all citations have been converted to the authoritative Jacob E. Cooke edition of *The Federalist*.²⁸

The diverse citations from so many places on the bench show one thing, even if they show nothing else. The essays that Hamilton, Jay, and Madison wrote in 1787 and 1788 have at least as much vitality entering their third century as they did on the day that they were first written.

inconsistent. See Melton, *supra* note 1, at 249-50. Nevertheless, the Court continues to use it, usually citing particular essays or passages, thus on the face of things reducing the inconsistency.

²⁸ ALEXANDER HAMILTON ET AL., *THE FEDERALIST* (Jacob E. Cooke ed., 1961). The justices persist in using various editions of *The Federalist*; in a recent case, four separate opinions cited three different versions. See *Printz*, 521 U.S. at 910-16 (citing the Clinton Rossiter edition); *id.* at 943-47 (Stevens, J., dissenting) (citing the E.G. Bourne edition); *id.* at 971-76 (Souter, J., dissenting) (citing the Cooke edition); *id.* at 977 (Breyer, J., dissenting) (citing the Rossiter edition). Some justices persist in citing older versions. See, e.g., *Florida Prepaid Postsecondary Educ. Expense Bd. v. Coll. Sav. Bank*, 527 U.S. 627, 650 (1999) (Stevens, J., dissenting) (citing the 1908 Henry Cabot Lodge edition); *Printz*, 521 U.S. at 943-47 (Stevens, J., dissenting) (citing the 1947 E.G. Bourne edition). But most citations are now either to the Cooke edition or to the equally well known Clinton Rossiter edition.

II. ALPHABETICAL LIST OF CITATIONS

- 277: Alden v. Maine, 527 U.S. 706 (1999)
- 714 (Kennedy, J., majority opinion) (No. 15, at 95 (Alexander Hamilton)) (federalism)
- 714 (Kennedy, J., majority opinion) (No. 20, at 128-29 (James Madison)) (federalism)
- 714 (Kennedy, J., majority opinion) (No. 39, at 256 (James Madison)) (federalism; sovereignty, state)
- 715 (Kennedy, J., majority opinion) (No. 39, at 256 (James Madison)) (federalism)
- 716-17 (Kennedy, J., majority opinion) (No. 81, at 548-49 (Alexander Hamilton)) (sovereign immunity; sovereignty, state)
- 729 (Kennedy, J., majority opinion) (No. 81, at 548 (Alexander Hamilton)) (federalism; sovereignty, state)
- 729 (Kennedy, J., majority opinion) (No. 81, at 549 (Alexander Hamilton)) (federalism; sovereign immunity; sovereignty, state)
- 730 (Kennedy, J., majority opinion) (No. 81, at 549 (Alexander Hamilton)) (sovereign immunity; sovereignty, state)
- 731 (Kennedy, J., majority opinion) (No. 33, at 207 (Alexander Hamilton)) (sovereign immunity; Supremacy Clause)
- 732-33 (Kennedy, J., majority opinion) (No. 33, at 207 (Alexander Hamilton)) (commerce power; implied powers; sovereign immunity)
- 763 (Souter, J., dissenting) (No. 81, at 548 (Alexander Hamilton)) (sovereign immunity; sovereignty, state)
- 773 (Souter, J., dissenting) (No. 81, at 548-49 (Alexander Hamilton)) (law, natural; sovereign immunity; sovereignty, state)

- 773-74 & n.13 (Souter, J., dissenting) (No. 81, at 548-49 (Alexander Hamilton)) (law, natural; sovereign immunity; sovereignty, state)
- 775 (Souter, J., dissenting) (No. 81, at 548-49 (Alexander Hamilton)) (law, natural; sovereign immunity; sovereignty, state)
- 779 n.19 (Souter, J., dissenting) (general citation) (inherent rights; sovereign immunity; sovereignty, state)
- 800 n.32 (Souter, J., dissenting) (No. 39, at 256 (James Madison)) (federalism; sovereignty, state)
- 809 n.39 (Souter, J., dissenting) (No. 15, at 95 (Alexander Hamilton)) (sovereignty, state)
- 809 n.39 (Souter, J., dissenting) (No. 15, at 95 (Alexander Hamilton)) (sovereignty, state)
- 278:** Bush v. Gore, 121 S. Ct. 525 (2000)
- 549 (Ginsburg, J., dissenting) (No. 78 (Alexander Hamilton)) (elections; electoral college; judicial power)
- 279:** California Democratic Party v. Jones, 120 S. Ct. 2402 (2000)
- 2417 n.2 (Stevens, J., dissenting) (No. 10 (James Madison)) (political parties)
- 280:** Camps Newfound/Owatonna, Inc. v. Town of Harrison, 520 U.S. 564 (1997)
- 612-13 (Thomas, J., dissenting) (No. 32, at 203 (Alexander Hamilton)) (commerce power)
- 613 n.6 (Thomas, J., dissenting) (No. 32 (Alexander Hamilton)) (commerce power; taxation)
- 631-32 (Thomas, J., dissenting) (No. 32, at 199 (Alexander Hamilton)) (Import-Export Clause; taxation)
- 639-40 (Thomas, J., dissenting) (No. 12 (Alexander Hamilton)) (taxation)

- 281:** *Carmell v. Texas*, 120 S. Ct. 1620 (2000)
- 1626 & n.6 (Stevens, J., majority opinion) (No. 44, at 301 (James Madison)) (Ex Post Facto Clause)
- 1626 & n.7 (Stevens, J., majority opinion) (No. 84, at 577 (Alexander Hamilton)) (Ex Post Facto Clause)
- 1632 (Stevens, J., majority opinion) (No. 84, at 577 (Alexander Hamilton)) (Ex Post Facto Clause)
- 282:** *City of Boerne v. Flores*, 521 U.S. 507 (1997)
- 516 (Kennedy, J., majority opinion) (No. 45, at 313 (James Madison)) (enumerated powers; judicial power)
- 549 (O'Connor, J., dissenting) (No. 84, at 579 (Alexander Hamilton)) (Bill of Rights, federal)
- 283:** *City of Chicago v. Morales*, 527 U.S. 41 (1999)
- 84 (Scalia, J., dissenting) (No. 6, at 31 (Alexander Hamilton)) (criminal law and procedure)
- 84 (Scalia, J., dissenting) (No. 11 (Alexander Hamilton)) (criminal law and procedure)
- 284:** *Clinton v. City of New York*, 524 U.S. 417 (1998)
- 450 (Kennedy, J., concurring) (No. 47, at 324 (James Madison)) (separation of powers; standing; veto power)
- 450 (Kennedy, J., concurring) (No. 84, at 578-81 (Alexander Hamilton)) (Bill of Rights, federal; separation of powers)
- 451 (Kennedy, J., concurring) (No. 47, at 326 (James Madison)) (separation of powers)
- 482 (Breyer, J., dissenting) (No. 51, at 349 (James Madison (or Alexander Hamilton))) (separation of powers)
- 285:** *Clinton v. Jones*, 520 U.S. 681 (1997)

699 n.30 (Stevens, J., majority opinion) (No. 51, at 349 (James Madison (or Alexander Hamilton))) (president; separation of powers)

703 & n.37 (Stevens, J., majority opinion) (No. 47, at 325 (James Madison)) (judicial power; president; separation of powers)

712 (Breyer, J., concurring in the judgment) (No. 70, at 471 (Alexander Hamilton)) (executive power)

713 (Breyer, J., concurring in the judgment) (No. 71, at 481 (Alexander Hamilton)) (executive power)

723 (Breyer, J., concurring in the judgment) (No. 51, at 349 (James Madison (or Alexander Hamilton))) (president; separation of powers)

286: Coll. Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666 (1999)

705 (Breyer, J., dissenting) (No. 81, at 549-50 (Alexander Hamilton)) (sovereign immunity)

287: Cook v. Gralike, 121 S. Ct. 1029 (2001)

1041 (Kennedy, J., concurring) (general citation) (federalism; voting)

288: Crawford-El v. Britton, 523 U.S. 574 (1998)

601 (Kennedy, J., concurring) (No. 49, at 340 (James Madison)) (Section 1983 actions)

289: Crosby v. Nat'l Foreign Trade Council, 120 S. Ct. 2288 (2000)

2299 n.16 (Souter, J., majority opinion) (No. 80, at 535-36 (Alexander Hamilton)) (foreign affairs; presidential power)

290: Edmond v. United States, 520 U.S. 651 (1997)

659 (Scalia, J., majority opinion) (No. 76, at 510 (Alexander Hamilton)) (appointment/removal power; president)

659 (Scalia, J., majority opinion) (No. 76, at 510-11 (Alexander Hamilton)) (appointment/removal power; president)

291: Florida Prepaid Postsecondary Educ. Expense Bd. v. Coll. Sav. Bank, 527 U.S. 627 (1999)

634 (Rehnquist, C.J., majority opinion) (No. 81, at 548 (Alexander Hamilton)) (federalism; sovereign immunity)

650 (Stevens, J., dissenting) (No. 43, at 288 (James Madison)) (federalism; patent)

292: Idaho v. Coeur d'Alene Tribe, 521 U.S. 261 (1997)

267 (Kennedy, J., majority opinion) (No. 81, at 549 (Alexander Hamilton)) (sovereign immunity)

271 (Kennedy, J.) (No. 80, at 535 (Alexander Hamilton)) (federalism; justiciability)

293: Kansas v. Hendricks, 521 U.S. 346 (1997)

396 (Breyer, J., dissenting) (No. 78, at 524 (Alexander Hamilton)) (Ex Post Facto Clause)

294: Kimel v. Florida Bd. of Regents, 528 U.S. 62 (2000)

93-94 n.1 (Stevens, J., concurring in part and dissenting in part) (No. 45, at 311 (James Madison)) (Senate; sovereign immunity)

295: Neder v. United States, 527 U.S. 1 (1999)

31 (Scalia, J., concurring in part and dissenting in part) (No. 83, at 562 (Alexander Hamilton)) (criminal law and procedure; juries)

296: Nevada v. Hicks, 121 S. Ct. 2304 (2001)

2314 (Scalia, J., majority opinion) (No. 82, at 553-55 (Alexander Hamilton)) (federalism; Indian rights; Section 1983 actions)

297: Nixon v. Shrink Mo. Gov't PAC, 528 U.S. 377 (2000)

414 (Thomas, J., dissenting) (No. 35, at 219 (Alexander Hamilton)) (campaign finance; expression, freedom of)

424 n.9 (Thomas, J., dissenting) (No. 10, at 58, 60 (James Madison)) (factions)

298: Printz v. United States, 521 U.S. 898 (1997)

910 (Scalia, J., majority opinion) (general citation) (federalism; taxation)

910 (Scalia, J., majority opinion) (No. 27, at 174 (Alexander Hamilton)) (federalism)

910 (Scalia, J., majority opinion) (No. 36, at 227 (Alexander Hamilton)) (federalism; taxation)

910 (Scalia, J., majority opinion) (No. 45, at 313 (James Madison)) (federalism)

910 (Scalia, J., majority opinion) (No. 45, at 313 (James Madison)) (federalism; taxation)

911-14 & nn.4, 5 (Scalia, J., majority opinion) (No. 27, at 174-75 (Alexander Hamilton)) (federalism)

913 n.6 (Scalia, J., majority opinion) (No. 44, at 307 (James Madison)) (federalism)

914 & n.7 (Scalia, J., majority opinion) (No. 36, at 228 (Alexander Hamilton)) (federalism)

914-15 & n.8 (Scalia, J., majority opinion) (No. 44, at 307 (James Madison)) (federalism)

915-16 & n.9 (Scalia, J., majority opinion) (No. 27 (Alexander Hamilton)) (federalism)

919 (Scalia, J., majority opinion) (No. 15 (Alexander Hamilton)) (federalism)

919 (Scalia, J., majority opinion) (No. 39, at 256 (James Madison)) (federalism; sovereignty)

- 919-20 (Scalia, J., majority opinion) (No. 15, at 95 (Alexander Hamilton)) (federalism)
- 920-21 (Scalia, J., majority opinion) (No. 39, at 256 (James Madison)) (federalism)
- 921 n.11 (Scalia, J., majority opinion) (No. 18 (James Madison)) (federalism)
- 921 n.11 (Scalia, J., majority opinion) (No. 19 (James Madison)) (federalism)
- 921 n.11 (Scalia, J., majority opinion) (No. 20, at 128-29 (James Madison)) (federalism)
- 922 (Scalia, J., majority opinion) (No. 28, at 178-80 (Alexander Hamilton)) (federalism)
- 922 (Scalia, J., majority opinion) (No. 51, at 351 (James Madison (or Alexander Hamilton))) (federalism)
- 922 (Scalia, J., majority opinion) (No. 70 (Alexander Hamilton)) (executive power)
- 924 (Scalia, J., majority opinion) (No. 33, at 207 (Alexander Hamilton)) (commerce power; Necessary and Proper Clause; sovereignty, state)
- 943 & n.3 (Stevens, J., dissenting) (No. 44, at 307 (James Madison)) (federalism)
- 945 (Stevens, J., dissenting) (No. 15, at 95 (Alexander Hamilton)) (federalism)
- 945 (Stevens, J., dissenting) (No. 27, at 174 (Alexander Hamilton)) (federalism)
- 946-47 (Stevens, J., dissenting) (No. 36, at 227 (Alexander Hamilton)) (federalism; taxation)
- 947 (Stevens, J., dissenting) (No. 45, at 312-13 (James Madison)) (federalism; taxation)

- 947-48 & n.7 (Stevens, J., dissenting) (No. 27, at 174-75 (Alexander Hamilton)) (federalism)
- 948 (Stevens, J., dissenting) (No. 27, at 175 (Alexander Hamilton)) (Supremacy Clause)
- 959 (Stevens, J., dissenting) (No. 36, at 227-28 (Alexander Hamilton)) (federalism)
- 959 (Stevens, J., dissenting) (No. 45, at 312-13 (James Madison)) (federalism)
- 971 (Souter, J., dissenting) (No. 27 (Alexander Hamilton)) (federalism)
- 971 (Souter, J., dissenting) (No. 36 (Alexander Hamilton)) (federalism)
- 971 (Souter, J., dissenting) (No. 44 (James Madison)) (federalism)
- 971 (Souter, J., dissenting) (No. 45 (James Madison)) (federalism)
- 971-72 & n.1 (Souter, J., dissenting) (No. 27, at 174-75 (Alexander Hamilton)) (federalism; oaths; Supremacy Clause)
- 972 n.1 (Souter, J., dissenting) (No. 44, at 307 (James Madison)) (executive power; federalism; legislative power)
- 973 (Souter, J., dissenting) (general citation) (federalism; taxation)
- 973 n.2 (Souter, J., dissenting) (No. 44, at 307 (James Madison)) (federalism)
- 973-74 & n.2 (Souter, J., dissenting) (No. 44, at 307 (James Madison)) (federalism)
- 974 (Souter, J., dissenting) (No. 45, at 313 (James Madison)) (federalism; taxation)
- 974 n.2 (Souter, J., dissenting) (No. 27 (Alexander Hamilton)) (federalism)
- 974-75 (Souter, J., dissenting) (No. 36, at 228 (Alexander Hamilton)) (federalism; taxation)

975 (Souter, J., dissenting) (general citation) (federalism)

975 (Souter, J., dissenting) (No. 27 (Alexander Hamilton))
(federalism)

975-76 (Souter, J., dissenting) (general citation) (federalism)

976 (Souter, J., dissenting) (No. 36, at 228 (Alexander Hamilton))
(federalism)

977 (Breyer, J., dissenting) (No. 20, at 124-29 (James Madison))
(federalism)

977 (Breyer, J., dissenting) (No. 42, at 284 (James Madison))
(federalism)

977 (Breyer, J., dissenting) (No. 43, at 291-93 (James Madison))
(federalism)

299: Raines v. Byrd, 521 U.S. 811 (1997)

821 (Rehnquist, C.J., majority opinion) (No. 62, at 418 (James
Madison (or Alexander Hamilton))) (justiciability; standing)

300: Rogers v. Tennessee, 121 S. Ct. 1693 (2001)

1706 n.2 (Scalia, J., dissenting) (No. 78, at 529 (Alexander
Hamilton)) (stare decisis)

1709 (Scalia, J., dissenting) (No. 44, at 301 (James Madison)) (Ex
Post Facto Clause; ex post facto laws)

301: Schenck v. Pro-Choice Network, 519 U.S. 357 (1997)

393-94 (Scalia, J., concurring in part and dissenting in part) (No.
78, at 522-23 (Alexander Hamilton)) (executive power;
judicial power; separation of powers)

302: Timmons v. Twin Cities Area New Party, 520 U.S. 351 (1997)

368 (Rehnquist, C.J., majority opinion) (No. 10 (James Madison))
(elections; factions; voting)

303: United States v. Hatter, 121 S. Ct. 1782 (2001)

1790 (Breyer, J., majority opinion) (No. 78, at 524 (Alexander Hamilton)) (compensation of judges; judicial power)

1790-91 (Breyer, J., majority opinion) (No. 78, at 523 (Alexander Hamilton)) (compensation of judges; judicial power)

1791 (Breyer, J., majority opinion) (No. 48, at 334 (James Madison)) (compensation of judges)

1791 (Breyer, J., majority opinion) (No. 79, at 551 (Alexander Hamilton)) (compensation of judges)

1797 (Breyer, J., majority opinion) (No. 79, at 531 (Alexander Hamilton)) (compensation of judges)

1799 (Scalia, J., concurring in part and dissenting in part) (No. 79, at 532 (Alexander Hamilton)) (compensation of judges)

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304: United States v. Locke, 529 U.S. 89 (2000)

99 (Kennedy, J., majority opinion) (No. 12 (Alexander Hamilton)) (admiralty/maritime law; pre-emption)

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305: United States v. Morrison, 120 S. Ct. 1740 (2000)

1765 (Souter, J., dissenting) (No. 45, at 313 (James Madison)) (commerce power; delegated powers; reserved powers)

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