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UNITED STATES V. MORRISON

529 U.S. 598 (2000)

INTRODUCTION

On September 13, 1994, § 13981, also known as the Civil Rights Remedy, of the Violence Against Women Act was signed into law by President Clinton.[1] Section 13981 provided a "federal substantive right to all persons within the United States to be free from crimes motivated by gender."[2] This provision created a private right of action in a person injured by gender motivated violence against the person who committed the act and obtain compensatory and punitive damages.[3] Furthermore, it allowed a victim to obtain injunctive, declaratory, and other appropriate relief.[4]

In drafting § 13981, Congress amassed voluminous findings detailing gender motivated violence and its effects on women.[5] Congress found that the massive amount of violence being subjected against women imposed an "artificial restriction on the market"[6] having a substantial effect on interstate commerce, thereby bringing it within the congressional realm to regulate under the Commerce Clause.[7] Furthermore, Congress found that state legal systems were failing to provide protection to victims of gender-based violence, and generally failing to grant women the right to receive equal

1. *See* Violence Against Women Act of 1994, Pub. L. No. 103-322, Title IV, § 40302, 108 Stat. 1941 (codified as amended at 42 U.S.C.A. § 13981).

2. *See* 42 U.S.C. § 13981(b).

3. *See id.* § 13981(c).

4. *See id.*

5. *See* Senator Joseph R. Biden, Jr., *The Civil Rights Remedy of the Violence Against Women Act: A Defense*, 37 HARV. J. ON LEGIS. 1, 4 (2000) (noting that the legislative findings demonstrated that violence and threat of violence is a constant in women's lives).

6. *See* Amicus Curae brief for Petitioners at 9, United States v. Morrison, 529 U.S. 598 (2000) (Nos. 99-5, 99-29) (arguing that Congress had the power to regulate gender-motivated violence under the Commerce Clause).

7. *See* U.S. CONST. art. I, § 8, cl. 3 (giving Congress the power "[t]o regulate commerce with foreign Nations, and among the several States, and with the Indian Tribes").

protection[8] of the laws in the Nation's courts systems.[9] Therefore, Congress enacted § 13981 under the Commerce Clause, and the Fourteenth Amendment, as an appropriate remedy to enforce the Equal Protection Clause.[10]

However, in *United States v. Morrison*,[11] the Supreme Court reviewed the United States Court of Appeals for the Fourth Circuit's holding that § 13981 of the Violence Against Women Act was unconstitutional.[12] In affirming the Fourth Circuit's opinion, the Supreme Court held that, despite the legislative findings, Congress lacked the constitutional authority to enact § 13981 under the Commerce Clause, or § 5 of the Fourteenth Amendment.[13]

FACTS OF THE CASE

On September 21, 1994, Antonio Morrison and James Crawford were alleged to have raped Christy Brzonkala, a freshman at Virginia Polytechnic Institute ("Virginia Tech"), within the first thirty minutes of their meeting.[14] Furthermore, Christy Brzonkala claimed that in the months following the rape, Morrison made comments in the dormitory's dining room that he liked to "get girls drunk and f*** the s*** out of them."[15] Brzonkala felt very depressed after the rape occurred,[16] and shortly thereafter, she stopped attending classes and withdrew from school.[17]

Before Brzonkala pursued an action in federal court, she filed a complaint against Morrison and Crawford under Virginia Tech's

8. *See* U.S. CONST. amend. XIV, § 1 ("No state shall . . . deny to any person within its jurisdiction the equal protection of the laws.").

9. *See* S. REP. NO. 103-138, at 48 ("The Violence Against Women Act is intended to respond both to the underlying attitude that this violence is somehow less serious than other crimes and to the resulting failure of our criminal justice system to address such violence.").

10. *See* U.S. CONST. amend. XIV, § 5 (delegating to Congress the authority "to enforce, by appropriate legislation, the provisions of this article"); *see also* Morrison, 529 U.S. at 626.

11. 529 U.S. 598, 600 (2000), *aff'g* 169 F.3d 820 (4th Cir. 1999) (en banc), *vacating as moot* 132 F.3d 949 (4th Cir. 1997), *rev'g* 935 F. Supp. 772 (W.D. Va. 1996).

12. *See* Brzonkala v. Virginia Polytechnic Inst. & State Univ., 169 F.3d 820, 889 (4th Cir. 1999) (en banc) (holding that Congress lacked the authority to enact the Civil Rights Remedy).

13. *See Morrison*, 529 U.S. at 627 (affirming the Fourth Circuit decision).

14. *See* Brzonkala v. Virginia Polytechnic Inst. & State Univ., 132 F.3d 949, 953 (4th Cir. 1997) (discussing that Brzonkala only knew Morrison and Crawford by their first names and by their status as members of the football team).

15. *Id.* at 953.

16. *See id.* (noting Brzonkala's depth of depression).

17. *See id.* (stating that Brzonkala ultimately attempted suicide and received a retroactive withdrawal from the university for the 1994-95 school year because of the trauma).

Sexual Assault Policy.[18] In a university hearing, Morrison admitted that he had sexual intercourse with Brzonkala after she had repeatedly told him no.[19] However, the Virginia Tech Judicial Committee found insufficient evidence to punish Crawford, who denied having sexual intercourse with Brzonkala, and only sentenced Morrison to immediate suspension for two semesters for sexual assault.[20]

Morrison appealed his conviction under Virginia Tech's Sexual Assault Policy and was granted a second hearing under the university's Abusive Conduct Policy.[21] As a result of this second hearing, the Judicial Committee found Morrison guilty and sentenced him again to a two-semester suspension.[22] However, the university found him guilty of using abusive language, not of committing sexual assault.[23] Morrison once again appealed his conviction and Virginia Tech's Vice President set aside Morrison's punishment, concluding that it was too excessive.[24] After Christy Brzonkala learned that Morrison would be returning[25] to Virginia Tech, she dropped out of the university.[26]

Brzonkala, frustrated by the efforts at the university level in her attempt to punish Morrison and Crawford, pursued her right to be free from gender-motivated violence under § 13981 in federal court.[27] Upon Brzonkala's filing an action in Federal district court, the defendants Morrison and Crawford motioned to dismiss her claim on the grounds that she did not state a claim under § 13981.[28]

18. *See id.* at 954 (commenting that criminal charges were not filed against Morrison and Crawford for lack of physical evidence).

19. *See Brzonkala*, 132 F.3d at 954.

20. *See* United States v. Morrison, 529 U.S. 598, 602 (2000) (discussing Morrison's culpability); *see also Brzonkala*, 132 F.3d at 954 (discussing the evidence available against Crawford).

21. *See Morrison*, 529 U.S. at 603 (identifying that since the Sexual Assault Policy had not been widely disseminated to the students, the University decided to re-prosecute Brzonkala's complaint under the old policy).

22. *See id.*

23. *See id.* (noting that university officials lessened Morrison's offense without offering an explanation).

24. *See id.* (citing *Brzonkala*, 132 F.3d at 955) (discussing the excessiveness of Morrison's punishment "when compared with other cases where has been found a violation of the Abusive Conduct Policy").

25. *See Brzonkala*, 132 F.3d at 955 (noting that Morrison did return to Virginia Tech in 1995 on a full athletic scholarship).

26. *See Morrison*, 529 U.S. at 604.

27. *See Brzonkala*, 169 F.3d at 827 (referring, en banc, to Christy Brzonkala's right of action in federal court under § 13981).

28. *See id.* at 828 (citing Brzonkala v. Virginia Polytechnic Inst. & State Univ., 935 F. Supp. 779, 785 (W.D. Va. 1996) (disagreeing with the defendants' claim that the plaintiff must allege

Furthermore, the defendants argued that even if Brzonkala did state such a claim, § 13981 was unconstitutional.[29] As a result of this allegation, the United States intervened to defend Congress' action in enacting the statute.[30]

However, the Federal District Court for the Western District of Virginia held that while Brzonkala did state a claim under the Violence Against Women Act, Congress did not have the authority to enact § 13981 under the Commerce Clause.[31] The court also concluded that § 13981 was not a valid congressional enactment under § 5 of the Fourteenth Amendment, because it was not closely tailored enough to remedy equal protection violations.[32] Moreover, the district court held that § 13981 was not directed at remedying violations of equal protection by the States, since it regulated individuals responsible for gender-motivated violence, rather than those acting under the "color of state law."[33]

The United States and Christy Brzonkala appealed the court's decision to the United States Court of Appeals for the Fourth Circuit. On December 23, 1997, a divided panel of the court decided that § 13981 was a valid congressional enactment under the U.S. Constitution.[34] However, on February 2, 1998, the full court vacated the judgment and reheard the case *en banc* on March 3, 1998.[35] On March 5, 1999, the Fourth Circuit held that Congress had exceeded its authority under the Commerce Clause and § 5 of the Fourteenth Amendment in enacting § 13981 and affirmed the district court

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facts, such as other sexual assaults, to contend that the alleged rape was motivated by gender bias).

29. *Id.* (citing *Brzonkala*, 935 F. Supp. at 785, that an analysis of the constitutionality of the Violence Against Women Act must follow a determination that the plaintiff has successfully stated a claim for a violation of its provisions).

30. *Id.* (defending the congressional enactment of § 13981 of the Violence Against Women Act, as constitutional under § 5 of the Fourteenth Amendment and under Article 1, § 8 of the U.S. Constitution).

31. *See id.* at 828 (citing *Brzonkala*, 935 F. Supp. at 801, that § 13981 was not sufficiently related to interstate commerce to justify congressional regulation).

32. *See Brzonkala*, 169 F.3d at 829 (contending that women who do not suffer gender bias by the states, and therefore cannot assert that there has been a violation of equal protection, can still pursue a cause of action under § 13981).

33. *Id.* (citing *Brzonkala*, 935 F. Supp. at 797) (finding that congressional regulation of private acts of gender-motivated violence under the Fourteenth Amendment is not consistent with Supreme Court precedent).

34. *See id.* at 828 (discussing the prior history of *United States v. Morrison*); *see also Brzonkala*, 132 F.3d at 974 (holding that § 13981 did not exceed the scope of Congress' authority under the Commerce Clause). The court, however, did not address whether it was a valid enactment under § 5 of the Fourteenth Amendment. *Id.*

35. *See* United States v. Morrison, 169 F.3d 820, 828 (4th Cir. 1999).

opinion.[36] Because the Fourth Circuit opinion invalidated a federal statute on constitutional grounds, the Supreme Court of the United States granted certiorari.[37]

HOLDING

In affirming the Fourth Circuit's opinion, the Supreme Court began by reviewing petitioner's assertion that § 13981 was constitutional under the Commerce Clause by primarily reiterating its own findings in *United States v. Lopez*.[38] As with the Gun Free School Zones Act of 1990,[39] in *Lopez*, the Court held that the Civil Rights Remedy was unconstitutional because it did not substantially affect interstate commerce.[40] Specifically, the Court emphasized that it has only sustained legislation under the Commerce Clause as having a substantial effect on interstate commerce when the activity in question has had an economic basis.[41]

The petitioners relied heavily on the Congressional findings in favor of the Violence Against Women Act to support their assertion that § 13981 was constitutional under the Commerce Clause.[42] However, the Court concluded that the link between gender-motivated violence and the finding of a substantial effect on interstate commerce was too attenuated.[43] Lastly, as was also a factor in striking down the statutory provision in *Lopez*, the Supreme Court held that § 13981 lacked a specific jurisdictional element limiting its reach and furthering its connection to interstate commerce.[44]

36. *See id.* at 889.

37. *See* United States v. Morrison, 527 U.S. 1068 (1999) (granting certiorari without expansion).

38. 514 U.S. 549, 558 (1995) (discussing the three categories of interstate commerce that can be regulated under the Commerce Clause); *see also id.* at 559 (holding that a proper test of whether an activity can be regulated by Congress under the third category is whether the activity in question "substantially affects interstate commerce").

39. *See* Pub. L. No. 101-647, 104 Stat. 4844 (codified as amended at 18 U.S.C. § 922(q)(1)(A) (1994 & Supp. IV 1998)).

40. *See* United States v. Morrison, 529 U.S. 598, 617 (2000) (rejecting petitioner's argument that Congress may regulate non–economic activity "based solely on the conduct's aggregate affect on interstate commerce").

41. *See id.* at 1750 (citing *Lopez*, 514 U.S. at 560) ("Where economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained.").

42. *See Morrison*, 529 U.S. at 614 (commenting on the numerous congressional findings in support of § 13981 in contrast to the *Lopez* decision, but holding that numerous findings are not enough to sustain its constitutionality).

43. *Id.* at 610 (concluding that if the Court was willing to let the Commerce Clause power extend into all areas having an aggregate effect on interstate commerce, almost everything could be regulated under it because of the nature of our interdependent society).

44. *See id.* at 613 (arguing that *Lopez* had given the drafters of § 13981 an advance warning

Further, the Supreme Court reviewed the petitioners' assertion that § 13981 was constitutional under the Fourteenth Amendment's Equal Protection Clause.[45] Although the petitioners argued that § 13981 was enacted by Congress to combat pervasive gender bias in state judicial systems, the Supreme Court, citing its decisions in the *Civil Rights Cases*[46] and *United States v. Harris*,[47] held that § 13981 was directed towards private individual conduct, not state action.[48] Additionally, the majority opinion emphasized that although congressional findings demonstrated gender bias in particular state judicial systems, the findings failed to show that there was pervasive gender bias nationwide.[49] Therefore, the Court asserted that § 13981 lacked proportionality to the state discrimination that it purported to remedy and therefore could not be upheld under § 5 of the Fourteenth Amendment.[50]

DISSENTING OPINIONS

The *Morrison* dissent began with a general reaffirmation of congressional power to regulate activity that has a substantial effect on interstate commerce.[51] Furthermore, the dissent reiterated that the purpose of judicial review is only to confirm that Congress had a rational basis for enacting a particular regulation.[52] Moreover, contrary to the majority opinion, the dissent emphasized that the massive congressional findings accumulated in support of the Violence Against Women Act were conclusive in demonstrating

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that a jurisdictional element limiting the reach of the federal regulation would better support the contention that the civil rights remedy was sufficiently related to interstate commerce).

45. *Id.* at 619 (noting that § 5 grants Congress the ability to "enforce by appropriate legislation the constitutional guarantee that no state shall deprive any person of life, liberty or property, without due process of law").

46. 109 U.S. 3, 24 (1883) (finding that the Fourteenth Amendment calls for remedies against state actors, not individual discriminators).

47. 106 U.S. 629, 644 (1883) (holding that Congress did not have the authority to enact a law that allowed citizens to intrude upon one another's rights).

48. *See Morrison*, 529 U.S. at 624-25 (citing the Civil Rights Cases, 109 U.S. at 3) (concluding that § 13981 cannot be sustained under § 5 because it is directed to remedying the actions of private individuals who have committed criminal acts, not state action).

49. *See id.* at 627.

50. *See id.* at 625-26 (holding that legislation enacted under § 5 must have a "congruence and proportionality between the injury to be prevented or remedies and the means adopted to that end").

51. *See id.* at 628-31 (Souter, J., dissenting) (identifying congressional authority under the Commerce Clause).

52. *See id.* (arguing that the purpose of judicial review is not to determine the soundness of a congressional enactment, but only to conclude that Congress had a rational basis for doing so).

Congress' rational basis for enacting § 13981.[53] The dissent also argued that since the Supreme Court's opinion in *Wickard v. Fillburn*,[54] case precedent clearly demonstrated that Congress had the ability to regulate any activity that, in the aggregate, had a substantial effect on interstate commerce.[55]

Secondly, the dissent addressed the Court's reliance on the fact that although Congress' Commerce Clause power is enumerated, there are some subjects that are excluded from the exercise of this power.[56] Contrasting the majority opinion, the dissent argued that congressional power to regulate commerce is plenary.[57] Therefore, limiting this power is only acceptable when the regulated activity does not affect interstate commerce, or interferes with an area traditionally left to the States, such as the exercise of police power.[58]

Souter's dissent argued that the Court, with its decision in *Morrison*, returned to the formalistic approach and interpretation of congressional power under the Commerce Clause, by limiting its reach to only commercial, or economic activities.[59] This formalistic approach to congressional Commerce Clause power was most evident before the Court's decision in *Wickard*, when it rejected its prior case precedent limiting congressional exercise of its Commerce Clause power on "direct" and "indirect" forms of commerce.[60] The dissent argued that this return to a formalistic approach served the purpose of advancing the majority's conception of federalism, and protection of areas it considered traditional state concern,[61] and does not take into account the realities of an integrated national commerce.[62]

The dissenting opinions concluded with Justice Breyer, who briefly addressed the congressional authority to enact § 13981 under § 5 of

53. *See id.* at 629 (Souter, J., dissenting) ("[T]he sufficiency of the evidence before Congress to provide a rational basis for the finding cannot seriously be questioned.").

54. 317 U.S. 111, 127-29 (1942) (holding that even homegrown wheat, produced for personal consumption, could raise market prices and have a substantial effect on interstate commerce).

55. *See Morrison*, 529 U.S. at 637 (Souter, J., dissenting) (arguing that § 13981 would have passed constitutional muster if it had been presented to the Supreme Court during the period between *Wickard* in 1942 and *Lopez* in 1995).

56. *See id.* at 639 (Souter, J., dissenting) (discussing Congress' enumerated powers).

57. *See id.* at 644 (Souter, J., dissenting).

58. *See id.* at 639 (Souter, J., dissenting) (arguing that the Commerce Clause does not give Congress the authority to regulate any subject not affecting commerce).

59. *See id.* at 642 (Souter, J., dissenting).

60. *See Morrison*, 529 U.S. at 642 (arguing that the distinction between commercial and non–commercial activities is contrary to the Court's cases since *Wickard*).

61. *See id.*. at 644 (Souter, J., dissenting) ("Just as the old formalism had value in the service of an economic conception, the new one is useful in serving a conception of federalism.").

62. *See id.* at 655 (Souter, J., dissenting).

the Fourteenth Amendment.[63] Justice Breyer argued that § 13981 was directed at remedying discriminatory justice systems and conduct of state officials, which provided inadequate remedies for women who were victims of gender-based violence.[64] Therefore, in addition to § 13981 being constitutional under the Commerce Clause, it was possibly constitutional under the Fourteenth Amendment.

IMPLICATIONS AND ISSUES

Nowhere has the curtailment of congressional Commerce Clause power been more apparent than in the Court's decision in *United States v. Morrison*.[65] The implications for future regulations under the Commerce Clause are staggering. In *Lopez*, a significant reason the Court did not sustain the Gun Free School Zones Act was because Congress had failed to demonstrate, with adequate findings, how the activity resulted in a substantial effect on interstate commerce.[66] In drafting § 13981, Congress attempted to combat the lack of findings in *Lopez*, with massive amounts of findings to support the Civil Rights Remedy of the Violence Against Women Act.[67] However, the holding in *Morrison* demonstrates that findings are not enough to demonstrate that a particular activity substantially affects interstate commerce.[68] As the dissent appropriately stated, the *Morrison* decision was an example of a congressional enactment being subjected to a higher standard of review than rational basis.[69] Although Congress had a rational basis for finding that gender-

63. *See id.* at 662-63 (Breyer, J., dissenting) (arguing "procedural limitations" are relevant considerations when evaluating Congress' actions under the Commerce Clause, and reaffirming the power of Congress, under § 5, to enact legislation that would enforce the Equal Protection Clause).

64. *See id.* at 664 (Breyer, J., dissenting) (citing the Civil Rights Cases, 109 U.S. 3, 14 (1883), and arguing that unlike the *Civil Rights Cases* where the statute did not "profess to be corrective of any constitutional wrong committed by the States," § 13981 was intended to correct gender bias in judicial systems nationwide). *See* Civil Rights Cases, 109 U.S. 3, 14 (1883).

65. *See* United States v. Morrison, 529 U.S. 598, 618 (2000) (emphasizing that the purpose of the Commerce Clause is to regulate primarily economic activities, and not justify broad regulation of the states by Congress).

66. *See Lopez*, 514 U.S. at 563 (arguing that findings assist the judiciary in evaluating whether the activity in question substantially effects interstate commerce).

67. *See Morrison*, 529 U.S. at 614 (discussing the reliance on legislative findings that demonstrated the substantial adverse effect of gender-based violence on interstate commerce).

68. *See id.* ("Simply because Congress may conclude that a particular activity substantially affects interstate commerce does not necessarily make it so.").

69. *See id.* at 637 (Souter, J., dissenting) ("Although a new jurisprudence has not emerged with any distinctness, it is clear that some congressional conclusions about obviously substantial, cumulative effects on commerce are being assigned lesser values than the once–stable doctrine would assign them.").

motivated violence substantially affects interstate commerce, the *Morrison* decision implies that the Supreme Court may only sustain regulations under the Commerce Clause when the regulated activity has an economic basis.[70] Essentially, if Congress identifies a non–economic activity that substantially affects interstate commerce, it would be powerless to regulate the activity under the Commerce Clause, making any regulation of it subject to much stricter judicial review.[71] Therefore, it appears from the *Morrison* decision that any regulation of a non–economic activity based on the Commerce Clause would be merely symbolic.

Further, the Court's decision regarding the inability of § 13981 to be sustained under § 5 of the Fourteenth Amendment, raises serious questions regarding the ability of Congress to propose national legislation under § 5.[72] It seems that Congress would have to demonstrate that the particular problem exists in every state, or that a particular public official is culpable of gender bias.[73] Arguably, the Court prefers that gender bias be handled at the State level.[74] However, congressional findings demonstrate that violence against women and the gender bias pervasive in the nation's judicial system is a serious problem on a national scale, incapable of being solved if it is confined to a state level.[75]

CONCLUSION

Although § 13981 has been held unconstitutional, there exists a hope that the impetus that caused Congress to enact this legislation, will be transferred to the States and the population as a whole. Women who are victims, or future victims of gender-based violence, face the current problem that this type of violence is still considered a

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70. *See id.* at 611 (noting *Lopez*'s holding that for an activity to be regulated under the commerce clause it must be part of some "economic endeavor").

71. *Id.* at 637 (Souter, J., dissenting).

72. *Id.* at 665 (Breyer, J., dissenting) (arguing that it would be inappropriate to require that Congress demonstrate the existence of gender bias in every state prior to proposing a national solution).

73. *See* United States v. Morrison, 529 U.S. 598, 625-26 (articulating that § 13981 was not directed towards specific states or public officials practicing or promoting gender bias in the nation's judicial system).

74. *See* Marcia Coyle, *A Court Revolution Brewing? Justices Tinker with Federalism Trend, but Watch Out Next Term*, NAT'L L.J., June 5, 2000, at A1 (arguing that the Supreme Court advanced its federalist ideals regarding the Commerce Clause and Equal Protection Clause in its *Morrison* decision).

75. *See Morrison*, 529 U.S. 598, 666 (referencing that Congress in enacting § 13981, considered task force reports from at least twenty-one states, documenting pervasive and unconstitutional discrimination against women who were victims of gender violence).

product of private relationships and not subject to either federal regulation or public interference.[76] Any attempt to remedy violence against women, or the bias they experience in the judicial system, will only be effective when there is a realization that violence against women reflects, "as much a failure of our Nation's collective willingness to confront the problem as it does the failure of the Nation's laws and regulations."[77]

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76. *See* Victoria F. Nourse, *Where Violence, Relationship, and Equality Meet: The Violence Against Women Act's Civil Rights Remedy*, 11 WIS. WOMEN['S] L.J. 1 (1996). The author comments on the fact that acquaintance rape, domestic violence, marital rape, and incest are all examples of crimes that categorize themselves by relationship. *See id.* at 1.

77. S. REP. NO. 101-138, at 37 (1993).