Stare Decisis: An Investigation of the Times the U.S. Supreme Court Strayed From Its Most Sacred Doctrine

by

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Defense Date: 4/12/2023

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Abstract

Stare decisis, the doctrine that the U.S. Supreme Court should respect and adhere to precedent established by the Court's previous cases, is a guiding principle for the Court's behavior. Nonetheless, the U.S. Supreme Court has overturned its own precedent 103 times in the last half-century. As shown in Sections I and II of this paper, the literature investigating this phenomenon by legal scholars and political scholars is limited, fragmented, and predominantly focused on isolated case issues; while the language and definitions used by the Justices themselves in overturning cases are inconsistent across Justices and inconsistent for individual Justices across cases.

Thus, to understand this inconsistency and establish a place for scholars to operate in this literature, I read through two thousand pages of opinion arguments (the most recent 103 U.S. Supreme Court cases of overturning precedent)- categorizing/ standardizing the terminology and providing the clearest quotations of the key arguments in each case along the way. Next, I turned the standardized factor frequencies into data/ a more accurate list of factors with definitions as to why the Court overturns precedent. I then put this information into the broader context of overturned case rates, judicial ideology, and the legal/ attitudinal models of Court behavior, and I outline and define the following factors as the most frequently used arguments by the Court in overturning cases: constitutionality/ framer's intent, inconsistency with Court precedent, workability *modified from CRS version*, reliance interests, interpretation of legislation, changed circumstances, historical norms/ modern norms, reinforced overturn, and practical utility. In terms of general observations, the case and data analysis shows a substantial degree of consistency in the rate the Court overturns cases and in the central arguments used by the Court over the last fifty years despite dramatically changing terminology; with the exception being a significant increase in the use of reliance interests as a central argument, decrease in constitutionality as a central argument, and the increased multifaceted argument structures by the Court in the last decade; as well as several other general observations noted in the results section. While these are important first steps to understanding the Court's behavior in overturning precedent, a study of times the Court stuck with precedent and a deeper investigation of potential external influences are still needed for fully arguing why (or why not) the Court decides to stray from precedent.

Introduction

In overturning Roe v. Wade (1973) in Dobbs v. Jackson (2022), the U.S. Supreme Court reversed a standard deemed by many legal scholars, Supreme Court Justices, and Supreme Court analysts to be a 'super precedent': a super precedent being a precedent that has been upheld consistently by the Court and deeply rooted in the interpretations/ evaluations made by Justices in relevant cases. Within months of the Dobbs decision, thirteen states implemented additional abortion restrictions that have and will dramatically change the lives of countless people (NYT, "Tracking the States…").

Immediately, questions about the future of the U.S. Supreme Court flooded news outlets and social media platforms: why would the Court overturn a case deeply rooted in precedent; what does this mean for other precedents such as gay or interracial marriage? More broadly, what does the Dobbs decision mean for the stability/ fragility of the U.S. Supreme Court; and what does this decision mean for the trust in and respect for the Court by the American public? In this light, it's non-controversial to assert that cases of overturned precedent can be rather impactful in the policy realm and may shift the public's perception of the Court.

This concern that exists when overturning cases is not just in the mind of scholars and the public. It is also on the mind of the Court. In his book published in 1921, *The Nature of the Judicial Process,* U.S. Supreme Court Justice Benjamin Cardozo states, "Adherence to precedent must then be the rule rather than the exception if litigants are to have faith in the even-handed administration of justice in the courts." As noted by Justice Cardozo, stare decisis is a valuable rule for how the Court operates, and thus the Court needs to be particularly careful when it decides to stray from precedent. This emphasis of stare decisis by Justice Cardozo is not isolated

either: conversations about stare decisis in terms of the impact on perceived Court legitimacy and interinstitutional authority were commonplace across the 103 cases examined later in the paper.

These aforementioned questions and the potential implications highlighted by the public, scholars, and Justices alike illustrate the importance of thoroughly understanding the times the Court has strayed from precedent. As such, my broad question that this paper revolves around is, "what causes the court to stray from its own precedent?"

In the legal literature, a few hot topic U.S. Supreme Court cases have enjoyed strict scrutiny in legal and historical literature: for example, *Brown v. Board* (1954), *Dobbs v. Jackson* (2022), and *Citizens United v. FEC* (2010). However, this thorough analysis has not been done on the vast majority of overturned cases. As a result, we somewhat understand the reasons for overturning precedent in a select few cases, but we have a weak understanding of the Court's overall reasoning behind straying from precedent across cases/ over time.

In attempting to understand why the Court decides to stray from precedent, hearing the reasoning from the Justices- the writers- themselves is an important first step. Thus, I dedicate the first (I) section of the paper to describing and analyzing the times that Justices in the last couple of decades have attempted to establish a thorough list of reasons the Court can and should overturn precedent. Noting the inconsistency immediately apparent, I turn to scholarly literature in section II to look for categorizations made of the Court's reasons for overturning precedent over time.

The lack of attempts to categorize the central arguments from Justices over time was also readily apparent in the scholarly literature aside from the work of the Congressional Research Service (CRS), which is relevant, and the work from professors Saul Brenner & Harold Spaeth that is only relevant to my work in the broad picture discussion in the results section. After

outlining my concerns with the CRS's methods and my skepticism of their categorizations, I do my analysis (case by case) of the most recent 103 U.S. Supreme Court cases where the Court overturned precedent. In this analysis- which is described in structure in section III with the detailed analysis provided in the appendix- I standardize the language over time based on the arguments made in the majority Court opinion for the benefit of legal and political science scholars alike.

In section IV, I turn the categorizations into data, I note in detail how I adjust the terms of the CRS (while adding my own terms), I incorporate overall statistics about the Court's behavior when it comes to overturning precedent, and I describe the general trends observed from the case and data analysis. Finally, I address what is still needed and outline how the data, factors, and additional observations can be used by advocacy groups, legal scholars, and political scientists. Specifically, I observe that the Court has not dramatically changed the types of arguments used over time in overturning cases despite a significant degree of inconsistency in terminology (and associated definitions), nor has the rate of overturning cases changed significantly over time; using the case analyses and data, I propose new terms/ ways of understanding the arguments made by the Court in overturning cases: redefining the limited literature in the process. Many other observations involving consistency, inconsistency, and legal models are also outlined in the results section.

To fully address the question of why the Court strays from precedent, investigations of the times the Court stuck with precedent and the potential external influences on the Court's decisions are still needed. Nonetheless, the benefits of the aforementioned methods and results in establishing a base in this literature for future scholars (legal and political science focused) is clear: the standardization/ term definitions and notes/ analyses of frequency and consistency will

allow legal scholars to better understand the Court's arguments in crafting their own arguments for future cases; while political science scholars can use the standardization and data as the first step of fully addressing the question, or to explore one of the many interesting observations of Court behavior outlined in the results section.

Section I: What The Justices Say is the Framework

In addressing the central question for this paper, an examination of the times Justices have attempted to establish a standard for overturning precedent is an important first step: it gives clues as to potential categorizations/ variables for addressing the central question of the paper. Furthermore, the extent to which the stated standard is or isn't consistent and properly defined carries its own implications for understanding the behavior of the Court.

This section is not about why a Justice feels it's acceptable to overturn one particular case. Rather, this section focuses on when Justices have attempted to create some sort of clear framework for the Court to use moving forward (or to more generally summarize the current standard). To identify the times Justices have attempted to create a standard, I looked for a few things: statements from Justices in case decisions (majority, concurring, or opposing opinions), statements in confirmation hearings, press releases, and interviews with Justices (on Youtube or other video platforms).

To look for materials in these aforementioned categories, I used a wide variety of keyword searches on Google's general search engine, Youtube, and google scholar; keeping an eye out for a public statement from a Justice on the subject that may be missing from those categories (such as a quote from a Justice's book or a speech at a law school). However, I

acknowledged going in that despite this wide search; there is likely a statement from a Justice that was not found in this search. In fact, during my own case analyses later- a few attempts not found in the preliminary search were identified. Nonetheless, this relatively thorough preliminary search and analysis, as you will see shortly, paints a clear picture of what is ultimately needed in this paper (and is fully consistent with the problems found in the case analyses).

Given that my goal in this section is to identify what the current standard is- if it exists- I hone in on only the proposed frameworks from the last few decades. Nonetheless, I acknowledge the clear caveat this time frame creates in both directions. For one, it means this section does not include potential frameworks stated before 1990. However, narrowing this time frame is for good reason in the preliminary search: depending on how far back the search goes, potential external causes/ alternative factors may have a greater influence on the frameworks used; and even further back, the Court is more in the precedent-setting era rather than reviewing previous standards. On the flip side, several decades is enough time to introduce these other concerns, but narrowing the time frame would reduce an already small sample of examples, and- despite the potential concerns- these examples manage to highlight a few key, consistent observations.

In using the described methods, I ultimately found and now will provide quotes from the following Justices (past or present Justices): Justice Roberts, Justice Thomas, Justice Sotomayor, Justice Scalia, Justice Souter, and Justice Kavanaugh.

Justice Clarence Thomas (In his concurring opinion in *Gamble v. United States* (2019)**:**

> "I write separately to address the proper role of the doctrine of stare decisis. In my view, the Court's typical formulation of the stare decisis standard does not

> comport with our judicial duty under Article III because it elevate demonstrably erroneous decisions—meaning decisions outside the realm of permissible interpretation—over the text of the Constitution… We should restore our stare decisis jurisprudence to ensure that we exercise "mer[e] judgment" (SupremeCourt.gov, "Gamble v. United States).

In other words, in the mind of Justice Thomas, the standard for overturning precedent is entirely in a sort of 'quality of the precedent's reasoning/ constitutionality' hybrid category: asserting that any precedent that by 'mere judgment' is deemed to be outside of the range of reasonable interpretation of the Constitution should be overturned. In terms of standards for overturning precedent, the argument that constitutionality should be a main factor is supported by the case analyses later, though saying it is the only reasonable argument for overturning cases is inconsistent with the perception of other Justices as well as the arguments in his own decisions: as one of several examples, see *Franchise Tax Board of California v. Hyatt* in the case analyses: where Justice Thomas, as opinion writer, highlighted four key arguments for why the precedent should be overturned.

Just focusing on the word choice of Justice Thomas in the above quote, "Outside of permissible interpretation" using "mere judgment" establishes a rather broad and subjective standard- allowing mere interpretation from the different Justices to dictate whether the precedent strays from the Constitution further than the undefined permissibility point.

Chief Justice John Roberts:

> "I do think that it is a jolt to the legal system when you overrule a precedent. Precedent plays an important role in promoting stability and evenhandedness... It is not enough that you may think the prior decision was wrongly decided. That really doesn't answer the question. It just poses the question. And you do look at these other factors, like settled expectations, like the legitimacy of the Court" (Coyle, *The Roberts Court: The Struggle for the Constitution,* Page 23).

> "There is a difference between judicial restraint and judicial abdication. When constitutional questions are "indispensably necessary" to resolving the case at hand" (Cornell Legal Information Institute, "Citizens United v. FEC").

As illustrated by Chief Justice Robert's statements above, he has frequently explicitly emphasized the importance of precedent- both in his confirmation hearings and his case decisions. His explicit willingness to stray from precedent, in cases like *Citizens United,* stems from his perception that a particular precedent is blatantly unconstitutional- making it "indispensably necessary to overturn the precedent" (Cornell Legal Information Institute, "Citizens United v. FEC"). That being said, while this somewhat agrees with the standard proposed by Justice Thomas, it's clear Justice Roberts would advocate for a sort of strict scrutiny analysis of constitutional reasoning as opposed to 'mere judgment'.

Incongruently, however, Justice Robert's mentioned the need to go a step further than calling a case poorly decided, yet there were several Court cases where Justice Roberts used the

most loose central argument, labeled as ‘quality of reasoning’ in the case analyses, and did not argue constitutionality issues as the central concern for overturning a precedent (rewording to fit his quote; his argument for overturning the case was not built around addressing a ‘constitutional question’). For example, see *Knick v. Township of Scott* in the case analyses section to observe an example of when Justice Roberts cited four categories without making constitutionality a primary factor. Assuming positive intent, this inconsistency gives credence to the need to standardize the factors based on arguments rather than proposed terms and to create a useful list of factors with proper definitions for future Courts to use. The inconsistency itself may be a subject of examination for future scholarly work.

Justice Antonin Scalia (In his majority court opinion in *Montejo v. Louisiana)***:**

> “We do not think that stare decisis requires us to expand significantly the holding of a prior decision—fundamentally revising its theoretical basis in the process—in order to cure its practical deficiencies. To the contrary, the fact that a decision has proved “unworkable” is a traditional ground for overruling it… Beyond workability, the relevant factors in deciding whether to adhere to the principle of stare decisis include the antiquity of the precedent, the reliance interests at stake, and of course whether the decision was well reasoned” (Justia, “Montejo v. Louisiana”).

Justice Scalia’s proposed standard for overturning precedent- outlined in his majority opinion decision for *Montejo v. Louisiana* (2009)- includes the ‘well reasoned’/ quality of legal

reasoning component aforementioned. Additionally, he includes the workability standard: the extent to which the doctrine/ precedent works/ worked in practice rather than just theory. He also mentioned the antiquity standard- as he calls it- which involves the ability of a precedent set in previous circumstances to work in current circumstances. For example, a Court restriction on search and seizure methods for law enforcement may become outdated/ unusable with changing technology. This will be more thoroughly explained with case examples later in the paper. Lastly, Justice Scalia mentioned reliance interests- meaning the extent to which people, organizations, and courts have become intertwined with/ reliant on a particular precedent. The reliance component is less about why the Court should overturn a precedent; rather it is a potential reason for the Court to stick with the precedent in that particular case.

Nonetheless, this is one of the oldest attempts to create some sort of test/ multi-faceted standard for overturning precedent. Is the precedent constitutionally well-reasoned? Is it workable in practice? Is it antiquated/ outdated? If the precedent is lightly one of these few concerns, are the reliance interests so strong that we should stick with the precedent anyway?

Justice David Souter (In his majority court opinion in Planned Parenthood of Southeastern Pa. v. Casey- 1992)**:**

> "Rather, when this Court reexamines a prior holding, its judgment is customarily informed by a series of prudential and pragmatic considerations designed to test the consistency of overruling a prior decision with the ideal of the rule of law, and to gauge the respective costs of reaffirming and overruling a prior case. Thus, for example, we may ask whether the rule has proved to be intolerable

> simply in defying practical workability… whether related principles of law have so far developed as to have left the old rule no more than a remnant of abandoned doctrine… whether facts have so changed or come to be seen so differently, as to have robbed the old rule of significant application or justification" (Cornell Legal Information Institute, "Planned Parenthood of Southeastern Pa. v. Casey").

This set of factors that would support overturning a case is one of the earliest frameworks found in the search. Justice Souter's standard looks at the cost to society (reliance), it looks at the workability of the doctrine, and it looks at whether the facts/ society has changed enough to make the old doctrine inapplicable or unjustified. Thus, in several ways, this framework includes several similar components to Justice Scalia's proposed framework.

Furthermore, this framework described by Justice Souter was noted by Justice Sotomayor, in her confirmation hearing in 2009, to be the best framework we have for understanding when it is acceptable to stray from precedent; though even after fully supporting this framework, she adds to the list of potential reasons- mentioning the importance of looking at how many times a particular case or doctrine has been presented before the Court and decided upon; a sort of argument in even greater support for so-called 'super precedent: precedent that is deeply ingrained in American values and has been decided upon several times consistently (RH Reality Check Youtube, "Sen. Herb Kohl Asks Sotomayor About Overruling Precedent"), (Constitution Center, "Hunting for 'super precedents…").

Interestingly, the standard discussed by Justice Souter did not include a line about 'flawed logical reasoning in the previous case', which happens to be the core test for Justices Thomas and Roberts.

Justice Kavanaugh (In his 'in part' concurring opinion in Ramos v. Louisiana):

> "The stare decisis factors identified by the Court in its past cases include: the quality of the precedent's reasoning; the precedent's consistency and coherence with previous or subsequent decisions; changed law since the prior decision; changed facts since the prior decision; the workability of the precedent; the reliance interests of those who have relied on the precedent; and the age of the precedent" (SupremeCourt.gov, "Ramos v. Louisiana").

After Justice Kavanaugh summarized what he found to be the central themes/ factors going into straying from precedent, he proposed a three-pronged framework revolving around identifying whether a Court should stray from precedent: the three factors being if the logic of a particular case is 'egregiously wrong', if the precedent 'has real-world/ harmful consequences', and identifying if the reliance interests for that particular case outweigh the benefits of overturning the case (SupremeCourt.gov, "Ramos v. Louisiana"). The focus on the quality of the arguments made by the previous Court as a category and the focus on reliance interests/ workability concerns (harm to society from a standard), encapsulates bits and pieces of the different frameworks aforementioned.

General Discussion for Supreme Court Justice Statements

A few things stood out while finding the comments from Justices about the justifiable reasons for straying from Court precedent. Firstly, the sample size is small of Justices stating what the framework is for overturning precedent; there were fewer than a dozen Justices I could find that at least tried to define the standard itself. That alone, though, would be more normal/ acceptable for answering the question of this paper, if the reason that so few Justices made comments about the standard is that many of the Justices agreed on this standard (thus it does not necessarily need to be stated/ fully defined repeatedly).

However, and this is my second observation, not a single one of the frameworks is the same; even for those with the same general category- such as Justices Roberts and Thomas- who define the term and underlying mechanism differently. Furthermore, there seem to be two dramatically different camps when it comes to these 'frameworks' one of the camps- with Justices such as Justice Thomas, Justice Blackstone, and Justice Roberts- simply discusses the need to overturn cases with significantly flawed logic/ cases that are blatantly unconstitutional; and then there is the second camp of Justices such as Justice Scalia, Justice Souter, and Justice Sotomayor who- in attempting to define the standard- look at a wide variety of potentially involved factors (for example, workability, age of the precedent, evolving circumstances/ facts around a case, and reliance).

These two camps for setting the framework aren't perfectly defined by interpreted party line or by decade; and the proposed factors and definitions used by the Justices- as illustrated above- differed within these camps. Lastly, as a quick observation, it is clear that the vast majority of attempts to set a standard for overturning cases have been within the last few decades.

This degree of inconsistency aforementioned means that the tests noted by the Justices themselves aren't alone enough to address the question of why the Court strays from precedent (across Justices the frameworks vary substantially, and the Justices themselves seem to disagree with themselves at least some in practice). Thus, the next section will be an incorporation of the limited literature on the subject from scholars; seeing if they have managed to standardize the test that Justices use for overturning precedent based on the arguments made.

Section II: The Literature's Categorizations of Why the Court has Strayed From Precedent

In looking for scholarly research investigating overturned cases over time, it was clear fairly quickly that there isn't much research on the subject- particularly for what I am looking for being scholars who have made a framework/ test about what the Court has argued are the reasons for overturning precedent from a scholarly perspective: more specifically, the goal was to find a scholar or organization going in and categorizing the arguments made over time by the Justices; or some form of broad picture look at overturned cases that isn't simply a comment in a news article following *Dobbs*.

While I did manage to find a few pieces of literature focused on overturned precedent over time: these works from Jeffrey Segal, Harold Spaeth, Saul Brenner, and more recently Matthew Hitt predominantly focused on potential modes of thinking about Justice behavior, on deriving a general argument about behavior from a few case examples, or on judicial ideology of the Court (using dichotomous methodology as this was several decades ago). To be clear, each of these pieces of work is relevant to understanding Court behavior and excellently done by these scholars with the information/ tools available to them at the time, but they don't tackle the

question in the same way I seek to: going case by case to categorize the arguments made, not just the terms used, and then turning that into data for other purposes.

Thus, the most relevant piece of literature is the work done by the Congressional Research Service in their, "The Supreme Court's Overruling of Constitutional Precedent" report. While this report does not categorize central arguments case by case, it lists each example of overturned precedent identified by the CRS and outlines general categories as to the arguments made across those cases. In doing so, they came up with category names and descriptors I will now explain.

Workability: According to CRS, the definition of the term is as follows, "Workability. Another factor that the Supreme Court may consider when determining whether to overrule a precedent is whether the precedent's rules or standards are too difficult for lower federal courts or other interpreters to apply and are thus "unworkable"" (CRS, "The Supreme Court's Overruling of Constitutional Precedent"). In other words, the wording from the precedent is so complicated as to create problems for lower Courts or other institutions to apply the standard.

An example of this would be *Erie Railroad Company v. Tompkins*, which overturned *Swift v. Tyson*. In *Erie*, Justice Brandeis wrote for the majority stating that the standard set by *Swift* created a degree of vertical separation issues- meaning obfuscation of the authority of the judiciary versus making it difficult for lower Courts to follow/ interpret (Oyez, "Erie Railroad Company v. Tompkins"). **Note this was not the only argument for overturning precedent made in the case, it is simply an illustration of this particular term.** What matters here in understanding the CRS's definition of 'workability' is that the Justices were able to say the equivalent of 'this standard does not really work in practice; the poorly defined standard creates problems for the lower Courts in trying to apply it.'

Inconsistency With Related Decisions: According to the Congressional Research Service, this category refers to, "whether the precedent departs from the Court's other decisions on similar constitutional questions, either because the precedent's reasoning has been eroded by later decisions or because the precedent is a recent outlier when compared to other decisions" (CRS, "The Supreme Court's Overruling of Constitutional Precedent"). In other words, this is when the standard from a precedent case is either inconsistent with the standards and reasoning of related cases (related in issue area/ surrounding factors) or over time has been picked apart/ disagreed with by newer cases such that it has become inconsistent through direct contradiction.

An example of this factor would be *Lawrence v. Texas* (2003), which struck down a law in Texas that prohibited sexual conduct between homosexual couples and overturned the precedent set by *Bowers v. Hardwick* (1986). In Justice Kennedy's argument for the Court majority, he noted how the precedent set by *Bowers* was in conflict with values of privacy and due process that were considered Court precedent in cases such as *Griswold v. Connecticut, Loving v. Virginia,* and many more (Justia, "Lawrence v. Texas").

Changed Understanding of the Facts: The CRS defines the term as follows: "The Supreme Court has also indicated that changes in how the Justices and society understand a decision's underlying facts may undermine a precedent's authoritativeness" (CRS, "The Supreme Court's Overruling…"). In other words, this category refers to the changed perception/ growing understanding of the implications of a previous doctrine leading to the Court's perception that the precedent should be overturned.

In interpreting this category definition, it means that Justices in a particular case have come to view the same underlying factors differently; reading the two-paragraph

explanation of the term, it also appears to include when the facts associated with the case have changed, thus changing the opinion. Surely, a lot of cases if not all would fit under this factor definition: inherently in overturning a precedent the new Court would likely have a changed understanding of what the previous Court thought. Thus, I think there is substantial room for greater precision in this particular category name and definition.

Quality of the Precedent's Reasoning: The Congressional Research Service defines this term as follows: "When determining whether to reaffirm or overrule a prior decision, the Supreme Court may consider the quality of the decision's reasoning" (CRS, "The Supreme Court's Overruling…"). After defining this category, the report's author proceeds to go into a few examples of when Justices outlined perceived flaws in the logic of the previous Court as a central reason for overturning the case.

One such example was *Janus v. American Federation of State, County, and Municipal Employees* (2018). In *Janus,* several factors were referenced: including the 'workability' category, the 'changed understanding of facts' category, the 'inconsistency' category, as well as a direct statement that the case it was overturning, *Abood v. Detroit Board of Education* (1977), was "poorly reasoned"- right at the start of the Court's opinion; the Court proceeded to explain several ways in which the reasoning was flawed and would have broader, negative institutional implications if allowed to stand (CRS, "The Supreme Court's Overruling…").

Similar to my qualms with the changed understanding category, my initial impression is that the equivalent of 'poor reasoning' as a central argument header says little about what is perceived to be wrong with the precedent or why the Court is overturning it, and leaves room for every other potential category to fall under it. As already illustrated earlier, the Justices that use this sort of term seem to differ substantially in their perception of what it means/ how it should

be applied. Furthermore, even from my paraphrased explanation from the CRS, it's clear the Court proceeded to argue the workability/ constitutionality issues of the precedent to describe that category- leaving room for potential recategorization that is more precise.

Reliance Interests: The Congressional Research Service defines this term as follows: "the Supreme Court may consider whether it should retain a precedent, even if flawed, because overruling the decision would injure individuals, companies, or organizations; society as a whole; or legislative, executive, or judicial branch officers, who had relied on the decision" (CRS, "The Supreme Court's Overruling…"). This description appears relatively straightforward- asserting that the Court must examine the extent to which overruling a precedent would disrupt the public depending on the reliance/dependence on the precedent. However, as an initial impression, this appears to be a factor the Court must address and overcome in overturning precedent; not itself a central reason to overturn precedent.

Discussion of the Explicit Factors: Incorporating the Stances from Justices with the Limited Literature

To summarize the factors from this section: the most common factors appear to be workability, quality of reasoning, inconsistency with related decisions, reliance interests, and changed understanding of the facts. In light of the additional investigation of specifically stated standards about stare decisis from Justices, I think it is fair to say that workability and 'logical/ constitutional reasoning errors' were frequently cited components across the academic/ research side as well as from Justices themselves. Nonetheless, when it comes to several of the variables, I find myself somewhat agreeing with what Justice Kavanaugh was saying as a reason for the need for a more concise/ clean standard for straying from precedent (in *Ramos v. Louisiana)*: that

there appears to be some complex overlap and poor definitions for several of the 'factors' such as the 'logical reasoning' factor.

Furthermore, the factors identified by each Justice differed, while the categorizations in the literature lacked a description of the methodology (or case by case categorization/ reasoning), which perhaps contributed to the creation of a couple of questionable category names for why the Court overturns precedent. For example, the quality of reasoning category (/ error in reasoning) term found in both sections is broad, undefined, and inconsistent in definition and application. Thus, I agree with Justice Roberts and Justice Ginsberg that saying a previous decision is poorly reasoned or 'wrong' is surface level and is part of the question- not the analysis (Yip, "Justice Ruth Bader Ginsberg's Jurisprudence").

Section III: Analysis of Explicit Causes/ Standardized Categorization

Given these aforementioned qualms with and gaps in the legal and political science literature involving a sort of thorough cross-case categorization (categorizing the factor/ factors for each case) in a way that would be most conducive to future research (standardized, detailed, and data-driven), this next step of the paper involves my own reading of the Court majority arguments for 103 case examples of overturned precedent/ categorizing those cases. In doing the case by case analysis, each case will be marked, the classifications for each case will be based on the arguments used (not the terminology used), and ultimately I will turn these categorizations into data for general observations/ analysis.

The initial case descriptions are a bit more thorough so I can better explain discrepancies in the terminology with the arguments made and establish the new standardized factors based on

these arguments. Later on, aside from the occasional case that demands the creation of a new standardized factor, I will include quotes from the Court majority opinion that best illustrate the reason/ reasons for overturning precedent and then a quick description of how each main argument should be categorized. With the provision of each quote, my categorizations, my reasoning, and my eventual data analysis are all included in this paper for scholars to observe- it paves the way for critiques of my work and future research. *This 78-page analysis is in the appendix* (the only thing in the appendix) for those who seek to see the methodology/ analyses.

For readers going through this analysis that just want to see the categorizations- at the bottom of each section is an underlined Factor(/s): subsection that simply summarizes the standardized terms derived from the case. Also, please note that if you see '***' at the bottom of a particular case's analysis, it means that 'quality of reasoning'- a factor always easily turned into other standardized factors- was used as a central argument header by the Justices in the case. Because of the standardization method, the arguments underlying the term were placed into proper categories, so I do not include the term heading itself in the quote usually, but noting where 'quality of reasoning' was used as a central term is important for understanding where this confusing phrase came from. Nonetheless, while reading, I kept an eye out for whether it could truly operate alone as the main argument's categorization.

All of that being said, this next section shows the data derived from the detailed case analyses- leading into general observations and an outline of the standardized terms I identified.

Section IV: Results/ Discussion

Across the 103 U.S. Supreme Court case examples of overturning Court precedent examined in this paper, there were 212 factors (categorized central arguments for overturning precedent). Using Excel, these factors were put into a data table and then turned into several graphs below.

Figure 1 (Immediately below)

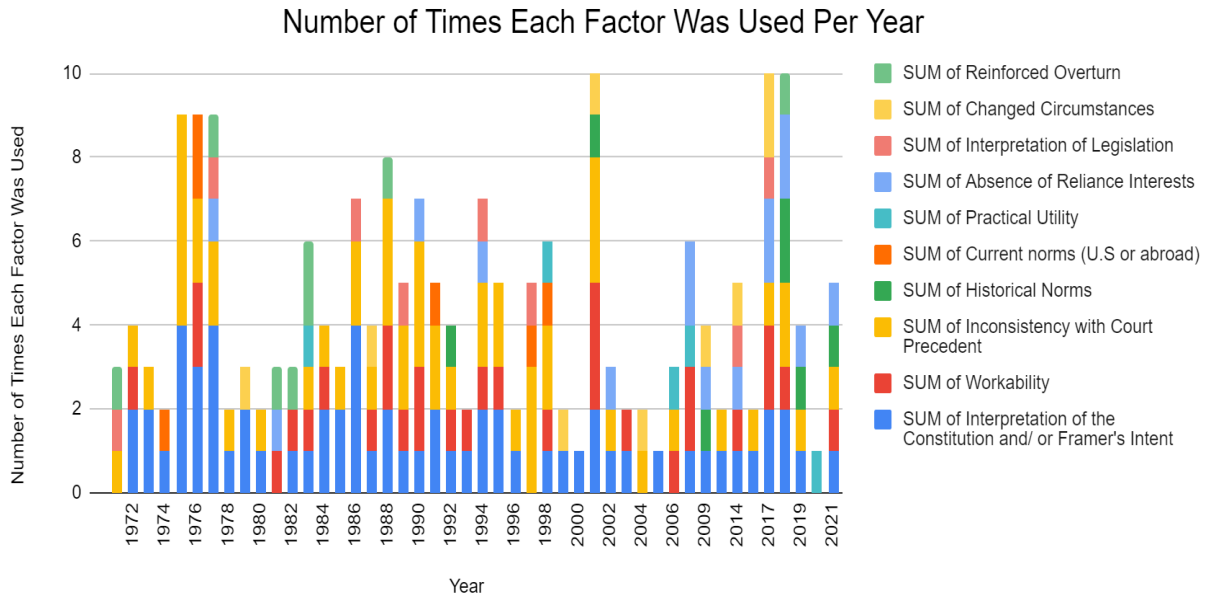


Figure 1 involves the number of times each specific factor outlined earlier was used each term/ year. Please note, however, that this particular graph does not account for two things: the overall number of cases that the Court addressed each year; nor does it show how many cases of overturning precedent there were in a particular year. Both of these will be shown later.

The trends are clear but may be difficult to observe with how many factors are involved in the above graph. Thus, below are pie graphs, broken down by decade, showing the relative frequency of each term.

Figure 2 (Immediately below)

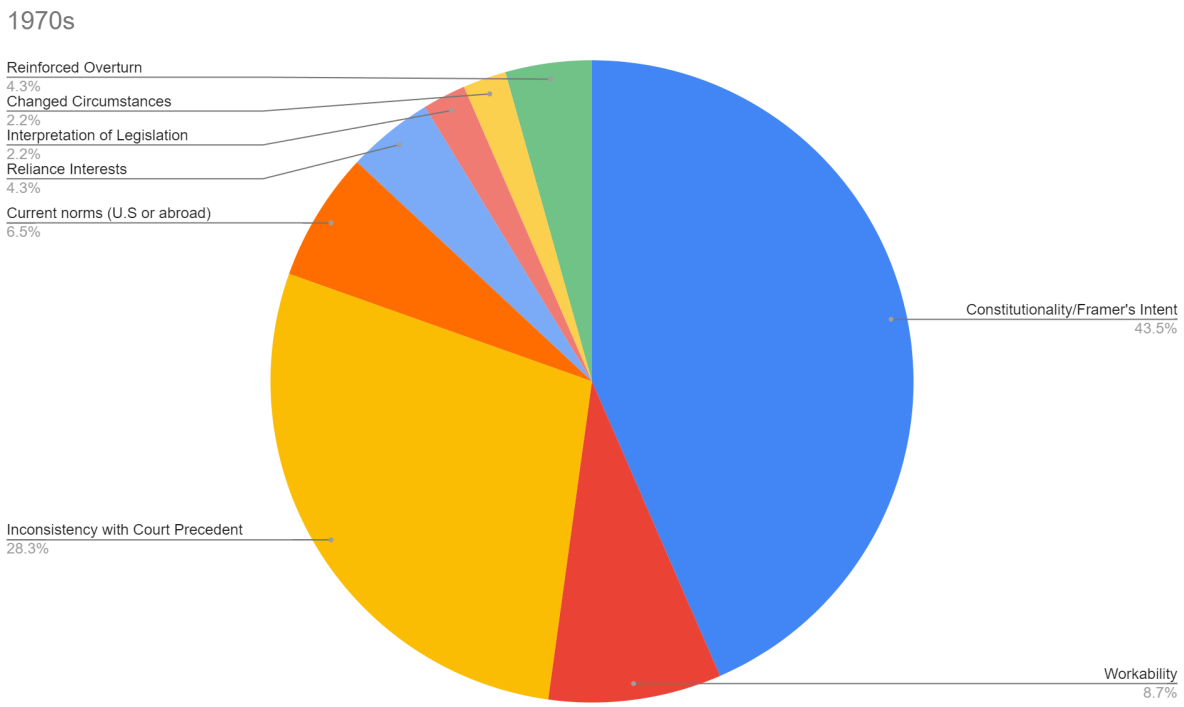


Figure 3 (Immediately below)

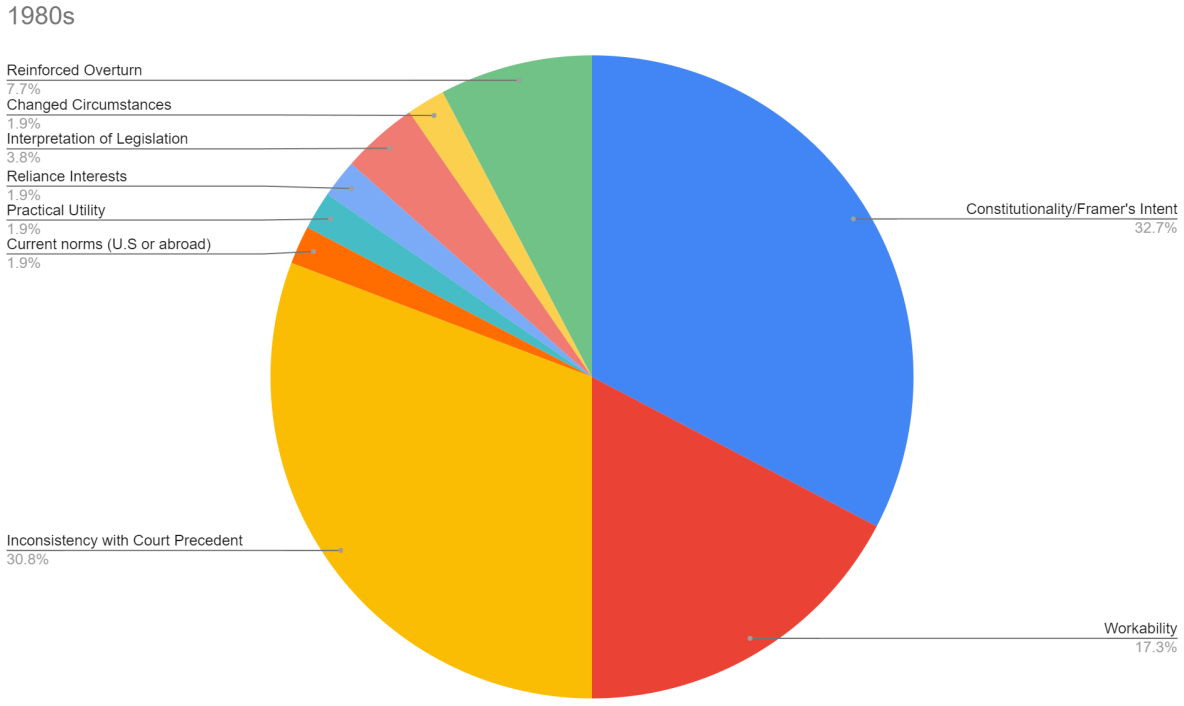


Figure 4 (Immediately below)

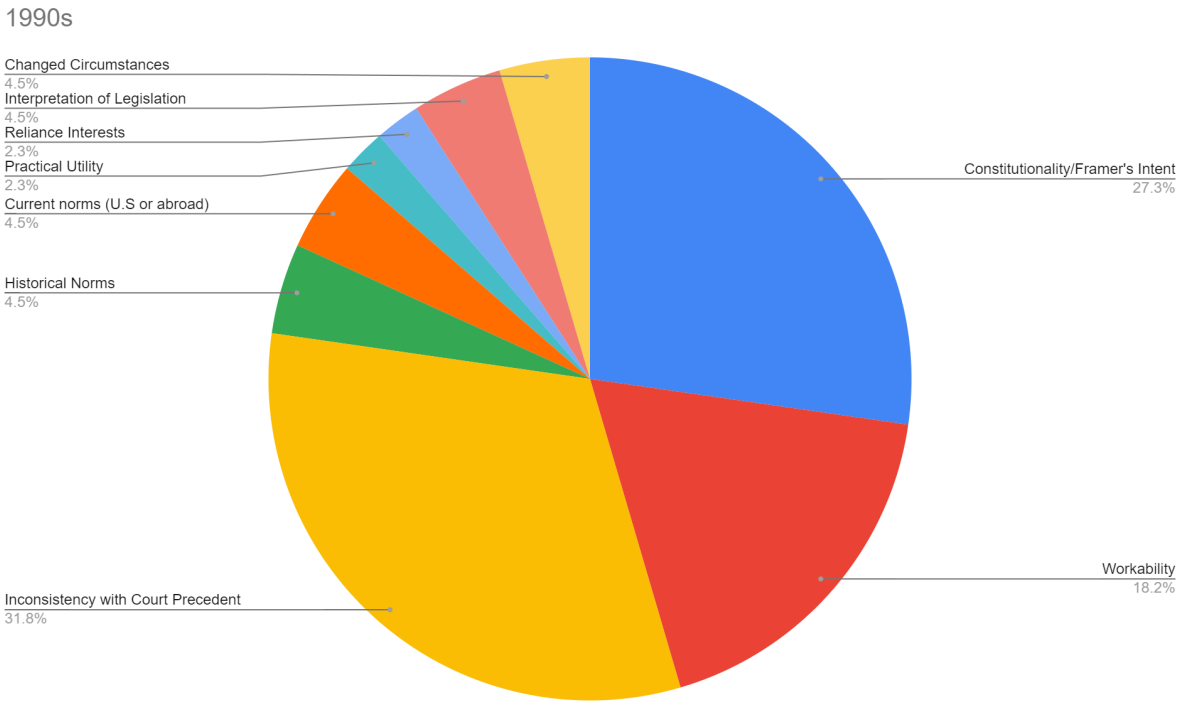


Figure 5 (Immediately below)

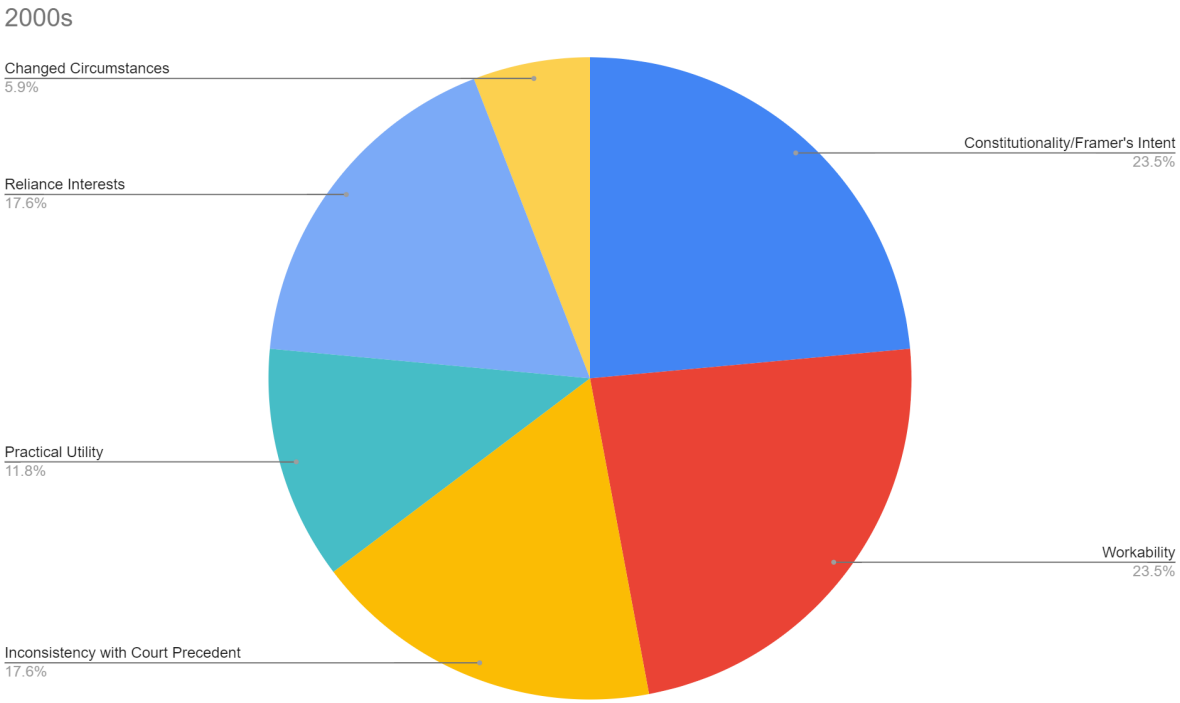
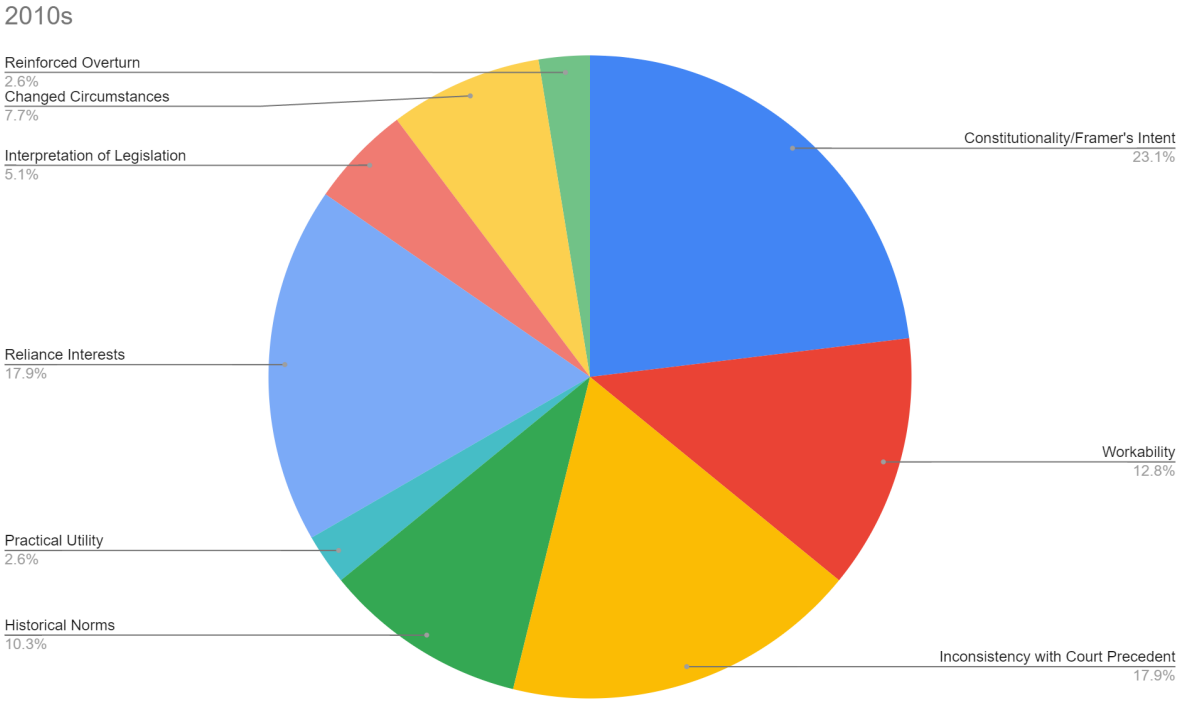


Figure 6 (Immediately below)



The above graphs, figures 2-6, use the data from the case analyses of standardized factors earlier in this paper. The total tally of each specific factor was divided by the overall total factor number to create a distribution that shows the comparative frequency for each factor. This was then broken down by decade.

Before I describe the observations above, a quick reminder is necessary. These are the standardized factors made from categorizing the arguments made by the Justices. For example, if the Court majority, in overturning a previous Case, asserted that the main reason for overturning a precedent was the quality of reasoning– and then the explanation was entirely about the workability issues of the precedent, I would then categorize that case of overturning precedent as workability. This was to avoid confusing readers with weird, rare terms that mean the same thing as other factors; and also to achieve the secondary goal of standardizing the terminology and explanations for scholars. This means that the above graphics illustrate what the opinion Courts argued, not the specific category names they used.

That being said, figures 1-6 highlight a few key observations. Firstly, the central arguments have some general consistency: constitutionality/ framer's intent, workability, and inconsistency with Court precedent have been frequently used in each decade. However, even after I accounted for the total number of cases, the constitutionality/ framer's intent argument has trended down in frequency over the years- illustrated in Figure 7 (below this paragraph). To emphasize this trend, the factor was used 20 times in the 1970s yet only 9 times in the 2010s. On the other hand, the reliance interests category has jumped up from nothing, to rare in the 1990s, to being a dominant, central argument mentioned in support of overturning a precedent in the 2000s (also shown below). Additionally, after I accounted for constitutionality/ framer's intent, absence of reliance interests, workability, and inconsistency with Court precedent- there is

roughly a quarter of central arguments not accounted for: most of which were not addressed by the Congressional Research Service or by proposed frameworks of the Justices themselves.

Figure 7 (Immediately below)

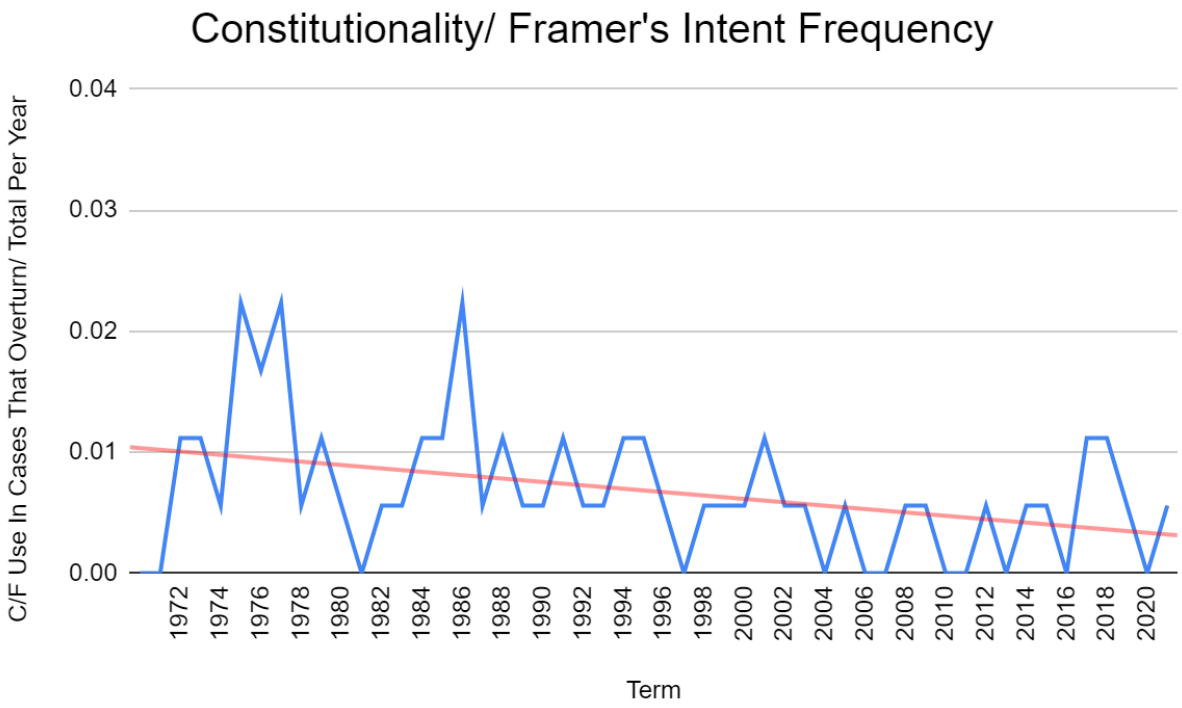
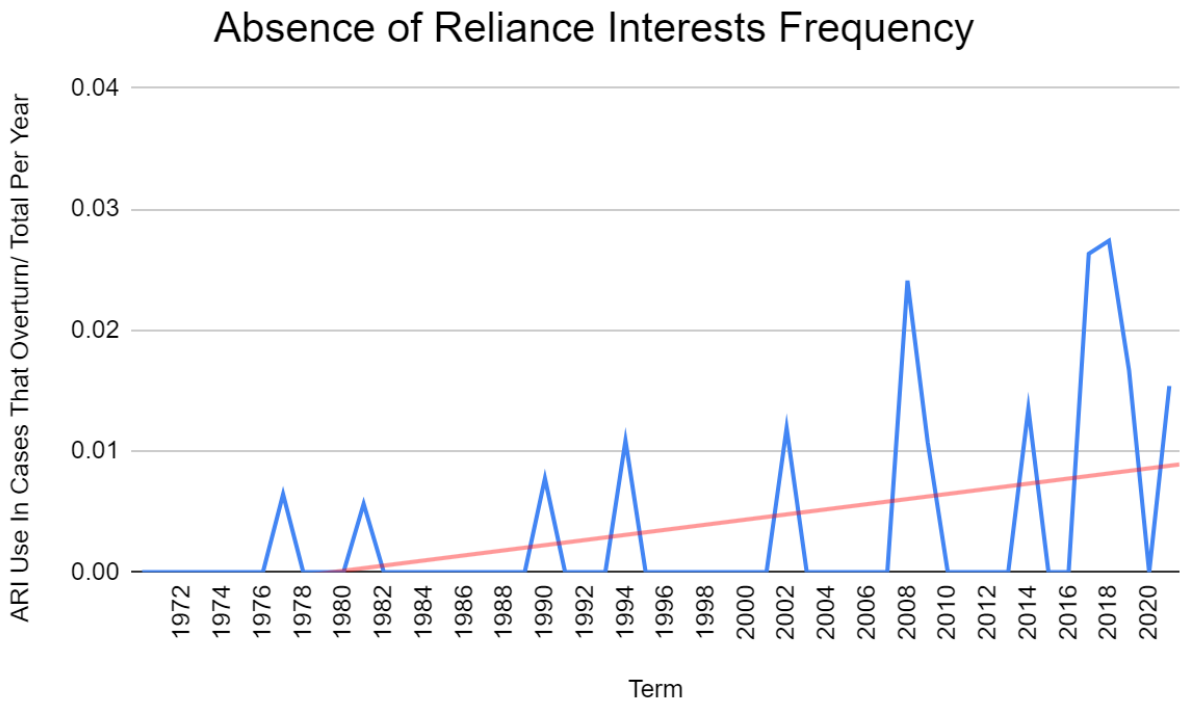


Figure 8 (Immediately below)



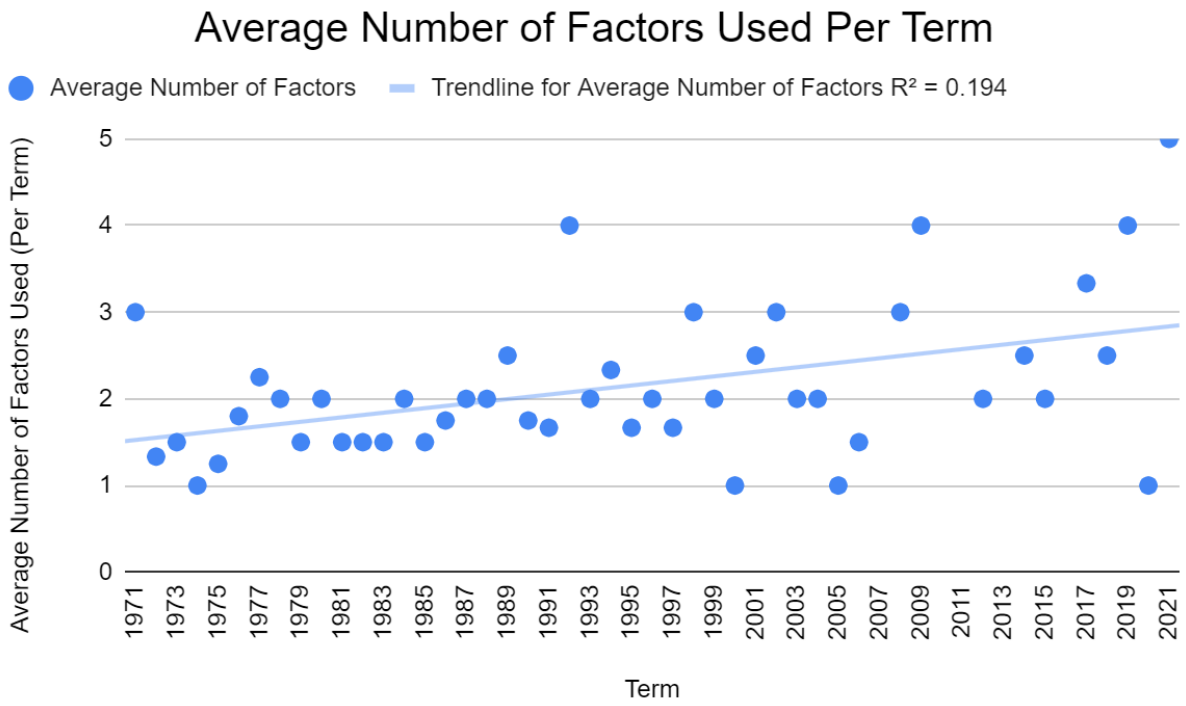
Figures 7 & 8 both place the rate at which a particular standardized factor was used over time (number per year) in the context of the total cases heard by the Court each term (using data from the Washington University School of Law Database). This was for me to better understand if the reason that the factors had dramatically changed in frequency was due to overall case rates or not.

Also of note is the reliance interest factor. Reliance interest arguments were used only 4 times before 2000, and then 11 times from 2000-2021. Furthermore, the factor/ term 'reliance interests' goes from focusing primarily on constitutional commerce clause issues before the 1990s (noted even by the Court in part in *Payne v. Tennessee*) to involving broader societal issues beginning with *Casey v. Planned Parenthood*: it is likely the first expansion of the term was in a case not in this study, though; this is just the first time I saw the expansion of the term in the case analyses.

The Court majority in *Hilton v. South* (1991) describes reliance interests in the current understanding of the term rather well: "would dislodge [individuals'] settled rights and expectations," stare decisis has "added force". This perception of reliance interests as a broader investigation of the relationship between precedent and society perhaps contributed to its boom, but it does not explain why the argument was rarely used in any form in the previous two decades- and proceeded to not really be used for another decade- *even after this expanded definition of the term*. And then, suddenly, it goes toe to toe in frequency with the other major factors in terms of frequency (and similar to the other factors, appears to rarely cite the same precedent in defining what the term means).

Either way, constitutionality, inconsistency with Court precedent, and workability accounted for 81.5 percent of the central arguments in the 1970s– and only 53.8 percent of the central arguments in the 2010s. This is in part because of the introduction of reliance interest terminology- and a few smaller categories shown in the pie graphs- and in part because the Court appears to more frequently be tackling the overturning cases with test-like structures or just generally multifaceted arguments. *See Figure 9 below to observe the changing average in how many factors are applied in each case over time.* However, as shown in the preliminary search for tests for overturning precedent and throughout the case analyses, the chosen test Justices decide to cite and how each Justice defines the terminology of those tests is inconsistent. Nonetheless, this increased attempt to create some sort of test-like structure/ multifaceted argument for more cases on average is an interesting development.

Figure 9 (Immediately below)



This graphic, using data from this paper's case analyses, shows the average number of factors (central argument categories) used each year in the cases that overturn precedent. The average was calculated by taking the total number of factors used each year and dividing that by the number of overturned cases. Years with no cases overturned were not included in this graph.

Aside from noting the generally changing Court behavior for the subject, the graphic is significant in part because it's not about just the terms used: these data values are based on how many central arguments the Court used on average for each year that had overturned cases. This means that the Court is trying to tackle the cases of overturning precedent with multifaceted arguments more often than in the past (tackling each precedent from multiple angles as opposed to the past format of generally identifying one or two central arguments and explaining those).

Furthermore, I believe from these graphs and the case analyses that this highlights the compounding of certain, new terminology: reliance interests is one such example up- spiking up

in use relatively reasoning but not necessarily causing a simultaneous decrease in all of these older factors. *Dobbs* illustrates another potential way for understanding this trend: the Court uses several terms- some of which are unsubstantive- and proceeds to have a substantial degree of overlap; as described in the case analysis for *Dobbs*, the Court argued workability and historical norms several times in different argument categories. In general, this helps emphasize that these changed/ inconsistent definitions and sometimes entirely poorly defined new category names can quickly become a frequently cited term for the Court: feeding how cases are argued before the Court and interpreted by other Courts/ future Courts.

This changing terminology, and the inconsistency/ differences in term definitions highlighted throughout the case analyses, point to at least a slight questioning of the legal model of Supreme Court decision-making: the idea that the sole goal of judges/ Justices is to follow rules, regulations, and precedent down to the letter (*The Supreme Court and the Attitudinal Model Revised,* Segal & Spaeth). Not even mentioning the coalitions that semi-consistently form, there is some clear inconsistency in language choices for individual Justices, for Justices across cases of the same time period, and for cases over time. Thus, at least in terms of the terminology used, precedent is not followed down to the letter. On the contrary, the case analyses show a significant difference across cases in the same time period and individual Justices over time. And if the Court has this slight inconsistency for the rare cases when the Court is willing to stray from its most sacred doctrine, it would be fascinating to see variations in terminology vary in precedent-setting cases and the examples of when the Court does side with the precedent. The only reasonable counterargument here would be the incorporation of a debatable human error element into the model.

This inconsistency either stems from genuine analytical error (believable given the Court's workload and the rarity of case overturns), from an internal 'why' we don't know, from external causes the Justices don't know, or some other alternative explanation. Either way, it's clear there are evolving central arguments being used by the Justices in the data above and changing terminology/ inconsistent definitions illustrated in the case analysis above (though minimized in the data through standardized central arguments).

However, the case analyses and data also denote a degree of consistency that slightly dispels a full acceptance of the attitudinal model: a model that asserts the Justice's individual policy preferences are the sole decider of a case decision (*The Supreme Court and the Attitudinal model Revised,* Spaeth & Segal). Without this central argument standardization, one might look at the variation of terms- quality of reasoning, nature of the Court's error, antiquity, and other poorly defined or rarely used terms- and think that the Court is crafting new arguments to overturn precedent. But what this standardized analysis shows is that the Court struggles with defining the terminology- but has generally used clearly categorizable arguments demonstrating some degree of consistency over time.

Furthermore, the rate of overturned cases has generally stayed the same- shown below- and outside of the incorporation of a few new terms, the baseline central arguments focusing on constitutionality, inconsistency with Court precedent, and workability have also stayed the same. ** This is just to say that while the aforementioned inconsistency opens room for further investigation as to causes, the new terminology choices and the overall data don't- alone at least- support a notion that the current Court is willing to overturn precedent substantially more than previous Courts.** Instead, it opens up room for more precise questions about the Court's

behavior. To illustrate that, in absolute numbers, the Court has not changed substantially- observe below:

Figure 10 (Immediately below)

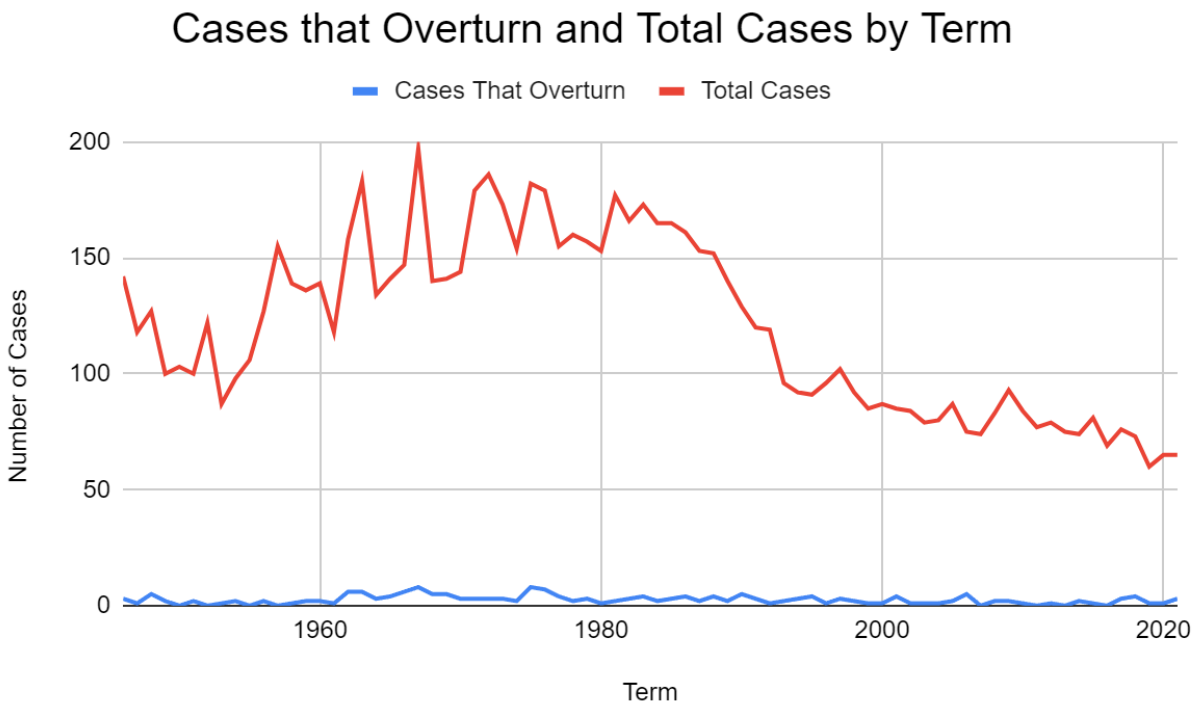


Figure 10 illustrates the relationship between 'Cases that Overturn' and 'Total Cases': in other words, it paints a picture of the ratio of cases that overturn precedent to cases that don't (in absolute numbers). The data is pulled from the Washington University School of Law Database and stretches from the 1946 term to the 2021 term.

Figure 11 (Immediately below)

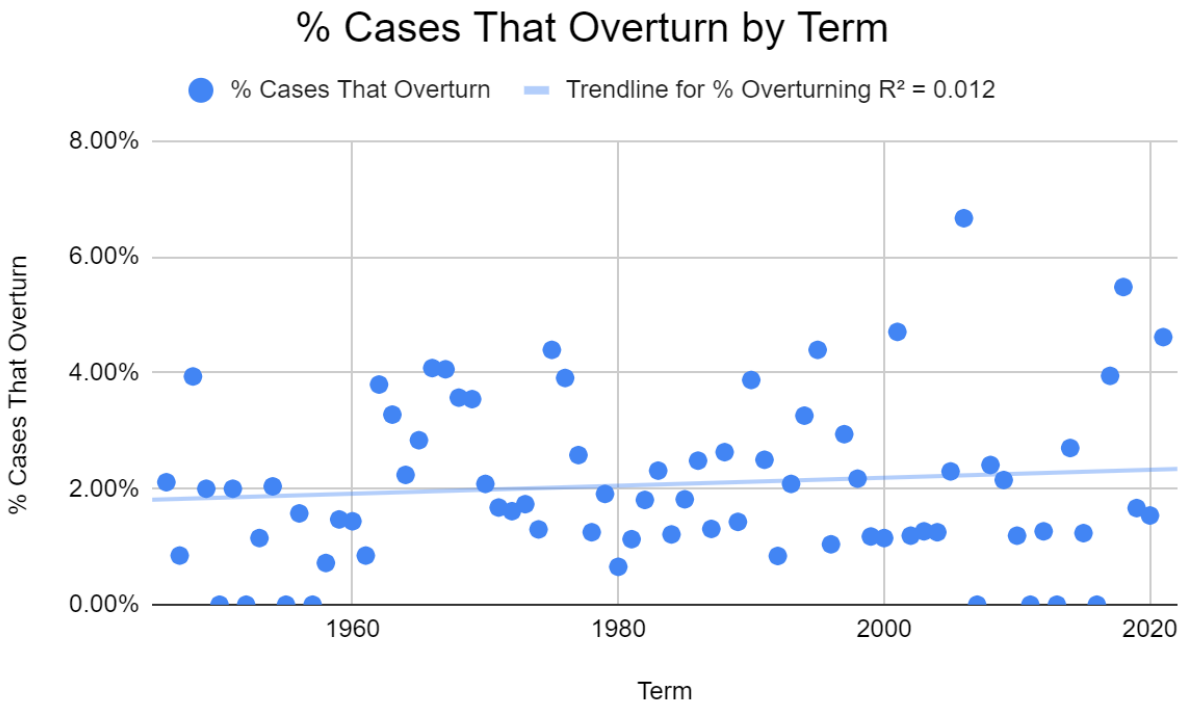


Figure 11 simply adjusts figure 10 by expressing the relationship between the cases that overturn and the total number of cases as a percent. This allows us to see the general rate at which the Court overturns cases over time- a rate that is impressively consistent.

Figure 12 (Immediately below)

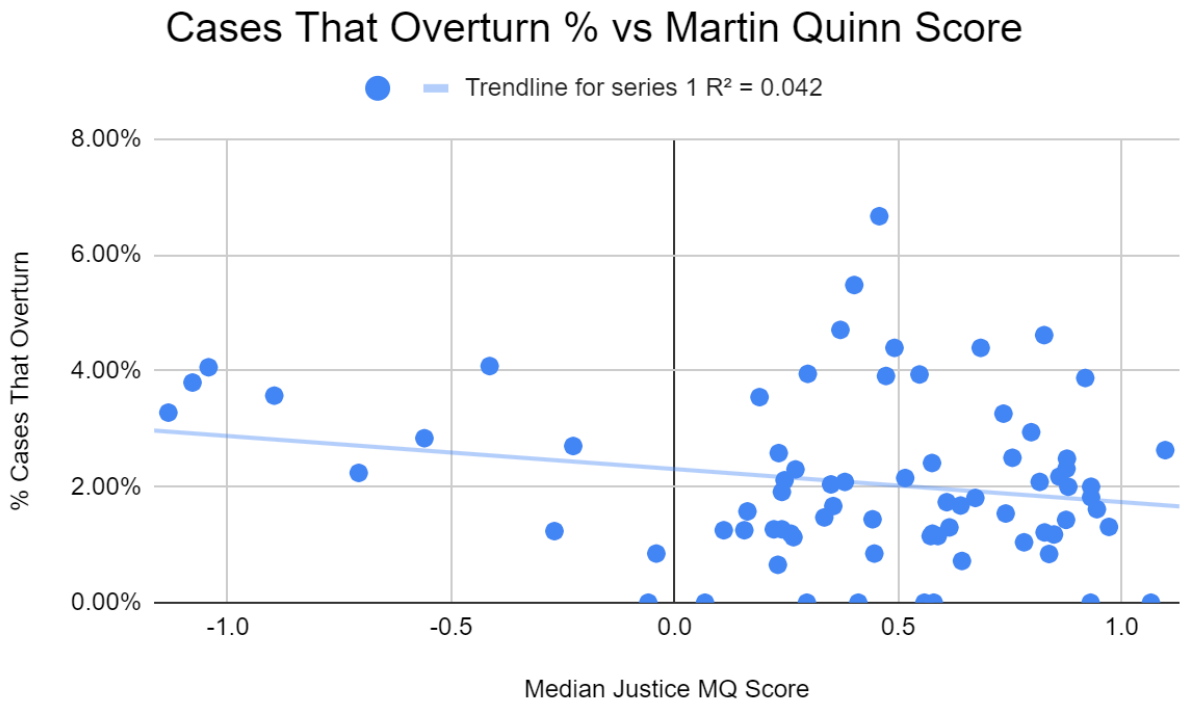


Figure 12 illustrates a nearly nonexistent/ weak relationship between the MQ median Justice judicial ideology scores (explained as a measure in the paragraph below) with the percent of cases that overturn for each term (using the rate from figure 11, so from 1946-2021). The further you go from 0 to -1, the more liberal the median Justice; and the more you go from 0 to 1, the more conservative the median Justice. One substantial problem for this data/ graph is that we have very few data points on the liberal side due to having not many liberal median Justices since 1946.

Figure 10 highlights just how rare overturned cases are as a percentage of the overall cases. Figure 11 shows that taking the percent of overturned cases (out of the total cases heard) creates a graph demonstrating that the actual rate of overturned cases has not changed much at all over time (the r value is negligible; the slope is near flat). This is a statement of its own– while the central arguments have somewhat shifted, and the terminology the Court uses associated with those central arguments is flimsy and inconsistent, the overall willingness to overturn precedent

has not shifted dramatically. **Though, interestingly, the number of cases the Court is willing to take on, has shifted dramatically.**

Figure 12 incorporates one of the most accurate measures for judicial ideology- Martin & Quinn Scores (MQ scores). The explanation of the ideology method itself is rather elaborate, but essentially it uses a bayesian statistical method to place Justices on a spatial scale/ continuum (-1 being extremely liberal and 1 being extremely conservative)- which indicates the likelihood that each individual Justice is to be in the same coalition with each of the other Justices. Using this method, Justices least likely to side with each other in a particular case would be on opposite sides of the spectrum; thus producing a scale that replicates our understanding of judicial ideology. Median Justice theory then uses the median Justice's ideological value, argued in some literature to be the most influential in case decisions, to understand the case's ideological value. Thus, a reasonable ideological value- though with pros/ and cons involved like anything- is assigned to each case (Martin & Quinn, "Martin-Quinn Scores"), (Carrubba et a., "Does the Median Justice…").

Using these ideological values from Martin & Quinn, and comparing that to Washington University's overturned case data (by term), the r value/ overall trend shows there is not a clear, distinct influence of judicial ideology on the absolute number of cases overturned. This does not mean that ideology has no impact on case decisions; that's not what this graphic measures/ shows. Instead, it shows that ideology, terminology changes, and somewhat evolving central arguments do not denote a clearly significant change in the Court's willingness to overturn cases based on the Court's ideology over time. Either way, even in the case that ideology has an impact on the arguments chosen/ the outcome of the cases, the above graphics demonstrate the relative stability/ consistency of the rate at which the Court overturns precedent. However, I can't

confidently argue that this relationship is predictive: there aren't enough liberal median Justice data points, nor does this look into which cases were heard (perhaps ideology plays a greater role depending on the case issue itself). Nonetheless, this paints a general picture with which to build for future research into the subject; and each of these graphs denotes a general trend of consistency in the rate that the Court overturns precedent.

In summary for this section, the results of my analyses show greater consistency than some might expect in terms of central arguments and overall rates of overturning cases; and a significant degree of inconsistency in the terminology applied to those central arguments; and the data shows a new heavy emphasis on reliance interests, a greater emphasis on certain more infrequent factors, and a decrease in the application of the constitutionality/ framer's intent factor. The data also shows a substantial increase in the number of central arguments (factors) used- without a significant increase in the overall number of cases heard. Thus, this paper simultaneously supports and rejects both the legal model and the attitudinal model- calling on researchers to use the detailed analyses and data to decipher the reasonings behind some of these particular factors and the inconsistency aforementioned.

With that said, using the case analyses and data this next section will use the standardized factors crafted in the 103 case analyses for the purposes of correcting the work of the Congressional Research Service; with the standardization benefitting interest groups, political science scholars, and even the Court itself as noted going into the case analyses.

Adjusting the literature's factors:

As initially illustrated in the "What The Justices Say is the Framework" section, the Justices had a substantial degree of variety in their descriptions of what the relevant factors are from overturning precedent: from the age of the precedent, to workability issues, to reliance interests, to the quality of the reasoning, to changed facts, and so on. The one consistency was the inconsistency in which factors were cited and how they were defined.

Also mentioned earlier, the major piece of literature on the subject, attempting to categorize the central arguments over time was from the Congressional Research Service (CRS). There were limited attempts to understand the Court's overturned precedent over time outside of this- including small news articles highlighting a few of the aforementioned categories with individual case examples/ arguments, but many of these articles were focused on individual cases and taking the factor names used from Justices at surface level. Thus, I honed in on the most relevant paper in terms of the work I hoped to do in this paper (the work of the CRS detailed thoroughly in the earlier literature section)- categorizing arguments made by Justices over time. The CRS provided five key categories they observed in their reading across cases- though no clear note about methods or thorough inclusion of quotes they pulled from. Thus, I will now go through each category the CRS proposed, saying whether (based on the case analyses) I will include, modify, or remove the category from my standardized categorizations. And then I will add a few unmentioned categories of my own.

Factors included:

- Quality of reasoning
- Changed Understanding
- Inconsistency with Court precedent

- Workability
- Reliance Interests

Quality of reasoning: As to the quality of reasoning categorization mentioned by the CRS and by several Justices, it is inherently incomplete. As Justice Roberts argued, "It is not enough that you may think the prior decision was wrongly decided. That really doesn't answer the question" (Coyle, *The Roberts Court: The Struggle for the Constitution,* Page 23). Arguing that the 'quality of reasoning' was poor is another way of saying the Court thinks the previous Court is wrong. Just as Justice Roberts mentioned, that leads immediately into- well, why is the previous Court wrong? Is it because the precedent improperly interprets the Constitution- making it unconstitutional? Is it because the wording used in the precedent creates workability issues- whereby lower courts struggle to interpret it or enforcement agencies don't know how to use it?

The potential arguments underlying this factor are endless precisely because categorizing a generalized factor of 'quality of reasoning' provides no reasoning as to the why; and in explaining the factor name for each case, the proper factor/ category for the why becomes abundantly clear (every case citing quality of reasoning proceeded to explain the term that easily fit into other categories). This is why in the six examples where quality of reasoning is used as a category header/ central explanation for overturning the precedent- noted by the *** at the bottom of that case's analysis- the factors were always properly recategorized. This term has popped up over the last decade, with little substantive value, and likely produces confusing signals as to what terminology advocacy groups should argue and what future cases should be overturned.

Thus, for the purposes of my standardized categorization, this term is removed. However, for the purposes of future scholars wanting to understand when this poorly defined term has been used/ understanding its evolution, this paper still shows where the term was used as the header for a central argument. Perhaps there is room for alternative explanations of Court behavior found within this confusing and recent categorization.

Changed Understanding: This particular term mentioned by the CRS is also problematic- but perhaps with a little more substance. This category essentially comes down to 'we now believe the previous Court was wrong'- meaning it runs into a similar concern as the 'quality of reasoning' factor as allows for a wide variety of arguments made under the term/ demands a more precise factor and explanation within its argument (which then can be recategorized).

However, there is an inherent component of value here: as illustrated in the case analyses, the Court has several times come to believe something else over time. This is either because of changed circumstances, changing norms of behavior, decreasing reliance interest, changed perception of the rule by several states (bringing into play a federalism role concern), a new interpretation stemming from how the previous doctrine played out in practice, a new understanding of the meaning of the legislation the previous was decided upon, and on and on. However, the standardized factors mentioned previously and reiterated shortly encapsulate these varying factors in a more precise manner without reading like a different version of saying the precedent is simply believed to be wrong. Thus, this term is also removed from my categorization.

Inconsistency with Court Precedent: This term is rather clean cut. To reiterate an earlier stated definition, the CRS defined the term as follows: "whether the precedent departs from the Court's other decisions on similar constitutional questions, either because the precedent's

reasoning has been eroded by later decisions or because the precedent is a recent outlier when compared to other decisions" (CRS, "The Supreme Court's Overruling of Constitutional Precedent"). Firstly, as observed in the overall factors graph and pie graphs, this category is consistently one of the most used factors over time. Additionally, the case analyses similarly support the two subcategories outlined in the definition: inconsistency with current precedent/ precedent on similar issues; or a precedent that has become inconsistent with time- either being directly contradicted but not explicitly overturned (leading to a reinforced overturn later) or becoming functionally overturned by the other cases changing bits and pieces/ degrading the underlying theory for the precedent over time. Either way, the consequence is that it is inconsistent with previous decisions, newer decisions, or both.

Workability: The definition of workability described by the Congressional Research Service is as follows. "Another factor that the Supreme Court may consider when determining whether to overrule a precedent is whether the precedent's rules or standards are too difficult for lower federal courts or other interpreters to apply and are thus "unworkable" (CRS, "The Supreme Court's Overruling of Constitutional Precedent"). To the extent that workability involves difficulty in interpretation- this is certainly something observed in the case analyses analysis: for example, *Miller v. California* overturning *Memoirs v. Massachusetts* because the standard established in *Memoirs* meant that no court could reasonably apply the doctrine/ other interpreters struggled to identify what violated the standard.

However, the underlying mechanism as to why it's problematic for lower courts is what matters here. The wording of the precedent itself is problematic: either because it is too difficult to interpret- or, as also used by the Court, the wording of the standard leads to undesired or generally problematic outcomes: unforeseen problems for companies/ individuals, conflicts with

state policies, causes varying effects on different groups (which can also be placed into the constitutionality category depending on what the Court argues), and so on. Thus, while the term is accurate and stays in my classifications- it is modified to represent the underlying mechanism and thus a broader array of circumstances in which the Court has used the term/ argument.

Reliance Interests: The definition of reliance interests per the Congressional Research Service is as follows: "Finally, the Supreme Court may consider whether it should retain a precedent, even if flawed, because overruling the decision would injure individuals, companies, or organizations; society as a whole; or legislative, executive, or judicial branch officers, who had relied on the decision" (CRS, "The Supreme Court's Overruling of Constitutional Precedent"). Firstly, it is clear from the case analyses analysis that 'reliance interests' as a central factor/ argument for overturning precedent, has been frequently used over the last couple of decades. Initially, I was skeptical that the absence of reliance interests could be used as a reason for overturning precedent; instead, my initial impression was that it is something the Court has to overcome/ a barrier the Court addresses for why the precedent should be overturned.

However, the wording the Justices used in the case analyses emphasized something I realized while reading: having no clearly identifiable, longstanding impact on people's lives in and of itself is a key selling point for arguing the precedent it is overturning has no practical utility (established as a category during the case analyses analysis). In a sense, it is both something the Court needs to address for why it does not need to overcome reliance interests and a key selling point to why the precedent isn't needed. Given that the Court has overturned a case purely because of it never being applied (see *Edwards v. Vannoy*), the legitimacy of a precedent/ the perception of whether it's just some unnecessary rule is in part based on how frequently it's

applied and to what degree that application is significant. That being said, while I agree with this term and the definition by the Congressional Research Service, the sudden jump in the use of the term, the unstated shift to applying to non-economic issues, and the broadness of the term means that it demands strict scrutiny from future research.

To summarize the comparison of the case analyses findings to the findings of the CRS, my case analyses do not support two of their categorizations (quality of reasoning, changed understanding), it supports a modification of one (workability), and it fully supports two categorizations (inconsistency with Court precedent, reliance interests). Now, I will outline additional factors I would include based on the analyses.

Over time- in absolute numbers at least- the central argument used most frequently in overturning precedent was that the precedent is blatantly unconstitutional due to its faulty interpretation of the Constitution or its unconstitutional consequences (see the results section for factor breakdowns); related to this, the Court frequently outlined the framer's intent- especially when it comes to institutional powers. In general, this factor means the Court is asserting that the precedent either contradicts the original meaning of the Constitution or the assumed/ stated roles of the institutions associated with it.

This makes sense: as argued by the Court majority in *Edelman v. Jordan*, "Since we deal with a constitutional question, we are less constrained by the principle of stare decisis than we are in other areas of the law" (Page 415 U.S. 671). Per the infamous principle of judicial review, the Court has the authority to determine the constitutionality of legislative and executive actions. In general, the complicated constitutional questions are what the Court frequently deals with; it fits in line with what the role of the Court is, and thus the Court has a greater 'policymaking' type authority to determine the constitutionality of an action. Either way, the case analyses

clearly showed this to be a dominant factor- deserving of categorization. Thus, constitutionality/ framer's intent is included in my standardized categorizations.

Additionally, as observed in Figure six, 25.7 percent of the central arguments used in the 2010s were not in the major categories (including the one I just proposed; inconsistency with Court decisions, workability, constitutionality/ framer's intent, or reliance interests). If a little over a quarter of U.S. presidents did not identify as Republican or Democrat, scholars would want to categorize this other 25.7 percent even if it was comprised of a variety of different parties; several presidents of one rare party can have a significant impact on executive decisions/perceptions of the executive branch through those decisions.

A similar thing exists here: not acknowledging and categorizing these factors in the 25.7 percent would paint an incomplete picture of the Court's behavior. In many ways, these rare factors are of substantial interest because it begs the question of why the Court adopted that particular rarer factor for the case. When the Court brought up international norms in rejecting youth death penalty in *Roper v. Simmons* and a separate Court based the entirety of their argument for overturning precedent in *United States v. Reliable Transfer Co* on international norms, it begged the question of how much influence international norms can have on the Court's decisions/ behavior. This goes for every factor: why was the Court interested in U.S. public norms of behavior in a particular case, in the changed revolving circumstances for a case, in how many states oppose the precedent for a case (which was then used to argue federalism issues), and so on. For political science scholars, the possibilities for examining potential external and/ or interinstitutional relationships are significant; for legal advocacy groups/ scholars, the understanding of nuanced arguments the Court has used and is thus potentially willing to use, is also useful.

Thus, here are the standardized categories I made that had at least five references in the 103 cases (enough to assert relevance as a relatively frequent factor).

Interpretation of legislation: This category refers to when a Court described a faulty textual analysis from the precedent's Court as one of the main reasons for overturning the case/ standard. *Hubbard v. United States* (1995) overturning *United States v. Bramblett* (1955) is an example of this: the Hubbard Court majority asserted that the Court in *Bramblett* misinterpreted the meaning of several clauses from an Act of Congress, leading to inconsistency between the Court's definitions and the actual intentions of the Congressional Act (in turn leading to a variety of workability and institutional role concerns).

Changed Circumstances: This factor refers to when the Court sets a precedent based on certain revolving facts/ assumptions, but those facts/ assumptions change. A good example demonstrating this component of changed circumstances is the evolution in the perception of the Fourth Amendment based on changing surveillance technologies. Chief Justice William Taft described the early precedent of the Fourth Amendment as only pertaining to 'physical searches and seizures'. This perception led him to perceive new surveillance technology, capable of monitoring conversations on payphones, as not protected against by the Fourth Amendment; an argument seen when in *Olmstead v. United States* (1927), he argued for the majority that law enforcement could use wiretapping technology without a warrant (Bill of Rights Institute, "Olmstead v. United States") (Oyez, "Olmstead v. United States").

Yet by the 1960s, the time of *Katz v. United States (1967),* the Court had seen how new surveillance technologies could be used to track rather private pieces of information without needing a warrant; and that the things frequently being tracked, such as payphones, were not

reasonably expected by the public to be surveilled. This argument became the background of *Katz,* which overturned *Olmstead* in a 7-1 decision.

Historical Norms/ Modern Norms: This factor refers to when the Court references society's general behavior or expectation associated with a particular policy/ rule. In other words, this involves the general public's perception of what is normal/ expected over time or simply at the time of the case before the Court. Here is an example where it applies to the general public's behavior/ values: "Political speech is so ingrained in our culture that speakers find ways to circumvent campaign finance laws" (Section C, *Citizens United Citizens United v. Federal Election Commission*). The Court is arguing that expressions of political speech are so common and valued by American culture that attempting to restrict it in this form will not work; workarounds will be made. The Court goes on to describe how this political speech cultural value is ingrained in American history; thus causing harm to both that norm as well as to the free speech clause of the First Amendment the Court argues the norm is tied to.

Reinforced Overturn: This factor was rather straightforward in the case analyses. Occasionally the Court had overturned a precedent without explicitly stating it- either having previously overturned the precedent's standard/ standards in a single case or bits and pieces across several cases. Thus, the Court then makes explicit the overturning of the precedent (via the other Court cases) to dispel confusion about the relevance/ applicability of the precedent's standard/ standards.

Practical Utility: This factor involves the frequency of use for the standard created. While this is tied into workability (perhaps the wording could not be used in practice) or reliance interests (arguing that if it's not used, there is not much reliance on it), it stands as the primary reason for overturning precedent in a couple of cases and is used as one of the main arguments in

several others. The reason it can stand alone is that the Court in a particular case may not at all reference problems in the wording from the precedent; instead, the Court entirely reasons that the standard never being used is enough to say the standard is useless, gives false hope, and should not hold weight when it conflicts with other standards.

Conclusion

In answering the question of why the U.S. Supreme Court strays from precedent: the case analyses and the resulting data analysis lead to a set of standardized factors that provide an important first step in addressing the question (the central arguments most frequently used over time in the Court's arguments). Without addressing the cases where the Court reviewed precedent and stuck with it and without a broader look into external influences/ whys for the Court's decisions, my set of terms does not definitively answer the question. Nonetheless, it provides an important first step- with many valuable observations along the way- for the use of political scientists and legal scholars/ workers. Below is a summary of the standardized factors I identified and defined.

- Constitutionality/ framer's intent
- Inconsistency with Court precedent
- Workability **Modified from CRS version**
- Reliance Interests
- Interpretation of legislation
- Changed Circumstances
- Historical norms/ modern norms

- Reinforced overturn
- Practical utility

Overall, taking a broad picture look at the focus and discoveries made in this paper, I standardized the inconsistent terminology involving central arguments across the 103 most recent U.S. Supreme Court examples of overturning precedent. In doing so, I also highlighted several key observations about Court behavior and provided a significant amount of case analysis/ data for those seeking to modify my work or build upon it to investigate alternative explanations. Specific to the literature, this paper modifies and expands on the limited literature from the Congressional Research Service on the subject; and in providing the full methods, analysis, and data in this paper- my hope is that it paves the way for future political science scholars to further investigate pointed out inconsistencies, to investigate particular unexamined factors, to pull certain quotes/ operating language for the purposes of external analysis. The broad-scale statistics, factor-specific statistics, and inclusion of case operative language for overturning cases provide room for further investigations into the role of public opinion, judicial ideology, chief Justice influence, and other potential influences on the Court.

This standardized terminology of the inconsistent overarching language, identifying how certain central arguments have changed over time, and the reference points of the overall overturn rate also paints a general picture of Court behavior. As noted in the results section, the surprising degree of consistency for several central arguments and inconsistency in how Justices attempt to categorize/ define them (and unclear shifts in the use of a couple central arguments), means that this research likely can't subscribe to either model associated with Justice behavior- the legal or attitudinal models: these results simultaneously calm the notion that the Court has

suddenly become hungry to overturn in the last decade by showing a general degree of consistency in the arguments made and overturning case rate, but the introduction of confusing terminology and the inconsistency in term definition introduces the potential for alternative explanations and speculations about changes in the Court.

Outside of setting a foundation with which to operate for understanding the terminology associated with overturned precedent in political science, the standardization is also beneficial to the legal advocacy groups that may be confused by the inconsistent terminology signaled by Justices: they can look here for focusing on the underlying arguments that have been made and the meaning of the terms that have been applied; allowing the legal advocates to properly reference/ utilize the arguments made by previous Courts. This strong relationship between the Court signaling their policy/argument preferences and legal advocacy groups like the ACLU using that language/ signaled preference down the road to bring cases and certain arguments before the Court has been thoroughly studied/ shown in the groundbreaking work of Dr. Vanessa Baird (*Answering the Call of the Court*).

And lastly, the Court itself would benefit from this sort of standardization if it is observed by Justices, as the current inconsistency has appeared to compound: with Justices currently inconsistently trying to establish a test for the subject citing different factors, different cases, and even defining and sometimes applying the terms differently. For a Court so critical of inconsistency in precedent as a reason for overturning it, this degree of inconsistency for terminology is interesting. Nonetheless, this paper establishes a base in the overturned cases literature for future legal and political science scholars to operate in understanding why the Court strays from precedent.

Thank you for reading.

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Appendix

Dobbs v. Jackson Women's Health Organization (2022) overturned *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992) & *Roe v. Wade* (1973)

In reading through the 213 page document containing Justice Alito's majority opinion, the concurrences of Justice Kavanaugh, Thomas, & Chief Justice Roberts, and Justices Sotomayor, Kagan, and Breyer dissents- many of the Justices had distinct perceptions of which factors for overturning precedent are relevant; and differed in their definitions and reasonings behind those factors.

In the syllabus for the majority opinion/ case decision- the Court referenced and argued several standards for overturning precedent. The clearest attempt to outline the factors determining why the Court overturned Roe and Casey, is in section III. The Court outlines the following factors: *the Nature of the Court's error, the quality of the reasoning, workability, effect on the other areas of law,* and *Reliance interests.*

- *Nature of The Court's error* involves an argument that Roe & Casey sidestepped the democratic/ policy process with this decision.
- *The Court's Quality of Reasoning* argument covers inconsistency with related decisions, constitutionality, and how historical norms do not side with Roe.
- The *Workability* argument outlines how the wording of the Roe & Casey decisions "scored poorly on the workability scale" (Section III). In other words, the wording used in Roe & Casey was hard to implement; it created problems in practice.
- The *Effect on other areas of Law* argument asserts that, "Roe and Casey have led to the distortion of many important but unrelated legal doctrines" (Section III)
- Lastly, the *Reliance Interests* argument focuses on the absence of reliance interests associated with the case- asserting the Court can't use this argument to uphold the Roe & Casey precedent because those seeking an abortion can immediately shift course on their behavior if the law changes.

However, this list- on the surface- is not enough for determining properly standardized categorizations for the case. The argument made by the Court in the "Nature of the Court's error" category, a clearly undefined category name at that, begins with a note about broader constitutionality concerns involving the idea of 'privacy as a right' before transitioning to asserting that *Roe* & *Casey* sidestepped the power of legislators to act on the issue. This concern falls under the category of institutional roles (and the broader implications associated with federalism/ framer's intention/ constitutionality). Thus, these two descriptions for their 'Nature of the Court's error' category best fall under the standardized category of constitutionality/ framer's intent.

Similarly, the ‘effect on other areas of the law’ categorization asserts that the wording of the *Roe* & *Casey* decisions creates issues in practice for other decisions; in other words, this is the workability doctrine the Court separately addresses (Section III).

The quality of the Court’s reasoning argument, as noted previously to be defined differently depending on the Justice, addressed multiple categories as the basis for the factor: constitutionality, inconsistency with precedent, and historical norms. Thus, this will be properly put into these other categories (Section III).

The other categories are more clear and defended throughout the first ten pages- which had a heavy emphasis on the lack of historical norms for Roe & Casey as well as the constitutional soundness of the precedents’ arguments. Thus, deciphering the arguments made in their categorizations, the proper categorizations for the majority opinions of this case are as follows: constitutional reasoning/ framer’s intent, inconsistency with Court precedent, workability, historical norms, and absence of reliance interests. However, the extent of obiter dictum and improper categorizations by the Court in this case potentially muddies the proper categorizations. Nonetheless, the goal of this case analyses analysis is not to take the stated factors at surface level by the Justices to be the factors for the case (since, as noted earlier, the stated factors can mean something entirely different based on the Justice), but rather to use the arguments made in the majority Court decision to create my own standardized factors.

Factors: Constitutionality/ framer’s intent, inconsistency with Court precedent, workability, historical norms, and absence of reliance interests.

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Edwards v. Vannoy (2021) overturned *Teague v. Lane* (1989)

A new categorization is needed for describing the Court's reason for overturning an exception from Teague. As illustrated in the quote below this paragraph from the majority opinion, the exception established in *Teague* was foreclosed because it was used during the several decades after the decision; in a way arguing that this makes it useless/ actively harmful by misleading defendants with false hope. It does not quite fit into the workability categorization because that would insinuate the word choice created problems in application (which wasn't really the issue as even the *Teague* Court described that the exception would be unlikely used in practice often); and it does not quite apply to the inconsistency with Court precedent categorization because it's not that it's inconsistent. Despite the standard not directly causing harm to other standards or disagreeing with precedent per se, it simply was not useful. Thus, this factor will be categorized as 'practical utility'- meaning whether the standard/ standards established by the precedent was/ were substantively used in practice.

Quote 1: "At this point, some 32 years after Teague, we think the only candid answer is that none can—that is, no new rules of criminal procedure can satisfy the watershed exception. We cannot responsibly continue to suggest otherwise to litigants and courts… Continuing to articulate a theoretical exception that never actually applies in practice offers false hope to defendants, distorts the law, misleads judges, and wastes the resources of defense counsel, prosecutors, and courts. Moreover, no one can reasonably rely on an exception that is non-existent in practice" (Section II).

This quote from the majority opinion highlights the lack of use for the exception since the Teague decision and how this created a unique set of problems for judges and defendants. Thus, the factor for overturning the precedent, in this case, is only the practical utility category.

Factors: Practical utility.

Ramos v. Louisiana (2020) overturned *Apodaca v. Oregon* (1972) & *Johnson v. Louisiana* (1972)

In the majority opinion for *Ramos,* the Court repeatedly tackles the particular constitutional reasoning of *Apodaca* & *Johnson*. The Court argues that the previous Court's interpretation of non-unanimous verdicts as being constitutional strayed substantially from the intention of the Sixth Amendment and the historical/ legal foundations supporting unanimous verdicts (Section IV); furthermore, the Court looked at reliance interests involved in the case before determining there to be none so significant as to deter overturning the precedent. Thus, the categories would be as follows: constitutional reasoning/ framer's intent, historical norms, absence of reliance interests, and inconsistency with Court precedent. Below is a quote from the majority opinion that illustrates the Court's core arguments in overturning *Apodaca* & *Johnson*.

Quote 1: "Factors traditionally considered by the Court when determining whether to preserve precedent on stare decisis grounds do not favor upholding Apodaca... Starting with the quality of Apodaca's reasoning, the plurality opinion and separate concurring opinion were gravely mistaken. And Apodaca sits uneasily with 120 years of preceding case law. When it comes to reliance interests, neither Louisiana nor Oregon claims anything like the prospective

economic, regulatory, or social disruption litigants seeking to preserve precedent usually invoke" (Section IV).

Though this quote does not cover the depth to which the Court highlighted the constitutional/ historical foundations for supporting unanimous verdicts, it summarizes the key variables identified for overturning precedent in this case: the 'quality of Apodaca's reasoning'- which based on the Court's argument that follows falls under the constitutional reasoning section, and the emphasis on the 120 years of preceding case law/ history for the Court (thus the inconsistency with precedent category). Separately, the Court addressed the historical significance of unanimous verdicts (page 2 of the syllabus), thus 'historical norms' is also a category. Lastly, as partially highlighted in the last sentence for the above quote, the Court takes into account potential reliance interests- dismissing them as minor for this particular case.

Factors: Constitutionality/ framer's intent, historical norms, absence of reliance interests, and inconsistency with Court precedent.

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Franchise Tax Board of California v. Hyatt (2019) overturned *Nevada v. Hall* (1979)

Quote 1: "Nevada v. Hall is contrary to our constitutional design and the understanding of sovereign immunity shared by the States that ratified the Constitution. Stare decisis does not compel continued adherence to this erroneous precedent. We therefore overrule Hall and hold

that States retain their sovereign immunity from private suits brought in the courts of other States" (Section II).

Quote 2: "We have also demonstrated that Hall stands as an outlier in our sovereign immunity jurisprudence, particularly when compared to more recent decisions" (Section II).

Quote 3: "Those case-specific costs are not among the reliance interests that would persuade us to adhere to an incorrect resolution of an important constitutional question" (Section II)

In this case, the Court majority predominantly focused on the historical interpretation of/ norms associated with sovereign immunity, and repeatedly described how the decision in *Hall* was fundamentally incorrect in its dismissal of the significance of sovereign immunity in its decision. As illustrated in the second quote above, the Court also addresses the inconsistency with related precedent. Lastly, also on page 17, the Court acknowledges that some reliance interests are involved in the case but are not substantial enough to keep something egregiously unconstitutional. ** Though there were reliance interests in this case, it was not something used as a factor for overturning the precedent; rather the Court needed to argue the other variables outweighed the somewhat existing reliance interests.** Thus, the proper categorizations for this case would include historical norms, constitutional reasoning, absence of reliance interests and inconsistency with Court precedent.

Factors: Historical norms, constitutionality/ framer's intent, absence of reliance interests, and inconsistency with Court precedent.

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Herrera v. Wyoming (2019) overturned *Ward v. Race Horse* (1896)

Quote 1: "This case is controlled by Mille Lacs, not Race Horse. Race Horse concerned a hunting right guaranteed in an 1868 treaty with the Shoshone and Bannock Tribes containing language identical to that at issue here. Relying on two lines of reasoning, the Race Horse Court held that Wyoming's admission to the United States in 1890 extinguished the Shoshone-Bannock Treaty right… Mille Lacs undercut both pillars of Race Horse's reasoning. Mille Lacs established that the crucial inquiry for treaty termination analysis is whether Congress has "clearly express[ed]" an intent to abrogate an Indian treaty right" (Section I).

The majority opinion for the Court argued that the *Ward v. Race Horse* standard was essentially overturned without explicitly being overturned in the *Mille Lacs* case (though the dissent for the case strongly disagrees). The Court majority offers no other insinuates a negative perception of the *Ward* standard with the 'relying on two lines of reasoning', but does not tackle the constitutionality or reasoning of the standard. Instead, the Court solely focuses on asserting it was already overturned. Given that the case was still brought up (because the standard was unclear enough to still be argued in front of the Court), and given the extent of disagreement from the dissent, it is still relevant to mention and categorize this case. Thus, this will be categorized as a 'Reinforced Overturn' - a more thorough acknowledgement by the Court that a precedent is overturned.

Factors: Reinforced overturn.

Knick v. Township of Scott (2019) overturned *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City* (1985)

Quote 1: "The state-litigation requirement of Williamson County is overruled. Several factors counsel in favor of this decision. Williamson County was poorly reasoned and conflicts with much of the Court's takings jurisprudence. Because of its shaky foundations, the rationale for the state-litigation requirement has been repeatedly recast by this Court and the defenders of Williamson County. The state-litigation requirement also proved to be unworkable in practice because the San Remo preclusion trap prevented takings plaintiffs from ever bringing their claims in federal court, contrary to the expectations of the Williamson County Court. Finally, there are no reliance interests on the state-litigation requirement" (Section 2 of the Syllabus).

The majority opinion for *Knick* addresses multiple factors for overturning the *Williamson County Regional Planning Commission* precedent; these factors are argued most concisely above. The Court mentions issues with the quality of the reasoning- emphasizing the inconsistency with other Court precedent, the 'unworkable' nature of the precedent (workability) issues, and the absence of reliance interests in the case.

Factors: Inconsistency with Court precedent, workability, absence of reliance interests.

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Rucho v. Common Cause (2019) overturned *Davis v. Bandemer (1986)*

In *Rucho*, the Court does not explicitly overturn Davis: rather it rejects- and thus overturns- the key notion prescribed by *Davis* (it is referenced and explained, but the Court focuses on rejecting the doctrine not the case). Specifically, the standard set by *Davis* that gerrymandering claims involving political questions are justiciable; meaning the Court has the authority to address political gerrymandering.

Rucho, however, attacks the constitutional reasoning used by the *Davis* Court in asserting political gerrymandering to be justiciable (Section II), and then reinforces this rejection with an explanation of how it strays from the historical role of the legislature in terms of elections (Section II). Thus, the two major categories for this case are constitutionality/ framer's intent, and historical norms.

Factors: Constitutionality/ framer's intent, historical norms.

Janus v. American Federation of State, County, & Municipal Employee (2018) overturned *Abood v. Detroit Board of Education* (1977)

Quote 1: In Janus, the Court explicitly overturns *Abood,* stating, "For the reasons given above, we conclude that public-sector agency-shop arrangements violate the First Amendment, and Abood erred in concluding otherwise. There remains the question of whether stare decisis nonetheless counsels against overruling Abood. It does not" (Section VI).

Quote 2: "Abood's proponents have abandoned its reasoning, that the precedent has proved unworkable, that it conflicts with other First Amendment decisions, and that subsequent developments have eroded its underpinnings" (Section VI).

The poorly reasoned component in this case essentially states how the reasoning behind the specific components of the Abood decision created problems in practice. In other words, how it was unworkable; in fact, both of these sections addressed the same problematic standard that was created due to the reasoning. Thus, this and the workability factor are essentially the same for this case. The developments since Abood- changes in Unions and other surrounding factors that would impact Court opinions on the standard- can be properly categorized as changed circumstances. The absence of reliance interests claim revolved around how the workability issues decreased reliance anyway, so rejecting the standard would not be causing additional harm to society. The final part of quote 2 highlights how the precedent is also inconsistent with subsequent Court decisions.

Factors: Changed circumstances, absence of reliance interests, inconsistency with Court precedent.

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South Dakota v. Wayfair (2018) overturned *Quill Corp. v. North Dakota* (1992) *& National Bellas Hess v. Department of Revenue of Illinois* (1967)

In South Dakota v. Wayfair, the Court explicitly overturns Quill Corp v. North Dakota & National Bellas Hess v. Department of Revenue of Illinois within the first page of the syllabus. However, the Court goes into argument after argument about the problems of *North Dakota & National Bellas Hess*. as opposed to a layout of the factors involved. Thus, reading through the

syllabus and scanning/ keyword searching the rest of the opinion, I use direct quotes from the syllabus to categorize them.

Quote 1: "The physical presence rule has long been criticized as giving out-of-state sellers an advantage. Each year, it becomes further removed from economic reality and results in significant revenue losses to the States. These critiques underscore that the rule, both as first formulated and as applied today, is an incorrect interpretation of the Commerce Clause" (Section 2 of the Syllabus).

The first portion of this quote addresses workability issues: the consequences to society that result from problematic wording in a standard. The second portion addresses the constitutionality/ framer's intention category by strictly asserting that the interpretation of the Commerce Clause of the Constitution is faulty in the two cases being overturned; this point is elaborated on more thoroughly in the opinion of the Court section.

Quote 2: " Quill is flawed on its own terms. First, the physical presence rule is not a necessary interpretation of Complete Auto's nexus requirement" (Section III).

The focus of the Court in this case differs from all of the aforementioned argument categories I have addressed thus far. It's not about misinterpreting the constitution- and it's not about poor reasoning skills- but rather the Court is addressing a misinterpretation of legislation. Thus, a new category is created called misinterpretation of legislation.

Quote 3: "The Internet revolution has made Quill's original error all the more egregious and harmful. The Quill Court did not have before it the present realities of the interstate marketplace" (Section IV).

Quote 4: "But even on its own terms, the physical presence rule as defined by Quill is no longer a clear or easily applicable standard, so arguments for reliance based on its clarity are misplaced" (IV)

This addresses how evolving circumstances- the internet- exacerbates the other problems aforementioned. Thus, this is the evolving circumstances factor.

Factors: Workability, constitutionality/ framer's intention, interpretation of legislation, and evolving circumstances.

Trump v. Hawaii (2018) overturned *Korematsu v. United States* (1944)

In *Trump* v. *Hawaii,* the Court decision does not focus on Korematsu as a central argument for the case decision, but rather addresses the dissent's mention of the standard and its potential relevance as standard. In the process, the Court majority thoroughly rejects the precedent.

Quote 1: "Whatever rhetorical advantage the dissent may see in doing so, Korematsu has nothing to do with this case. The forcible relocation of U.S. citizens to concentration camps, solely and explicitly on the basis of race, is objectively unlawful and outside the scope of Presidential authority" (Section IV).

Quote 2: "But it is wholly inapt to liken that morally repugnant order to a facially neutral policy denying certain foreign nationals the privilege of admission" (Section IV).

The central legal argument made it contesting *Korematsu* illustrated in both quotes above revolved around executive authority as intended by the Constitution; thus, the constitutionality/ framer's intention category is involved.

Factors: constitutionality/ framer's intent.

Hurst v. Florida (2016) overturned *Hildwin v. Florida* (1989) & *Spaziano v. Florida (1984)*

Quote 1: "We now expressly overrule Spaziano and Hildwin in relevant part. Spaziano and Hildwin summarized earlier precedent to conclude that "the Sixth Amendment does not require that the specific findings authorizing the imposition of the sentence of death be made by the jury… Their conclusion was wrong, and irreconcilable with Apprendi" (Section III).

The irreconcilable with Apprendi mention is a clear 'inconsistency with Court precedent' reference. The "their conclusion was wrong" quote in reference to the Sixth Amendment interpretation is more specifically explained in the opening paragraph of the Court's opinion. It addresses *Hildin* and *Spaziano's* interpretations of the Sixth Amendment word choices as faulty, thus falling under the constitutionality/ framer's intention category.

Factors: Inconsistency with Court precedent, constitutionality/ framer's intent.

Johnson v. United States (2015) overturned *Sykes v. United States* (2011), *James v. United States* (2007)

The Court explicitly addresses *Sykes and James* and how these cases should be overturned. The two major qualms with the precedent set by these two cases can be seen below.

Quote 1: "All in all, James, Chambers, and Sykes failed to establish any generally appli-cable test that prevents the risk comparison required by the residual clause from devolving into guesswork and intuition" (Section II).

Asserting that the precedent fails to establish a workable, understandable test fits cleanly into the workability category.

Quote 2: "the Government has not asked us to abandon the categorical approach in residual-clause cases. In addition, Taylor had good reasons to adopt the categorical approach, reasons that apply no less to the residual clause than to the enumerated crimes. Taylor explained that the relevant part of the Armed Career Criminal Act "refers to 'a person who . . . has three previous convictions' for—not a person who has committed—three previous violent felonies or drug offenses." 495 U.S., at 600. This emphasis on convictions indicates that "Congress intended the sentencing court to look only to the fact that the defendant had been convicted of crimes falling within certain categories, and not to the facts underlying the prior convictions" (Section II).

Quote 3: "And departing from those decisions does not raise any concerns about upsetting private reliance interests" (Section II)

This description of the legislation set by Congress that was then- in the words of the Court majority- improperly described and weaved into the standard/ precedents that were rejected in this case, fits into the earlier category of interpretation of Legislation. Perhaps a better word in this case would be misapplication/ inappropriate application; however, that inappropriate

application stems from a deemed inappropriate interpretation/ utilization. Thus, the previous, standardized term fits. Finally, quote 3 notes the absence of Reliance Interests.

Factors: Workability, interpretation of legislation, absence of reliance interests.

Obergefell v. Hodges (2015) overturned *Baker v. Nelson* (1972)

The Obergefell Court's addressing of the one line precedent in *Baker*- involving an expectation of only couples from opposing sexes being married- falls into one key paragraph within the Court majority.

Quote 1: "These considerations lead to the conclusion that the right to marry is a fundamental right inherent in the liberty of the person, and under the Due Process and Equal Protection Clauses of the Fourteenth Amendment couples of the same-sex may not be deprived of that right and that liberty. The Court now holds that same-sex couples may exercise the fundamental right to marry. No longer may this liberty be denied to them. Baker v. Nelson must be and now is overruled, and the State laws challenged by Petitioners in these cases are now held invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples" (Section III).

Quote 2: "Indeed, in interpreting the Equal Protection Clause, the Court has recognized that new insights and societal understandings can reveal unjustified inequality" (Section III)

Quotes 1 & 2 from the Court majority addressing the precedent established in *Baker* falls under the constitutionality/ framer's intention category. It involves an evaluation of how the right

to marry is fundamentally tied to liberty, which makes the withholding of that right in direct contradiction to the Due Process and Equal Protection clauses. Changed circumstances

Factors: Constitutionality/ framer's intention, changed circumstances.

Alleyne v. United States (2013) overturned *Harris v. United States* (2002)

The *Alleyne* Court majority breaks down their concern with Harris into two simple arguments:

Quote 1: " Harris drew a distinction between facts that increase the statutory maximum and facts that increase only the mandatory minimum. We conclude that this distinction is inconsistent with our decision in Apprendi v. New Jersey, 530 U.S. 466 (2000), and with the original meaning of the Sixth Amendment… Accordingly, Harris is overruled" (Syllabus).

In other words, *Harris* is argued to be inconsistent with Court precedent and in direct contradiction to the meaning of the Sixth Amendment (thus, the constitutionality/ framer's intention category).

Factors: Inconsistency with Court precedent, constitutionality/framer's intent.

Citizens United v. Federal Election Commission (2010) overturned *McConnell v. Federal Election Commission* (2003); *Austin v. Michigan Chamber of Commerce* (1990)

In *Citizens United* v. *FEC*, the Court mentions multiple reasons for overruling *Austin* and *McConnell*.

Quote 1: "There is simply no support for the view that the First Amendment, as originally understood, would permit the suppression of political speech by media corporations. The Framers may not have anticipated modern business and media corporations... The First Amendment was certainly not understood to condone the suppression of political speech in society's most salient media" (Section III).

Quote 2: "Political speech is so ingrained in our culture that speakers find ways to circumvent campaign finance laws" (Section III).

Quote 3: "Rapid changes in technology—and the creative dynamic inherent in the concept of free expression—counsel against upholding a law that restricts political speech in certain media or by certain speakers" (Section III)

Quote 4: "No serious reliance interests are at stake" (Section III)

Quote 1 covers the Court Majority's perception that *Austin* and *McConnell* strayed from the framer's intentions and the meaning of the First Amendment rather directly. This is the constitutionality/ framer's intention category.

Quote 2 addresses how the historical culture of political speech/ advocacy is so tied to American culture, that trying to restrict it will only lead to new methods of bypassing the restriction. This is the historical norms category.

Quote 3 addresses how changing technology results in a need to reevaluate the constitutionality of the Court's argument in *Austin*. Thus, this is the evolving Circumstances category.

Quote 4 addresses reliance interests rather succinctly (with a short elaboration that followed). Therefore, the last category for the case is reliance interests.

Factors: Constitutionality/ framer's intent, historical norms, changed circumstances, absence of reliance interests.

Montejo v. Louisiana (2009) overturned *Michigan v. Jackson* (1986)

In this case, the *Montejo* majority argues for overruling *Michigan* on the grounds of a few well known variables, but with explanations that demand a reevaluation of the Court's categorizations.

Quote 1: "Beyond workability, the relevant factors in deciding whether to adhere to the principle of stare decisis include the antiquity of the precedent, the reliance interests at stake, and of course whether the decision was well reasoned. Pearson v. Callahan, 555 U.S. ___, ___ (2009) (slip op., at 8). The first two cut in favor of abandoning Jackson: the opinion is only two decades old, and eliminating it would not upset expectations" (Section IV)

Quote 2: "Which brings us to the strength of Jackson's reasoning. When this Court creates a prophylactic rule in order to protect a constitutional right, the relevant "reasoning" is the weighing of the rule's benefits against its costs" (Section IV).

Here, the majority opinion's primary argument employs the 'quality of reasoning' category. However, the Court describes a cost-benefit analysis for examining the 'reasoning' behind the standard, when the problem with the standard is the wording and consequences of the standard… not the reasoning behind it. Furthermore, as with other qualms with the 'reasoning'

category earlier in the paper, the weight then placed by this cost-benefit analysis is based on other variables: workability, constitutionality, reliance, historical relevance, etcetera. Thus, these other factors used for the Court's cost-benefit analysis will be marked for this case.

Quote 3: "The effect of this badgering might be to coerce a waiver, which would render the subsequent interrogation a violation of the Sixth Amendment" (Section IV).

Describing how the specific language of the precedent creates issues- in general and in direct contradiction to the Constitution- should be simultaneously categorized as constitutional reasoning/ framer's intentions as well as workability: it creates harm in practice, so it falls under the workability concern; and this harm is to the Constitution, thus having the contradicting the Constitution concern of the constitutionality category.

Quote 3: "Jackson was policy driven, and if that policy is being adequately served through other means, there is no reason to retain its rule" (Section IV).

Quote 4: "The first two cut in favor of abandoning Jackson: the opinion is only two decades old, and eliminating it would not upset expectations" (Section IV)

These quotes from the majority opinion, as well as the explanation that follows, describe how other standards already address this issue in an effective manner: meaning the standard itself provides no benefit. Thus, this will be categorized as the practical utility category: the Court is simply outlining how it generally has not and cannot be used. Quote four addresses the reliance interests.

Factors: Constitutionality/ framer's intent, workability, practical utility, absence of reliance interests.

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Pearson v. Callahan (2009) overturned *Saucier v. Katz* (2001)

The Pearson majority predominantly uses one previously outlined factor for overturning precedent. However, the language used by the Court to outline potential reasons for overturning precedent as well as the ultimate reason for overturning precedent in this case, the terminology used is substantially different from the previous cases.

Quote 1: " Revisiting precedent is particularly appropriate where, as here, a departure would not upset expectations, the precedent consists of a judge-made rule that was recently adopted to improve the operation of the courts, and experience has pointed up the precedent's shortcomings" (Section II).

Here the Court majority is addressing potential reasons the Court could overturn precedent. The 'upset expectations' wording, elaborated on later in the opinion, simply references reliance interests and societal dependence on the standard (thus the reliance category); and the experience pointing to shortcomings wording essentially means that over time the standard has proven to cause harm or simply not be used in practice: in other words, the workability or practical utility categories.

Quote 2: "Because of the basis and the nature of the Saucier two-step protocol, it is sufficient that we now have a considerable body of new experience to consider regarding the consequences of requiring adherence to this inflexible procedure. This experience supports our present determination that a mandatory, two-step rule for resolving all qualified immunity claims should not be retained" (Section II).

The Court focuses on this argument as to why the *Saucier* precedent should be overturned. Essentially, the body of evidence demonstrating the precedent to be an inflexible procedure is another way of saying that the precedent is unworkable. Thus, the Court employs the workability factor. Absence of reliance interests (the court proceeds to define what reliance interests are).

Factors: Workability, absence of reliance interests.

Bowles v. Russell (2007) overturned *Thompson v. Immigration & Naturalization Service* (1964), *Harris Truck Lines, Inc. v. Cherry Meat Packers, Inc.* (1962)

Quote 1: "Given that this Court has applied Harris Truck Lines only once in the last half century, Thompson v. INS, 375 U.S. 384 (1964) (per curiam), several courts have rightly questioned its continuing validity… Accordingly, we reject Bowles' reliance on the doctrine, and we overrule Harris Truck Lines and Thompson" (Section II).

Harris and *Thompson* were rarely mentioned throughout the opinion, but the one place the Court explicitly overturned the precedent, the Court focuses its argument entirely on the outdatedness and lack of usefulness of the precedent. This argued lack of utility/ usefulness of the precedent falls under the practical utility factor.

Factor: Practical utility.

Leegin Creative Leather Products Inc. v. PSKS, Inc (2007) overturned *Dr. Miles Medical Co. v. John D. Park & Sons Co.* (1911)

Quote 1: "As discussed earlier, respected authorities in the economics literature suggest the per se rule is inappropriate, and there is now widespread agreement that resale price maintenance can have procompetitive effects" (Section IV).

Quote 2: "The Court's treatment of vertical restraints has progressed away from Dr. Miles' strict approach. We have distanced ourselves from the opinion's rationales" (Section IV).

The Court's opinion in quote 1 demonstrates the Court majority's concern about the workability of the *Dr. Miles Medical Co* doctrine: a general consensus has formed that there are problematic procompetitive effects resulting from the precedent.

Quote 2 of the majority opinion describes how components of the argument used in the *Dr. Miles* case are no longer consistent with the case law that has developed since. In other words, this is the inconsistency with Court precedent category. In subsection B of section IV, the Court addresses reliance interests, but asserts that the problems outweigh these reliance interests.

Factors: Workability, inconsistency with Court precedent.

Central Virginia Community College v. Katz (2006) overturned *Hoffman v. Connecticut Department of Income Maintenance* (1989)

Quote 1: "We acknowledge that statements in both the majority and the dissenting opinions in Seminole Tribe of Fla. v. Florida, 517 U.S. 44 (1996), reflected an assumption that

the holding in that case would apply to the Bankruptcy Clause. See also Hoffman v. Connecticut Dept. of Income Maintenance, 492 U.S. 96, 105 (1989) (O'Connor, J., concurring). Careful study and reflection have convinced us, however, that that assumption was erroneous" (Section I*)*

Essentially, with this section, the Court majority in *Central Virginia Community College* is saying that the *Hoffman* Court's interpretation of the bankruptcy clause was 'erroneous'; meaning the constitutional reasoning was flawed. Therefore this falls under the constitutional reasoning/ framer's intention category).

Factor: Constitutionality/ framer's intent.

Roper v. Simmons (2005) overturned *Stanford v. Kentucky* (1989)

Quote 1: "To the extent Stanford was based on review of the objective indicia of consensus that obtained in 1989, 492 U.S., at 370–371, it suffices to note that those indicia have changed" (Section III).

Quote 2: "Last, to the extent Stanford was based on a rejection of the idea that this Court is required to bring its independent judgment to bear on the proportionality of the death penalty for a particular class of crimes or offenders, id., at 377–378 (plurality opinion), it suffices to note that this rejection was inconsistent with prior Eighth Amendment decisions" (Section III)

Quote 1 addresses that public opinion/ the public consensus has changed since *Stanford*. This mention of the changing opinion falls under the changing circumstances standard: the *Roper* Court majority is arguing that since the public opinion/ mood has shifted over time- the standard needs to be changed.

The second quote mentioned the inconsistency with other Eighth Amendment cases. Thus, this would fall under the inconsistency with Court precedent category.

Factors: Changed circumstances, inconsistency with Court precedent.

Crawford v. Washington (2004) overturned *Ohio v. Roberts* (1980)

Quote 1: "First, it is too broad: It applies the same mode of analysis whether or not the hearsay consists of ex parte testimony. This often results in close constitutional scrutiny in cases that are far removed from the core concerns of the Clause. At the same time, however, the test is too narrow: It admits statements that do consist of ex parte testimony upon a mere finding of reliability. This malleable standard often fails to protect against paradigmatic confrontation violations" (Section V)

The quote above focuses on two separate, related concerns that stem from the wording in *Ohio v. Roberts.* The Crawford Court majority is saying how the test is simultaneously too narrow and broad: making it unworkable and in some situations leads to falling outside the meaning of the Constitution. Thus, the categories are workability and constitutionality/ framer's intention.

Factors: Workability, constitutionality/ framer's intent.

Lawrence v. Texas (2003) overturned *Bowers v. Hardwick* (1986)

Quote 1: “there has been no individual or societal reliance on Bowers of the sort that could counsel against overturning its holding” (Section I).

Quote 2: “Bowers itself causes uncertainty, for the precedents before and after its issuance contradict its central holding” (Section I).

Quote 3: “Their right to liberty under the Due Process Clause gives them the full right to engage in their conduct without intervention of the government” (Section I).

Quote 1 involves the Court Majority’s stance that there are no relevant reliance interests supporting Bowers. Quote 2 addresses the inconsistency with Court precedent of the doctrine established in Bowers (before and after the case). Lastly, Quote 3 asserts that Bowers strays from the right to liberty portion of the Due Process Clause of the Constitution. Thus, the third factor for this case is constitutional reasoning/ framer’s intention.

Factors: Absence of reliance interests, inconsistency with Court precedent, constitutionality/ framer’s intent.

Atkins v. Virginia (2002) overturned *Penry v. Lynaugh* (1989)

Quote 1: “in the 13 years since we decided Penry v. Lynaugh, 492 U.S. 302 (1989), the American public, legislators, scholars, and judges have deliberated over the question whether the death penalty should ever be imposed on a mentally retarded criminal. The consensus reflected in those deliberations informs our answer to the question presented by this case: whether such executions are "cruel and unusual punishments" prohibited by the Eighth Amendment to the Federal Constitution” (Syllabus).

Quote 2: “As Penry demonstrated, moreover, reliance on mental retardation as a mitigating factor can be a two-edged sword that may enhance the likelihood that the aggravating factor of future dangerousness will be found by the jury. 492 U.S., at 323-325. Mentally retarded defendants in the aggregate face a special risk of wrongful execution” (Section IV).

Quote 1 involves the Court Majority’s acknowledgement that the general consensus of the public since *Penry* informs the Court’s perception of the case in relation to the cruel and unusual punishment clause of the Constitution, which leads directly into the Court’s perception of *Penry* being unconstitutional. Thus, from this quote, two categories are clear: the use of historical/ modern norms and the constitutional reasoning/ framer’s intention.

Quote 2 involves the Court Majority addressing the potential negative impact of the *Penry* standard on juries. Thus, this falls under the workability factor: where the wording/ natural implication of a standard has a negative consequence on society.

Factors: Norms (modern), constitutional reasoning/ framer’s intent, workability.

Lapides v. Board of Regents of University System of Georgia (2002) overturned *Ford Motor Co. v. Department of Treasury of State of Indiana* (1945)

Quote 1: “A rule of federal law that finds waiver through a state attorney general's invocation of federal-court jurisdiction avoids inconsistency and unfairness. A rule of federal law that, as in Ford, denies waiver despite the state attorney general's state-authorized litigating decision, does the opposite… A rule that finds waiver through a state attorney general's invocation of federal-court jurisdiction avoids inconsistency and unfairness, but a rule that, as in

Ford, denies waiver despite the attorney general's state-authorized litigating decision does the opposite. For these reasons, Clark, Gunter, and Gardner represent the sounder line of authority, and Ford, which is inconsistent with the basic rationale of those cases, is overruled" (Section II).

Quote 1 involves the Court majority's main reason for overturning *Ford Motor Co. v. Department of Treasury of State of Indiana:* that the precedent is inconsistent with a substantial amount of other Court precedent. Thus, this case falls in the inconsistency with Court precedent category. Additionally, the Court addresses the unfairness that stems from the inconsistency created by the *Ford* standard: meaning the wording of the precedent itself established a confusing and unfair standard for people to follow due (specifically because it strays from Court precedent and institutional norms). Thus, the case also involves the workability category.

Factors: Inconsistency with Court precedent, workability.

Ring v. Arizona (2002) overturned *Walton v. Arizona* (1990)

Quote 1: "Walton and Apprendi are irreconcilable; this Court's Sixth Amendment jurisprudence cannot be home to both. Accordingly, Walton is overruled to the extent that it allows a sentencing judge, sitting without a jury, to find an aggravating circumstance necessary for imposition of the death penalty" (Section 585).

Quote 2: "In Walton v. Arizona, 497 U.S. 639 (1990), this Court held that Arizona's sentencing scheme was compatible with the Sixth Amendment because the additional facts found by the judge qualified as sentencing considerations, not as "elementes] of the offense of capital murder." Id., at 649. Ten years later, however, we decided Apprendi v. New Jersey, 530 U.S. 466

(2000), which held that the Sixth Amendment does not permit a defendant to be "expose[d] ... to a penalty… Apprendi's reasoning is irreconcilable with Walton's holding in this regard, and today we overrule Walton in relevant part. Capital defendants, no less than noncapital defendants, we conclude, are entitled to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment" (Section 588).

Quote 1 involves the Court majority in *Ring* acknowledging an inconsistency in Court precedent and thus needing to choose between the doctrine established by *Walton v. Arizona* (1990) versus *Apprendi v. New Jersey* (2002)- ultimately choosing the *Apprendi* standard. Quote 2 is an elaboration as to why the Court decided to stick with *Apprendi:* the Court perceived *Apprendi* to be more in line with the meaning of the Constitution. Thus, this also falls under the constitutional reasoning/ framer's intention category.

Factors: Inconsistency with Court precedent, constitutionality/ framer's intent.

United States v. Cotton (2002) overturned *Ex parte Bain* (1887)

Quote 1: "Ex parte Bain, 121 U.S. 1, the progenitor of the Fourth Circuit's view that the indictment errors are "jurisdictional," is a product of an era in which this Court's authority to review criminal convictions was greatly circumscribed. It could examine constitutional errors in a criminal trial only on a writ of habeas corpus, and only then if it deemed the error "jurisdictional." The Court's desire to correct obvious constitutional violations led to a "somewhat expansive notion of 'jurisdiction,'" Custis v. United States, 511 U.S. 485, 494, which is not what the term means today, i. e., "the courts' statutory or constitutional power to adjudicate

the case," Steel Co. v. Citizens for Better Environment, 523 U.S. 83,89. Because subject-matter jurisdiction involves a court's power to hear a case, it can never be forfeited or waived. Thus, defects require correction regardless of whether the error was raised in district court. But a grand jury right can be waived. Post-Bain cases confirm that" (Section 629).

Quote 1 involves the *United States v. Cotton* Court majority outlining why it overturned *Ex parte Bain*. The Court majority argues that Ex part Bain, a case from the 1880s, is dramatically outdated in purpose; that the role of the Court/ and the precedent alone with it has shifted significantly since *Bain* was decided (changing circumstances). In turn, this created a strong inconsistency with Court precedent between *Bain* and the norm; and brought with it all of the workability issues that stem from interpreting and using a doctrine created in an era with an entirely different understanding of the role of the Court.

Factors: Changed circumstances, inconsistency with Court precedent, workability.

United States v. Hatter (2001) overturned *Evans v. Gore* (1920)

Quote 1: "Although the Compensation Clause prohibits taxation that singles out judges for specially unfavorable treatment, it does not forbid Congress to enact a law imposing a nondiscriminatory tax (including an increase in rates or a change in conditions) upon judges and other citizens. See O'Malley v. Woodrough, 307 U.S. 277, 282. Insofar as Evans v. Gore, 253 U.S. 245, 255, holds to the contrary, that case is overruled" (Section 558).

Quote 1 involves the *United States v. Hatter* Court majority describing the flaw in the interpretation of the Constitution in *Evans v. Gore* in relation to the Compensation Clause. The

Court elaborates substantially on this point in this and in another section (566), but this constitutional reasoning/ framer's intention argument is the only clearly identifiable factor for the case.

Factor: Constitutionality/ framer's intent.

Mitchell v. Helms (2000) overturned *Wolman v. Walter* (1977), *Meek v. Pittenger* (1975)

Quote 1: "Scattered de minimis statutory violations of the restrictions on content, discovered and remedied by the relevant authorities themselves before this litigation began almost 15 years ago, should not be elevated to such a level as to convert an otherwise unobjectionable parishwide program into a law that has the effect of advancing religion" (Section 797).

Quote 2: Justice O'Connor's concurrence: "Indeed, technology's advance since the Allen, Meek, and Wolman decisions has only made the distinction between textbooks and instructional materials and equipment more suspect. In this case, for example, we are asked to draw a constitutional line between lending textbooks and lending computers" (Section 852).

Quote 1 highlights how the precedent ultimately has the effect of advancing religion (an establishment clause concern). In turn, this falls in into the constitutionality/ framer's intent category.

Quote 2 highlights how changing technology has only served to complicate the application of the standard in the precedent cases. This problem stemming from changing technology would fall under the changed circumstances category.

Factors: Constitutionality/ framer's intent, changed circumstances.

College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board (1999) overturned *Parden v. Terminal Railway of Alabama State Docks Department* (1964)

Quote 1: "we said there was "no doubt that Parden's discussion of congressional intent to negate Eleventh Amendment immunity is no longer good law," and overruled Parden "to the extent [it] is inconsistent with the requirement that an abrogation of Eleventh Amendment immunity by Congress must be expressed in unmistakably clear language" (Section 678).

Quote 2: "This Court has never applied Parden's holding to another statute, and in fact has narrowed the case in every subsequent opinion in which it has been under consideration. Even when supplemented by a requirement of unambiguous statement of congressional intent to subject the States to suit, Parden cannot be squared with this Court's cases requiring that a State's express waiver of sovereign immunity be unequivocal, see, e. g., Great Northern Life Ins. Co. v. Read, 322 U.S. 47, and is also inconsistent with the Court's recent decision in Seminole Tribe of Fla. v. Florida… Nor is it relevant that the asserted basis for constructive waiver is conduct by the State that is undertaken for profit" (Section 667).

Quote 1 highlights a central concern of the Court in regards to *Parden*: the confusing language creating workability issues that doubles as an unjustified narrowing of and thus violation of the 11th Amendment; thus the Court tweaks the language/ restriction.

Quote 2 highlights how the precedent hasn't really been used in practice- emphasizing the practical utility concern; and how it is inconsistent with the other Court's cases dealing with the

"immunity be unequivocal" standard- emphasizing the 'inconsistency with Court precedent' factor.

Factors: Constitutionality/ framer's intent, practical utility, workability, and inconsistency with Court precedent.

Minnesota v. Mille Lacs Band of Chippewa Indians (1999) overturned *Ward v. Race Horse* (1896)

Quote 1: "The first part of the Race Horse holding-that the treaty rights conflicted irreconcilably with state natural resources regulation such that they could not survive Wyoming's admission to the Union on an "equal footing" with the 13 original States-rested on a false premise, for this Court has subsequently made clear that a tribe's treaty rights to hunt, fish, and gather on state land can coexist with state natural resources management" (Section 174).

The Court majority in this case, as in part highlighted above, repeatedly emphasized how the previous Court's interpretation of state natural resource regulation/ union admission being a means of forfeiting agreed upon treaties disagrees with subsequent decisions as well as general societal behavior/ perceptions "tribe's treaty rights… can coexist with state natural resources management" (Quote 1).

Factors: Inconsistency with Court precedent, norms (modern).

Hohn v. United States (1998) overturned *House v. Mayo* (1945)

Quote 1: “The argument is also refuted by the recent amendment to § 2244(b)(3)(E) barring certiorari review of court of appeals denials of motions to file second or successive habeas applications, which would have been superfluous were such a motion not a case in the court of appeals for § 1254(1) purposes, see, e. g., Kawaauhau v. Geiger, 523 U.S. 57, 62, and which contrasts tellingly with the absence of an analogous limitation on certiorari review of denials of appealability certificate applications, see, e. g., Bates v. United States, 522 U.S. 23, 29-30. Today's holding conforms the Court's commonsense practice to the statutory scheme, making it unnecessary to invoke the Court's extraordinary jurisdiction in routine cases, which present important and meritorious claims such as Hohn's. Although the decision directly conflicts with the portion of House v. Mayo, 324 U.S. 42,48 (per curiam), holding this Court lacks statutory certiorari jurisdiction to review denials of certificates of probable cause, stare decisis does not require adherence to that erroneous conclusion” (Section 237).

Quote 1 highlights how the *Hohn’s* Court repeatedly emphasized the inconsistency with other Court standards in *House*- clearly emphasizing the inconsistency with Court precedent standard.

Factor: Inconsistency with Court precedent.

Agostini v. Felton (1997) overturned *Aguilar v. Felton* (1985)*, School District of Grand Rapids v. Ball* (1985)

Quote 1: “The stare decisis doctrine does not preclude this Court from recognizing the change in its law and overruling Aguilar and those portions of Ball that are inconsistent with its more recent decisions. E. g., United States v. Gaudin, 515 U.S. 506, 521. Moreover, in light of the Court's conclusion that Aguilar would be decided differently under current Establishment Clause law, adherence to that decision would undoubtedly work a "manifest injustice," such that the law of the case doctrine does not apply” (Section 206).

As shown in quote 1, the *Agostini* Court clearly outlines the inconsistency with Court precedent and contradictory to “Establishment Clause Law” (making it a constitutionality/ framer’s intent issue as well).

Factors: Inconsistency with Court precedent, constitutionality/ framer’s intent.

Hudson v. United States (1997) overturned *United States v. Halper* (1989)

Quote 1: “The Clause protects only against the imposition of multiple criminal punishments for the same offense. See, e. g., Helvering v. Mitchell, 303 U.S. 391,399. Halper deviated from this Court's longstanding double jeopardy doctrine in two key respects. First, it bypassed the traditional threshold question whether the legislature intended the particular successive punishment to be "civil" or "criminal" in nature” (Section 93).

In Quote 1, the Court clearly outlines the faulty interpretation of the legislature’s meaning of successive punishments; and it is inconsistent with the Court’s precedent revolving around the double jeopardy doctrine- making it an inconsistency and constitutionality violation.

Factors: Interpretation of legislation, inconsistency with Court precedent, constitutionality/ framer's intent.

State Oil Co. v. Khan (1997) overturned *Albrecht v. Herald Co* (1968)

Quote 1: "Because Albrecht has been widely criticized since its inception, and the views underlying it have been eroded by this Court's precedent, there is not much of that decision to salvage" (Section 4).

Quote 1 illustrates the Court's emphasis during the case of the incorporation of general public criticism/ societal perceptions of the *Albrecht* given how it conflicts with standard practice. Leading into a general argument beginning at the end of quote 1 that describes how it contradicts with several doctrines proscribed by the Court- thus it fits into the inconsistency standard. If the Court had gone all the way to argue that the standard has been entirely eroded by subsequent decisions, it would fit into the reinforced overturn category– this gets rather close to that.

Factors: Inconsistency with Court precedent, norms (modern).

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44 Liquormart, Inc. v. Rhode Island (1996) overturned *California v. LaRue* (1972)

Quote 1: "Without questioning the holding in LaRue, we now disavow its reasoning insofar as it relied on the Twenty-first Amendment. As we explained in a case decided more than a decade after LaRue, although the Twenty-first Amendment limits the effect of the dormant

Commerce Clause on a State's regulatory power over the delivery or use of intoxicating beverages within its borders, "the Amendment does not license the States to ignore their obligations under other provisions of the Constitution." Capital Cities Cable, Inc. v. Crisp, 467 U.S. 691, 712 (1984)" (Section 516).

As shown in quote 1, the *44 Liquormart* Court emphasized that the limitation on the Commerce Clause providied by *Larue* is not warranted and thus unconstitutional in nature.

Factor: Constitutionality/ framer's intent.

Fulton Corp. v. Faulkner (1996) overturned *Darnell v. Indiana* (1912)*, Kidd v. Alabama* (1903)

Quote 1: "To the extent that Darnell evaluated a discriminatory state tax under the Equal Protection Clause, time simply has passed it by. While we continue to measure the equal protection of economic legislation by a "rational basis" test, see, e. g., FCC v. Beach Communications, Inc., 508 U.S. 307, 313 (1993), we now understand the dormant Commerce Clause to require "justifications for discriminatory restrictions on commerce [to] pass the 'strictest scrutiny" (Section 345).

Quote 1 illustrates how over time the Court has come to interpret the requirements for restricting the Commerce Clause differently (and has applied this new perception to subsequent cases); thus, the precedent is inconsistent with Court precedent and unconstitutional.

Factor: Inconsistency with Court precedent, constitutionality/ framer's intent.

Seminole Tribe of Florida v. Florida (1996) overturned *Pennsylvania v. Union Gas Co.* (1989)

Quote 1: “However, in the five years since it was decided, Union Gas has proved to be a solitary departure from established law” (Section 45).

Quote 2: “Moreover, the deeply fractured decision has created confusion among the lower courts that have sought to understand and apply it” (Section 45).

Quote 3: “hus, Union Gas was wrongly decided and is overruled. The Eleventh Amendment restricts the judicial power under Article III, and Article I cannot be used to circumvent the constitutional limitations placed upon federal jurisdiction” (Section 45).

Quote highlights the inconsistency with Court precedent; quote 2 highlights the problems with the confusing wording for lower Courts (workability), and quote 3 highlights how the precedent circumvented a constitutional limitation- making it a constitutionality/ framer’s intent concern.

Factors: Inconsistency with Court precedent, workability, and constitutionality/ framer’s intent.

Adarand Constructors, Inc. v. Pena (1995) overturned *Metro Broadcasting, Inc. v. Federal Communications Commission* (1990)

Quote 1: “As we have explained, Metro Broadcasting undermined important principles of this Court's equal protection jurisprudence, established in a line of cases stretching back over 50 years, see supra, at 213-225. Those principles together stood for an "embracing" and "intrinsically soun[d]" understanding of equal protection "verified by experience," namely, that

the Constitution imposes upon federal, state, and local governmental actors the same obligation to respect" (Section 231).

Quote 2: "Metro Broadcasting's adoption of different standards of review for federal and state racial classifications placed the law in an "unstable condition," and advocating strict scrutiny across the board" (Section 232).

Quote 1 emphasizes the inconsistency with Court precedent (and how the standard thus contradicts equal protection precedent and is unconstitutional). Quote 2 created a degree of confusingness and diverging consequences that presented workability concerns (and relatedly the constitutional concerns aforementioned).

Factors: Inconsistency with Court precedent, workability, and constitutionality/ framer's intent.

Hubbard v. United States (1995) overturned *United States v. Bramblett* (1955)

Quote 1: "The Bramblett Court erred by giving insufficient weight to the plain language of §§ 6 and 1001 and, instead, broadly interpreting "department" in § 1001 to refer to the Executive, Legislative, and Judicial Branches. Rather than attempting to reconcile its interpretation with the usual meaning of "department"" (Section 696).

Quote 2: "because of the absence of significant reliance interests in adhering to Bramblett on the part of prosecutors and Congress" (Section 696).

Quote 1 emphasizes the misinterpretation of legislation; quote 2 highlights the absence of reliance interests stemming from the precedent.

Factors: Interpretation of legislation, absence of reliance interests.

United States v. Gaudin (1995) overturned *Sinclair v. United States* (1929)*, Kungis v. United States* (1988)

Quote 1: "And we think stare decisis cannot possibly be controlling…its underpinnings eroded, by subsequent decisions of this Court" (Section 521).

Quote 2: "In any event, Kungys assuredly did not involve an adjudication to which the Sixth Amendment right to jury trial attaches, see Luria v. United States, 231 U.S. 9 (1913), and hence had no reason to explore the constitutional ramifications of Sinclair and Abadi, as we do today. Whatever support it gave to the validity of those decisions was obiter dicta, and may properly be disregarded" (Section 522).

Quote 1 emphasizes the inconsistency with subsequent Court decisions while quote 2 emphasizes examination of the constitutional ramifications of the precedent as well.

Factors: Inconsistency with Court precedent, constitutionality/ framer's intent.

Nichols v. United States (1994) overturned *Baldasar v. Illinois* (1980)

Quote 1: "his degree of confusion following a splintered decision such as Baldasar is itself a reason for reexamining that decision" (Section 746).

Quote 2: "Today we adhere to Scott v. Illinois, supra, and overrule Baldasar.12 Accordingly we hold, consistent with the Sixth… and Fourteenth Amendments of the

Constitution, that an uncounseled misdemeanor conviction, valid under Scott because no prison term was imposed, is also valid when used to enhance punishment at a subsequent conviction (Section 748).

Quote 1 emphasizes the confusion (upon elaboration- mostly for lower Court interpretations) presenting workability concerns.

Quote 2 illustrates the Court's perception that *Baldasar's* 'uncounseled misdemeanor conviction' standard was unconstitutional.

Factors: Workability, constitutionality/ framer's intent.

United States v. Dixon (1993) overturned *Grady v. Corbin* (1990)

Quote 1: "Although prosecution under Counts II-V of Foster's indictment would undoubtedly be barred by the Grady "same-conduct" test, Grady must be overruled because it contradicted an unbroken line of decisions, contained less than accurate historical analysis, and has produced confusion. Unlike Blockburger analysis, the Grady test lacks constitutional roots. It is wholly inconsistent with this Court's precedents and with the clear common-law understanding of double jeopardy" (Section 689).

Quote 2: "Unlike Blockburger analysis, whose definition of what prevents two crimes from being the "same offence," U.S. Const., Arndt. 5, has deep historical roots and has been accepted in numerous precedents of this Court, Grady lacks constitutional roots" (Section 704).

Quote 1 illustrates the Court's emphasis throughout the case on the inconsistency of the precedent and- through faulty analysis- incorporation of faulty historical arguments (contradictory to the actual historical norms), and *Grady* having produced confusion for lower Courts- so workability concerns. Quote 2 reinforces these other categories and notes the missing constitutional argument/ existing contradiction that inherently produces constitutional concerns.

Factors: Inconsistency with Court precedent, workability, constitutionality/ framer's intent, historical norms.

Keeney v. Tamayo-Reyes (1992) overturned *Townsend v. Sain* (1963)

Quote 1: "However, in light of more recent decisions of this Court, Townsend's holding in this respect must be overruled…" (Section 5).

Quote 1 emphasizes the inconsistency with Court precedent, which was repeatedly noted and explained throughout the Court's opinion.

Factors: Inconsistency with Court precedent

Planned Parenthood of Southeastern Pennsylvania v. Casey (1992) overturned *Thornburgh v. American College of Obstetricians & Gynecologists* (1986)*, City of Akron v. Akron Center for Reproductive Health, Inc.* (1983)

Quote 1: “To the extent Akron I and Thornburgh find a constitutional violation when the government requires, as it does here, the giving of truthful, nonmisleading information about the nature of the procedure, the attendant health risks and those of childbirth, and the "probable gestational age" of the fetus, those cases go too far, are inconsistent with Roe's acknowledgement of an important interest in potential life, and are overruled” (Section 882).

Quote 2: “The inquiry into reliance counts the cost of a rule's repudiation as it would fall on those who have relied reasonably on the rule's continued application” (Section 855)

Quote 1 illustrates the inconsistency with Roe argument as well as the faulty constitutional argument of the *Akron* and *Thornburgh* Courts (thus reasserting/ defending the constitutionality of *Roe*). Quote 2 emphasizes the reliance interests involved in Roe that had not been addressed by the *Akron* nor *Thornburgh* Courts.

Factors: Inconsistency with Court precedent, constitutionality/ framer’s intent, absence of reliance interests (in the overturned cases, but noting reliance interests in Roe).

Quill Corp v. North Dakota (1992) overturned *National Bellas Hess, Inc. v. Department of Revenue of Illinois* (1967)

Quote 1: “The underlying issue here is one that Congress may be better qualified to resolve and one that it has the ultimate power to resolve” (Section 299).

Quote 1 illustrates the Court’s focus on institutional concerns for the case- emphasizing how Congress is better suited to address the underlying standard than the Court. The *Quill Corp*

Court complimented the standard but rejected the role of the Court on the this interstate commerce issue.

Factor: Constitutionality/ framer's intent.

California v. Acevedo (1991) overturned *Arkansas v. Sanders* (1979)

Quote 1: "Although we have recognized firmly that the doctrine of stare decisis serves profoundly important purposes in our legal system, this Court has overruled a prior case on the comparatively rare occasion when it has bred … We conclude that it is better to adopt one clear-cut rule to govern automobile searches and eliminate the warrant requirement for closed containers set forth in Sanders" (Page 500 U.S. 579).

Quote 1 illustrates the Court's attempt to establish a "clear-cut rule" as opposed to the confusing standard outlined in *Sanders*- a concern emphasizing workability issues.

Factor: Workability,

Coleman v. Thompson (1991) overturned *Fay v. Noia* (1963)

Quote 1: "The several cases after Fay that applied the cause and prejudice standard to a variety of state procedural defaults represent a different view" (Page 501 U.S. 750).

Quote 2: "Fay was based on a conception of federal/state relations that undervalued the importance of state procedural rules" (Page 501 U.S. 750).

Quote 1 illustrates the precedent's inconsistency with subsequent decisions, while quote 2 illustrates the institutional role concerns (and thus the constitutional/ framer's intent category concerns).

Factors: Inconsistency with Court precedent, constitutionality/ framer's intent.

Exxon Corp v. Central Gulf Lines, Inc. (1991) overturned *Minturn v. Maynard* (1855)

Quote 1: "Because there is no per se exception of agency contracts from admiralty jurisdiction, Minturn is overruled. Minturn is incompatible with current principles of admiralty jurisdiction over contracts" (Page 500 U.S. 603).

Quote 1 illustrates the inconsistency with Court precedent caused by *Minturn*; this central argument was repeatedly emphasized and elaborated on throughout the Court majority opinion.

Factor: Inconsistency with Court precedent.

Payne v. Tennessee (1991) overturned *South Carolina v. Gathers* (1987)*, Booth v. Maryland* (1987)

Quote 1: "Booth and Gathers were decided by the narrowest of margins, over spirited dissents challenging their basic underpinnings; have been questioned by Members of this Court in later decisions; have defied consistent application by the lower courts" (Page 501 U.S. 810).

Quote 2: "Considerations in favor of stare decisis are at their acme in cases involving property and contract rights, where reliance interests are involved… the opposite is true in cases, such as the present one, involving procedural and evidentiary rules" (Page 501 U.S. 828).

Quote 1 illustrates the inconsistency with Court precedent; the 'defied consistent application' was elaborated on later in the Court's argument to be caused by clarity issues in the standard- thus meaning workability concerns. Quote 2 emphasizes the absence of reliance interests in this case.

Factors: Inconsistency with Court precedent, workability, absence of reliance interests.

Collins v. Youngblood (1990) overturned *Thompson v. Utah* (1898)*, Kring v. Missouri* (1883)

Quote 1: "Kring v. Missouri, 107 U.S. 221, and Thompson v. Utah, supra, are inconsistent with the understanding of the term "ex post facto law" at the time the Constitution was adopted, rely on reasoning that this Court has not followed since Thompson was decided, and have caused confusion in state and lower federal courts about the Clause's scope. Kring and Thompson are therefore overruled" (Page 497 U.S. 38).

Quote 1 emphasizes the precedent's inconsistency with other Court decisions about ex post facto law (and in doing so produces an unconstitutional standard); the quote also illustrates a central argument repeatedly noted in the case about the confusion for lower Courts stemming from this inconsistency and poorly defined standard- meaning the *Collins* Court also had workability concerns.

Factors: Inconsistency with Court precedent, constitutionality/ framer's intent, workability.

W. S. Kirkpatrick & Co. v. Environmental Tectonics Corp (1990) overturned *American Banana Co. v. United Fruit Co.* (1909)

Quote 1: “whatever support the dictum might provide for petitioners' position is more than overcome by our later holding in United States v. Sisal Sales Corp., 274 U.S. 268 (1927). There we held that, American Banana notwithstanding, the defendant's actions in obtaining Mexico's enactment of "discriminating legislation" could form part of the basis for suit under the United States antitrust laws. 274 U.S. at 274 U.S. 276. Simply put, American Banana was not” (Page 493 U.S. 406).

Quote 1 illustrates the Court majority’s perception that the precedent misinterpreted a Congressional statue/ that “discriminating legislation” could form part of the basis for suit under the United States antitrust laws”; the Court majority also notes the inconsistency with other Court precedent in several ways.

Factors: Interpretation of legislation, inconsistency with Court precedent.

Alabama v. Smith (1989) overturned *North Carolina v. Pearce* (1969)*, Simpson v. Rice* (1968)

Quote 1: “Part of the reason for now reaching a conclusion different from that reached in Simpson v. Rice, therefore, is the later development of this constitutional law relating to guilty pleas. Part is the Court's failure in Simpson to note the greater amount of sentencing information that a trial generally affords as compared to a guilty plea” (Page 490 U.S. 803).

Quote 2: “Because the Pearce presumption "may operate in the absence of any proof of an improper motive, and thus . . . block a legitimate response to criminal conduct” (Page 490 U.S. 799).

Quote 1 emphasizes the inconsistency with subsequent Court precedent, while quote 2 illustrates a workability issue that stems from the standard (blocking a “legitimate response to criminal conduct”).

Factors: Inconsistency with Court precedent, workability.

Healy v. The Beer Institute (1989) overturned *Joseph E. Seagram & Sons, Inc. v. Hostetter* (1966)

Quote 1: “Appellants' reliance on Seagram, supra, to validate the statute is also foreclosed by Brown-Forman, 476 U.S. at 476 U.S. 581-584, and n. 6, which strictly limited Seagram's scope and removed the underpinnings of its Commerce Clause analysis. To the extent that it held that retrospective affirmation statutes do not facially violate the Commerce Clause, Seagram is no longer good law, since such statutes, like other affirmation statutes, have the inherent practical extraterritorial effect of regulating liquor prices in other States” (Page 491 U.S. 325).

Quote 1 highlights the Court’s focus on the Commerce Clause (constitutional) concerns of the precedent and reinforcing the overturn from *Brown-Forman* in this interpretation.

Factors: Reinforced overturn, constitutionality/ framer’s intent.

Rodriguez de Quijas v. Shearson/American Express, Inc. (1989) overturned *Wilko v. Swan* (1953)

Quote 1: "Wilko is overruled. It was incorrectly decided, and is inconsistent with the prevailing uniform construction of other federal statutes governing arbitration agreements in the setting of business transactions" (Page 490 U.S. 477).

Quote 2: "Although the decision to overrule Wilko establishes a new principle of law, the ruling furthers the purpose and effect of the Arbitration Act without undermining those of the Securities Act; it does not produce substantial inequitable results" (Page 490 U.S. 478).

Quote 1 illustrates the Court's argument about inconsistency with Court precedent, while quote 2 highlights the "substantial inequitable results" that will be fixed by changing the standard. This addressing of the inequity complication/ consequence of the precedent falls into the workability category.

Factors: Inconsistency with Court precedent, workability

Thornburgh v. Abbott (1989) overturned *Procunier v. Martinez* (1974)

Quote 1: "The Court's decision to apply a reasonableness standard in these cases, rather than Martinez' less deferential approach, stemmed from its concern that language in Martinez might be too readily understood as establishing a standard of "strict" or "heightened" scrutiny, and that such a strict standard simply was not appropriate for consideration of regulations that are centrally concerned with the maintenance of order and security within prisons" (Page 490 U.S. 409).

Quote 2: “This peculiar bifurcation of the constitutional standard governing communications between inmates and outsiders is unjustified” (Page 490 U. S. 424).

Quote 1, in the context of discussing several cases that are inconsistent with the standard in *Martinez*, the Court goes onto side with the other precedents due to constitutional/ workability concerns in part highlighted in quote 2: the unjustified bifurcation presented confusion for Court interpretations and potential constitutional concerns.

Factors: Inconsistency with Court precedent, constitutionality/ framer’s intent, workability

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Gulfstream Aerospace Corp. v. Mayacamas Corp. (1988) overturned *Ettelson v. Metropolitan Life Insurance Co. & Enelow v. New York Life Insurance Co.* (1935)

Quote 1: “Enelow-Ettelson doctrine is overruled, since it is based on outmoded procedural differentiations and produces arbitrary and anomalous results in modern practice” (Page 485 U.S. 272).

Quote 2: “Two orders may involve similar issues and produce similar consequences, and yet one will be appealable, whereas the other will not” (Page 485 U.S. 286).

Quote 1 is part of a broader discussion of the Court about the significantly different procedural differentiations based largely on the role of the Court/ norms about its role; it was decided under different assumptions and circumstances (hence the term ‘outmoded’ used by the Court). Thus, this is categorized as changed circumstances; a potential argument can be made for inconsistency with Court precedent instead. Quote 2 highlights the workability issues: two

similar cases with different consequences is inherently problematic for Court interpretations and the general functionality of the precedent (it does not work properly in practice).

Factors: Changed circumstances, workability.

South Carolina v. Baker (1988) overturned *Pollock v. Farmers' Loan & Trust Co.* (1895)

Quote 1: "Court's holding in Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, that state bond interest was immune from a nondiscriminatory federal tax, but that decision has been effectively overruled by subsequent case law" (Page 485 U.S. 506).

Quote 2: "That rationale has been repudiated by modern intergovernmental tax immunity case law, and the government contract immunities have been, one by one, overruled. The owners of state bonds have no constitutional entitlement not to pay taxes on income they earn from the bonds" (Page 485 U.S. 506).

Quote 1 highlights the precedent's inconsistency with subsequent cases; quote 2 illustrates the disagreement with the constitutionality claim of the previous Court.

Factors: Inconsistency with Court precedent, constitutionality/ framer's intent.

Puerto Rico v. Branstad (1987) overturned *Kentucky v. Dennison* (1861)

Quote 1: "However, the Dennison holding as to the federal courts' authority to enforce the Extradition Clause rested on a fundamental premise -- that the States and the Federal

Government in all circumstances must be viewed as coequal sovereigns -- which is not representative of current law. It has long been a settled principle that federal courts may enjoin unconstitutional action by state officials. Considered de novo, there is no justification for distinguishing the duty to deliver fugitives from the many other species of constitutional duty enforceable in the federal courts" (Page 482 U.S. 219).

Quote 2: "Yet, with respect to extradition, the law has remained as it was more than a century ago. Considered de novo, there is no justification for distinguishing the duty to deliver fugitives from the many other species of constitutional duty enforceable in the federal courts… The explicit and long-settled nature of the command, contained in a constitutional provision and a statute substantially unchanged for 200 years, eliminates the possibility that state officers will be subjected to inconsistent direction." (Page 483 U.S. 228).

Quote 1 illustrates inconsistency with the "long…settled principle that federal courts may enjoin unconstitutional action by state officials"- a common practice and understanding from the Court, while quote 2 tackles the constitutional authority claim more directly in supporting and overturn of *Dennison.*

Factors: Inconsistency with Court precedent, constitutionality/ framer's intent.

Solorio v. United States (1987) overturned *O'Callahan v. Parker* (1969)

Quote 1: "The plain meaning of Art. I, § 8, cl. 14, of the Constitution -- which grants Congress plenary power "[t]o make Rules for the Government and Regulation of the land and

naval Forces" -- supports the military status test, as was held in numerous decisions of this Court prior to O'Callahan" (Page 483 U.S. 435).

Quote 1 illustrates the Court's interpretation of the Constitution (contesting the interpretation of the previous Court) and describes the inconsistency of the *O'Callahan* precedent with cases prior to it.

Factors: Constitutionality/ framer's intent, inconsistency with Court precedent.

Tyler Pipe Industries, Inc. v. Washington State Department of Revenue (1987) overturned *General Motors Corp v. Washington* (1964)

Quote 1: "Washington's manufacturing tax discriminates against interstate commerce in violation of the Commerce Clause because, through the operation of the multiple activities exemption, the tax is assessed only on those products manufactured in Washington that are sold to out-of-state customers" (Page 483 U.S. 232).

In quote 1, the Court directly contests the constitutionality of the manufacturing tax. This is the central argument used in the case.

Factor: Constitutionality/ framer's intent

Welch v. Texas Department of Highways & Public Transportation (1987) overturned *Parden v. Terminal Railway of Alabama State Docks Department* (1964)

Quote 1: “It should not be easily inferred that Congress, in legislating pursuant to one article of the Constitution, intended to effect an automatic and compulsory waiver of rights arising under another. Only when Congress has clearly considered the problem and expressly declared that any State which undertakes given regulable conduct will be deemed thereby to have waived its immunity should courts disallow the invocation of this defense” (Page 483 U.S. 477,

Quote 1 illustrates the Court’s perception about Congress’s institutional role for waiving the immunity standard. This institutional claim fits into the broader picture category of constitutionality/ framer’s intent.

Factor: Constitutionality/ framer’s intent.

Batson v. Kentucky (1986) overturned *Swain v. Alabama* (1965)

Quote 1: “By denying a person participation in jury service on account of his race, the State also unconstitutionally discriminates against the excluded juror” (Page 476 U.S. 79)

Quote 2: “This evidentiary formulation is inconsistent with equal protection standards subsequently developed in decisions relating to selection of the jury venire. A defendant may make a prima facie showing of purposeful racial discrimination in selection of the venire by relying solely on the facts concerning its selection in his case” (Page 476 U.S. 80)

Illustrated in quote 1, the Court explicitly states the constitutionality problem of *Swain*. Quote 2 highlights the inconsistency with other equal protection cases.

Factors: Inconsistency with Court precedent, constitutionality/ framer’s intent.

Daniels v. Williams (1986) overturned *Parrat v. Taylor* (1981)

Quote 1: "To hold that injury caused by such conduct is a deprivation within the meaning of the Due Process Clause would trivialize the centuries-old principle of due process of law. Parratt v. Taylor, 451 U.S. 527, overruled to the extent that it states otherwise" (Page 474 U.S. 327)

Quote 1 illustrates the Court's heavy concern with the due process implications of *Parrat*; thus, the primary argument fits under the constitutionality/ framer's intent category.

Factor: Constitutionality/ framer's intent.

Garcia v. San Antonio Metropolitan Transit Authority (1985) overturned *National League of Cities v. Usery* (1976)

Quote 1: "The attempt to draw the boundaries of state regulatory immunity in terms of "traditional governmental functions" is not only unworkable but is also inconsistent with established principles of federalism and, indeed, with those very federalism principles on which National League of Cities purported to rest. That case, accordingly, is overruled" (Page 469 U.S. 528).

Quote 1 illustrates the Court's explicit tackling of the workability concerns from the precedent and the broader institutional role question/ argument (which falls into the constitutionality/ framer's intent category).

Factors: Workability, constitutionality/ framer's intent.

United States v. Miller (1985) overturned *Ex parte Bain* (1887)

Quote 1: "Modern criminal law has generally accepted that an indictment will support each offense contained within it. To the extent Bain stands for the proposition that it constitutes an unconstitutional amendment to drop from an indictment those allegations that are unnecessary to an offense that is clearly contained within it, that case has simply not survived. To avoid further confusion, we now explicitly reject that proposition… Rejecting this aspect of Bain is hardly a radical step, however, given that, in the years since Bain, this Court has largely ignored this element of the case" (Page 471 U.S. 144).

Quote 1 illustrates the Court's perception that the constitutional interpretation was faulty in Bain and that this interpretation is inconsistent modern criminal law (which the Court outlined thoroughly later in the majority opinion/ outlining cases the precedent contradicts).

Factors: Constitutionality/ framer's intent, inconsistency with Court precedent.

Copperweld Corp v. Independence Tube Corp. (1984) overturned *United States v. Yellow Cab Co.* (1947)

Quote 1: "The Court's opinion relies on Appalachian Coals, Inc. v. United States, 288 U.S. 344 (1933); however, examination of that case reveals that it gives very little support for the

broad doctrine Yellow Cab has been thought to announce. On the contrary, the language of Chief Justice Hughes speaking for the Court in Appalachian Coals supports a contrary conclusion" (Page 467 U.S. 762).

Quote 2: "The ambiguity of the Yellow Cab holding yielded the one case giving support to the intra-enterprise conspiracy doctrine" (Page 467 U.S. 763).

Quote 3: "Later cases invoking the intra-enterprise conspiracy doctrine do little more than cite Yellow Cab or Kiefer-Stewart, and in none of the cases was the doctrine necessary to the result reached" (Page 467 U.S. 764).

In Quote 1, the Court highlights how *Yellow Cab Co* is actually inconsistent with a standard that was cited by the precedent's Court. Quotes 2 and 3 highlight the ambiguity of the *Yellow Cab Co* factor and how that is related to the fact it was never applied (thus simultaneously the workability and practical utility categorizations).

Factors: Inconsistency with Court precedent, workability, practical utility.

Limbach v. Hooven & Allison Co. (1984) overturned *Hooven & Allison Co v. Evatt* (1945)

Quote 1: "Thus, Hooven I is inconsistent with Michelin, and although not expressly overruled in Michelin, must be regarded as retaining no vitality since the Michelin decision, and accordingly is overruled to the extent that it espoused the original-package doctrine" (Page 466 U.S. 354).

Quote 1 illustrates how the *Hooven & Allison Co* Court perceived the *Evatt* precedent to have already been entirely overturned via *Michelin*; thus, the Court is making explicit that overturn/ reinforcing it.

Factor: Reinforced overturn.

Pennhurst State School & Hospital v. Halderman (1984) overturned *Rolston v. Missouri Fund Commissioners* (1887)

Quote 1: " The Court included many of the cases upon which the dissent relies in its list of cases that were rejected by Larson… E.g., Rolston v. Missouri Fund Commissioners" (Footnote 27).

Quote 1 illustrates how the Court perceives the standard set in *Rolston* to have been picked apart piece by piece in cases after it- meaning it is essentially overturned. Thus, this is a reinforced overturn of that case (making it explicit/ clear).

Factor: Reinforced overturn.

United States v. One Assortment of 89 Firearms (1984) overturned *Coffey v. United States* (1886)

Quote 1: "We hold that a gun owner's acquittal on criminal charges involving firearms does not preclude a subsequent in rem forfeiture proceeding against those firearms under § 924(d). Neither collateral estoppel nor the Double Jeopardy Clause affords a doctrinal basis for

such a rule of preclusion, and we reject today the contrary rationale of Coffey v. United States, 116 U.S. 436 (1886)" (Page 465 U.S. 354).

Quote 1 illustrates the Court's rejection of the constitutional reasoning (about the Double Jeopardy Clause) in *Coffey.*

Factors: Constitutionality/ framer's intent

Bob Jones University v. United States (1983) overturned *Plessy v. Ferguson* (1896)

Quote 1: "Few social or political issues in our history have been more vigorously debated and more extensively ventilated than the issue of racial discrimination, particularly in education. Given the stress and anguish of the history of efforts to escape from the shackles of the "separate but equal" doctrine of Plessy v. Ferguson, 163 U.S. 537 (1896), it cannot be said that educational institutions that, for whatever reasons, practice racial discrimination, are institutions exercising "beneficial and stabilizing influences in community life," Walz v. Tax Comm'n, 397 U.S. 664, 397 U.S. 673 (1970), or should be encouraged by having all taxpayers share in their support by way of special tax status" (Page 461 U.S. 595).

Quote 1 illustrates how the *Bob Jones* Court perceived the *Plessy* precedent to have already been entirely overturned by cases after it; thus, the Court is making explicit that overturn/ reinforcing it.

Factor: Reinforced overturn.

Illinois v. Gates (1983) overturned *Spinelli v. United States* (1969)*, Aguilar v. Texas* (1964)

Quote 1: "This flexible, easily applied standard will better achieve the accommodation of public and private interests that the Fourth Amendment requires than does the approach that has developed from Aguilar and Spinelli" (Page 462 U.S. 214).

Quote 1 illustrates that the Court overturns the standard from *Spinelli* and *Aguilar* in an attempt to make a more constitutionally sound/ clearer standard.

Factors: Constitutionality/ framer's intent.

Sporhase v. Nebraska ex rel. Douglas (1982) overturned *Hudson County Water Co. v. McCarter* (1908)

Quote 1: "Second, the State argued that the statute regulated groundwater, and that groundwater is not an article of commerce, citing Geer v. Connecticut, 161 U.S. 519 (1896), and Hudson County Water Co. v. McCarter, 209 U.S. 349 (1908). The court rejected this argument since the statute directly regulated the interstate transportation of water that had been pumped from the ground" (Page 458 U.S. 948).

Quote 2: "That theory, upon which the Commerce Clause issue in Hudson County was decided, was rejected by the District Court in City of Altus" (Page 458 U.S. 950).

Quotes 1 and 2 illustrate how the Court is making explicit that the standard established in *Hudson County Water Co* has been overturned in other cases (making explicit that overturn/ reinforcing the cases that do it).

Factor: Reinforced overturn.

United States v. Ross (1982) overturned *Robbins v. California* (1981)*, Arkansas v. Sanders *in part** (1979)

Quote 1: "Other courts also have read the Sanders opinion in different ways. [Footnote 4] Moreover, disagreement concerning the proper interpretation of Sanders was at least partially responsible for the fact that Robbins v. California, 453 U.S. 420, was decided last Term without a Court opinion. There is, however, no dispute among judges about the importance of striving for clarification in this area of the law" (Page 456 U.S. 803).

Quote 2: "moreover, it is clear that no legitimate reliance interest can be frustrated by our decision today" (Page 456 U.S. 824).

Quote 1 highlights the Court's perception that there is a significant degree of "clarification in this area of the law" that is needed; while quote 2 highlights the absence of reliance interests.

Factors: Workability, absence of reliance interests.

Commonwealth Edison Co. v. Montana (1981) overturned *Heisler v. Thomas Colliery Co.* (1922)

Quote 1: “A state severance tax is not immunized from Commerce Clause scrutiny by a claim that the tax is imposed on goods prior to their entry into the stream of interstate commerce. Any contrary statements in Heisler” (Page 453 U.S. 609).

Quote 2: “ Heisler's reasoning has been undermined by more recent cases. The Heisler analysis evolved at a time when the Commerce Clause was thought to prohibit the States from imposing any direct taxes on interstate commerce” (Page 453 U.S. 614).

Quote 1 highlights the Court’s confrontation of the constitutional arguments made in *Heisler;* while quote 2 highlights that *Heisler* was inconsistent with subsequent decisions.

Factors: Constitutionality/ framer’s intent, inconsistency with Court precedent.

Trammel v. United States (1980) overturned *Hawkins v. United States* (1958)

Quote 1: “Since 1958, when Hawkins was decided, support for the privilege against adverse spousal testimony has been eroded further. Thirty-one jurisdictions, including Alaska and Hawaii, then allowed an accused a privilege to prevent adverse spousal testimony… The trend in state law toward divesting the accused of the privilege to bar adverse spousal testimony has special relevance because the laws of marriage and domestic relations are concerns traditionally reserved to the states” (Page 445 U.S. 48).

This quote illustrates a broader argument made by the Court majority in this case: that the norms during the times of the *Hawkins* standard have been ‘eroded’ with time; and that the specific exception conflicts with traditional states rights/ roles (fitting into the broader institutional/ constitutionality concern).

Factors: Constitutionality/ framer's intent, changing circumstances (changing norms)

United States v. Salvucci (1980) overturned *Jones v. United States* (1960)

Quote 1: "The underlying assumption for such "vice of prosecutorial self-contradiction" that possession of seized goods is the equivalent of Fourth Amendment "standing" to challenge the search creates too broad a gauge for measurement of Fourth Amendment rights. Rather, it must be asked not merely whether the defendant has a possessory interest in the items seized, but also whether he had an expectation of privacy in the area searched" (Page 448 U.S. 84).

Quote 1 highlights the Court's focus on the constitutionality concern of the precedent/ incorporating the newer standard involving the 'expectation of privacy.'

Factor: Constitutionality/ framer's intent.

Hughes v. Oklahoma (1979) overturned *Geer v. Connecticut* (1896)

Quote 1: "Challenges under the Commerce Clause to state regulations of wild animals should be considered according to the same general rule applied to state regulations of other natural resources" (Page 441 U.S. 322),

Quote 2: "The view of the Geer dissenters increasingly prevailed in subsequent cases. Indeed, not only has the Geer analysis been rejected when natural resources other than wild game

were involved, but even state regulations of wild game have been held subject to the strictures of the Commerce Clause under the pretext of distinctions from Geer" (Page 441 U.S. 329).

Quote 1 & 2 highlights the Court's focus on the inconsistency of *Greer's* standard in light of other natural resource applications; furthermore, the quotes briefly get into the general argument the Court is making that the "stage regulation of wild animals" should be subject to the "strictures of the Commerce Clause"/ a broader constitutionality argument.

Factors: Inconsistency with Court precedent, constitutionality/ framer's intent.

Burks v. United States (1978) overturned *Forman v. United States* (1960)*, Yates v. United States* (1957)*, Bryan v United States* (1950)

Quote 1: "Nonetheless, as the discussion in 437 U.S. supra, indicates, our past holdings do not appear consistent with what we believe the Double Jeopardy Clause commands. A close reexamination of those precedents, however, persuades us that they have not properly construed the Clause, and accordingly should no longer be followed" (Page 437 U.S. 12).

Quote 1 highlights the Court's central argument about the constitutionality of the precedents overturned in this case/ disagreeing with their interpretations of the Double Jeopardy Clause- a constitutional concern/ question.

Factor: Constitutionality/ framer's intent.

Department of Revenue v. Ass'n of Washington Stevedoring Cos. (1978) overturned *Joseph v. Carter & Weekes Stevedoring Co.* (1947)*, Puget Sound Stevedoring Co. v. State Tax Commission* (1937).

Quote 1: "he majority considered petitioner's argument that recent cases had eroded the holdings in the Stevedoring Cases" (Page 435 U.S. 742).

Quote 2: "to begin with, our rejection of the Stevedoring Cases does not effect a significant present change in the law. The primary alteration occurred in Complete Auto" (Page 435 U.S. 749).

Quote 3: "Consistent with Complete Auto, then, we hold that the Washington business and occupation tax does not violate the Commerce Clause by taxing the interstate commerce activity of stevedoring" (Page 435 U.S. 749).

Quote 1 highlighted the inconsistency of the two precedents overturned in this case with subsequent cases after their decisions, quote 2 addresses the fact that these cases have been essentially overturned in good part already (thus this is a reinforced overturn), and quote 3 illustrates the general constitutional argument for sticking with *Complete Auto*.

Factors: Inconsistency with Court precedent, reinforced overturn, constitutionality/ framer's intent.

Monell v. Department of Social Services (1978) overturned *Monroe v. Pape* (1961)

Quote 1: “In Monroe v. Pape, supra, after examining the legislative history of the Civil Rights Act of 1871, now codified as 42 U.S.C. § 1983, and particularly the rejection of the so-called Sherman amendment, the Court held that Congress, in 1871, doubted its constitutional authority to impose civil liability on municipalities, and therefore could not have intended to include municipal bodies within the class of "persons" subject to the Act. Reexamination of this legislative history compels the conclusion that Congress, in 1871, would not have thought § 1983 constitutionally infirm if it applied to local governments. In addition, that history confirms that local governments were intended to be included among the "persons" to which § 1983 applies. Accordingly, Monroe v. Pape is overruled insofar as it holds that local governments are wholly immune from suit under § 1983” (Page 436 U.S. 659).

Quote 2: “this Court's many cases holding school boards liable in § 1983 actions are inconsistent with Monroe” (Page 436 U.S. 659).

Quote 3: “municipalities cannot have arranged their affairs on an assumption that they can violate constitutional rights for an indefinite period; accordingly, municipalities have no reliance interest that would support an absolute immunity” (Page 436 U.S. 659).

Quote 1 shows the *Monell* Court’s disagreement with *Monroe’s* interpretation of the Congressional legislation; quote 2 highlights the inconsistency with other precedents; quote 3 highlights the constitutional concern contesting *Monroe* as well as the absence of reliances interests for this case.

Factors: Interpretation of legislation, inconsistency with Court precedent, constitutionality/ framer’s intent, and reliance interests.

United States v. Scott (1978) overturned *United States v. Jenkins* (1975)

Quote 1: "occurred only three Terms ago, our vastly increased exposure to the various facets of the Double Jeopardy Clause has now convinced us that Jenkins was wrongly decided" (Page 437 U.S. 87).

Quote 1 illustrates the Court's concise central argument for overturning *Jenkins* (on the ground of a different constitutional interpretation).

Factor: Constitutionality/ framer's intent.

Complete Auto Transit, Inc. v. Brady (1977) overturned *Spector Motor Service v. O'Connor* (1955)

Quote 1: "Spector Motor Service, Inc. v. O'Connor that a state tax on the "privilege of doing business" is per se unconstitutional when it is applied to interstate commerce, and that case is overruled" (Page 430 U.S. 289).

Quote 1 illustrates the Court's concise central argument for overturning *Spector* (on the ground of a different constitutional interpretation).

Factor: Constitutionality/ framer's intent.

Continental T.V., Inc. v. GTE Sylvania (1977) overturned *United States v. Arnold, Schwinn & Co.* (1967)

Quote 1: "we are convinced that the need for clarification of the law in this area justifies reconsideration. Schwinn itself was an abrupt and largely unexplained departure from White Motor Co. v. United States, 372 U.S. 253 (1983), where, only four years earlier, the Court had refused to endorse a per se rule for vertical restrictions. Since its announcement, Schwinn has been the subject of continuing controversy and confusion, both in the scholarly journals and in the federal courts" (Page 433 U.S. 47).

Quote 1 highlights the Court majority's perception that *Arnold, Schwinn & Co* is inconsistent with other Court precedent and that it produced a degree of controversy and confusion- an argument that comfortably fits into the workability category.

Factors: Inconsistency with Court precedent, workability.

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*Oregon ex rel. State Land Board v. Corvallis Sand & Gravel Co. (*1977) overturned *Bonelli Cattle Co. v. Arizona* (1973)

Quote 1: " Those courts understandably felt that our recent decision in Bonelli Cattle Co. v. Arizona, 414 U.S. 313 (1973), required that they ascertain and apply principles of federal common law to the controversy. Twenty-six States have joined in three amicus briefs urging that we reconsider Bonelli, supra, because of what they assert is its significant departure from long-established precedent in this Court" (Page 429 U.S. 366).

Quote 2: “Our error, as we now see it, was to view the equal-footing doctrine enunciated in Pollard's Lessee v. Hagan as a basis upon which federal common law could supersede state law in the determination of land titles” (Page 429 U.S. 371).

Quote 1 highlights this Court’s argument that *Bonelli* was inconsistent with “long-established precedent in this Court”; quote 2 highlights the institutional implications/ complications caused by placing federal common law over state law (which fits into a broader constitutional/ framer’s intent category/ conversation).

Factors: Inconsistency with Court precedent, constitutionality/ framer’s intent.

Shaffer v. Heitner (1977) overturned *Pennoyer v. Neff* (1878)

Quote 1: “Pennoyer itself recognized that its rigid categories, even as blurred by the kind of action typified by Harris, could not accommodate some necessary litigation. Accordingly, Mr. Justice Field's opinion carefully noted that cases involving the personal status of the plaintiff, such as divorce actions, could be adjudicated in the plaintiff's home State even though the defendant could not be served within that State” (Page 433 U.S. 201).

Quote 2: “The overwhelming majority of commentators have also rejected Pennoyer's premise that a proceeding "against" property is not a proceeding against the owners of that property” (Page 433 U.S. 205).

Quote 1 highlights the Court’s concern and confusion with the applicability of the standard from *Pennoyer* (which is a workability concern); while quote 2 highlights the “overwhelming majority of commentators” speaking negatively about the precedent- thus taking

in general feedback from the public on the subject. That being said, this either can be spun to mean the general perception on the subject/ how society perceives it, or- if the Court meant amicus briefs or other judges– then it would carry a different classification.

Factors: Workability, norms (modern).

City of New Orleans v. Dukes (1976) overturned *Morey v. Doud* (1957)

Quote 1: "The grandfather provision does not violate the Equal Protection Clause of the Fourteenth Amendment. Morey v. Doud, supra, overruled" (Page 427 U.S. 297).

Quote 2: "Morey v. Doud, as the dissenters in that case correctly pointed out, see 354 U.S. at 354 U.S. 474-475 (Frankfurter, J., joined by Harlan, J., dissenting), was a needlessly intrusive judicial infringement on the State's legislative powers" (Page 427 U.S. 306).

Quotes 1 & 2 illustrate the Court's arguments in support of overturning *Morey*, both involving constitutional issues/ categorizations.

Factors: Constitutionality/ framer's intent.

Craig v. Boren (1976) overturned *Goesaert v. Cleary* (1948)

Quote 1: "Undoubtedly reflecting the view that Goesaert's equal protection analysis no longer obtains, the District Court made no reference to that decision in upholding Oklahoma's statute" (Footnote 23).

Quote 1 illustrates the heavy focus by the *Craig* Court on the equal protections implications of *Goesaert* (as a reason for overturning the case), which can be categorized as constitutionality/ framer's intent.

Factor: Constitutionality/ framer's intent.

Dove v. United States (1976) "ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT." overturned *Durham v. United States* (1971)

Quote 1: "The Court is advised that the petitioner died at New Bern, N.C., on November 14, 1975. The petition for certiorari is therefore dismissed. To the extent that Durham v. United States, 401 U.S. 481 (1971), may be inconsistent with this ruling, Durham is overruled" (Page 423 U.S. 325).

Quote 1 shows all that was said in the case. No argument was made.

Factor: No reasoning was given.

Gregg v. Georgia (1976) overturned *McGautha v. California* (1971)

Quote 1: "We note that McGautha's assumption that it is not possible to devise standards to guide and regularize jury sentencing in capital cases has been undermined by subsequent experience. In view of that experience and the considerations set forth in the text, we adhere to Furman's determination" (Footnote 47).

Quote 1 illustrates the Court's perception that *McGautha* is inconsistent with subsequent decisions. To be clear, the Court did not make any argument to say that the constitutional reasoning in Furman was better- just that it should be the deciding precedent for Eighth Amendment issues.

Factor: Inconsistency with Court precedent.

Hudgens v. National Labor Relations Board (1976) overturned *Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc.* (1968)

Quote 1: "But the fact is that the reasoning of the Court's opinion in Lloyd cannot be squared with the reasoning of the Court's opinion in Logan Valley. It matters not that some Members of the Court may continue to believe that the Logan Valley case was rightly decided. Our institutional duty is to follow until changed the law as it now is" (Page 424 U.S. 518).

Quote 1 highlights the Court's argument that *Amalgamated Food Employees Union Local 590* is inconsistent with the Court's opinion in "Logan Valley". That was the central reasoning for overturning *Amalgamated* (inconsistency).

Factor: Inconsistency with Court precedent.

Lodge 76, International Association of Machinists & Aerospace Workers v. Wisconsin Employment Relations Commission (1976) overturned *International Union, U.A.W.A. v. Wisconsin Employment Relations Board* (1949)

Quote 1: “Briggs-Stratton "stands as a significant departure from our . . . emphasis upon the Congressional policy" central to the statutory scheme it has enacted, and since our later decisions make plain that Briggs-Stratton "does not further but rather frustrates realization of an important goal of our national labor policy” (Page 427 U.S. 154).

Quote 1- and the sections that follow in the Court opinion- highlights the Court majority’s perception that the *U.A.W.A.* case was inconsistent with other Court cases (both prior to and after the decision).

Factor: Inconsistency with Court precedent.

Michelin Tire Corp. v. Wages (1976) overturned *Low v. Austin* (1872)

Quote 1: “Commentators have uniformly agreed that Low v. Austin misread this dictum in holding that the Court in Brown included nondiscriminatory ad valorem property taxes among prohibited "imposts" or "duties," for the contrary conclusion is plainly to be inferred from consideration of the specific abuses which led the Framers to include the Import-Export” (Page 423 U.S. 282).

Quote 1 highlights how the Court majority believes the *Low v. Austin* Court to have misinterpreted *Brown* making it inconsistent with that precedent; and, relatedly, the Court argues the precedent is contrary to the framer’s intention.

Factors: Inconsistency with Court precedent, constitutionality/ framer’s intent.

National League of Cities v. Usery (1976) overturned *Maryland v. Wirtz* (1968)

Quote 1: "Congress may not exercise its power to regulate commerce so as to force directly upon the States its choices as to how essential decisions regarding the conduct of integral governmental functions are to be made" (Page 426 U.S. 833).

Quote 1 involves the *Usery* Court's perception that *Wirtz* presented institutional role concerns; which places this central argument under the constitutionality/ framer's intent category.

Factor: Constitutionality/ framer's intent.

Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc. (1976) overturned *Valentine v. Chrestensen* (1942)

Quote 1: "the expression in Valentine v. Chrestensen, 316 U.S. 52, 316 U.S. 54-55 (1942), to the effect that "purely commercial advertising" is not protected had been tempered, by later decisions of this Court, to the point that First Amendment interests in the free flow of price information could be found to outweigh the countervailing interests of the State" (Page 425 U.S. 755).

Quote 2: "Today the Court ends the anomalous situation created by Chrestensen and holds that a communication which does no more than propose a commercial transaction is not "wholly outside the protection of the First Amendment" (Page 425 U.S. 776).

Quote 1 illustrates the Court's perception that *Chrestensen* is inconsistent with subsequent decision; and quote 2 shows the Court contesting the "outside the protection of the First Amendment" stated in the precedent case (thus arguing a constitutional concern).

Factors: Inconsistency with Court precedent, constitutionality/ framer's intent.

Taylor v. Louisiana (1975) overturned *Hoyt v. Florida* (1961)

Quote 1: "But Hoyt did not involve a defendant's Sixth Amendment right to a jury drawn from a fair cross-section of the community and the prospect of depriving him of that right if women as a class are systematically excluded. The right to a proper jury cannot be overcome on merely rational grounds" (Page 419 U.S. 534).

Quote 1 clearly shows this Court's perception that the standard outlined in *Hoyt* is unconstitutional (the Court elaborates on this argument heavily throughout the majority opinion).

Factor: Constitutionality/ framer's intent.

United States v. Reliable Transfer Co. (1975) overturned *The Schooner Catherine v. Dickinson* (1854)

Quote 1: "It was against this background that, in 1855, this Court adopted the rule of equal division of damages in The Schooner Cathrine v. Dickinson, 17 How. 170. The rule was adopted because it was then the prevailing rule in England, because it had become the majority

rule in the lower federal courts, and because it seemed the "most just and equitable, and . . . best [tended] to induce care and vigilance on both sides, in the navigation." Id. at 58 U.S. 177-178. There can be no question that subsequent history and experience have conspicuously eroded the rule's foundations… Indeed, the United States is now virtually alone among the world's major maritime nations in not adhering to the Convention with its rule of proportional fault" (Page 421 U.S. 402).

Quote 1 highlights the *Reliable Transfer Co* Court majority predominantly focusing on the international norms of behavior as a central argument for overturning *The Schooner Catherine v. Dickinson.*

Factor: International norms (categorized with the modern norms subset in the data).

Edelman v. Jordan (1974) overturned *Sterrett v. Mothers' & Children's Rights Organization* (1973)*, State Department of Health & Rehabilitative Services v. Zarate* (1972)*, Wyman v. Bowens* (1970)*, Shapiro v. Thompson* (1969)

Quote 1: "Having now had an opportunity to more fully consider the Eleventh Amendment issue after briefing and argument, we disapprove the Eleventh Amendment holdings of those cases" (Page 415 U.S. 671).

Quote 1 illustrates the Edelman Court's clear focus on the Eleventh Amendment interpretation in the precedent cases; reevaluating the constitutional interpretation.

Factor: Constitutionality/ framer's intent.

Braden v. 30th Judicial Circuit Court (1973) overturned *Ahrens v. Clark* (1948)

Quote 1: "Today the Court overrules Ahrens v. Clark, 335 U.S. 188 (1948), which construed the legislative intent of Congress in enacting the lineal predecessor of 28 U.S.C. § 2241. Although considerations of "convenience" may support the result reached in this case, those considerations are, in this context, appropriate for Congress, not this Court, to make" (Page 410 U.S. 502).

Quote 1 highlights the *Braden* Court's concern about the problematic institutional roles stemming from *Ahrens* (which is part of a broader constitutional/ framer's intent category of institutional roles).

Factor: Constitutionality/ framer's intent.

Lehnhausen v. Lake Shore Auto Parts Co (1973) overturned *Quaker City Cab Co. v. Pennsylvania* (1928)

Quote 1: "While Quaker City Cab came after Flint, cases following Quaker City Cab have somewhat undermined it" (Page 410 U.S. 362).

Quote 2: "Quaker City Cab Co. v. Pennsylvania is only a relic of a bygone era. We cannot follow it and stay within the narrow confines of judicial review, which is an important part of our constitutional tradition" (Page 410 U.S. 364).

Quote 1 highlights the inconsistency of *Quaker City Cab Co* with subsequent cases; while quote 2 illustrates the Court's perception that *Quaker* causes problems in using judicial review- an important institutional rule/ component of the Court's behavior. The perception of judicial review as a component of the Court's institutional role per the framer's intention is debatable, however, so this category description is not particularly confident. Either way, the precedent conflicted with the Court's institutional role (so this should be categorized as either constitutionality/ framer's intent or norms).

Factors: Inconsistency with Court precedent, constitutionality/ framer's intent.

Miller v. California (1973) overturned *A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General* (1966)

Quote 1: "But now the Memoirs test has been abandoned as unworkable by its author" (Page 413 U.S. 22).

Quote 1 involves the most concise point where the *Miller* Court addressed the essential problem with *Memoirs*: that it was unworkable in practice. The Court argued this was the case for several reasons- particularly that the precedent's standard/ test could never technically be applied in practice because of the problematic wording.

Factors: Workability.

North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc (1973) overturned *Louis K. Liggett Co. v. Baldridge* (1928)

Quote 1: "In Daniel, however, we stated that "a pronounced shift of emphasis since the Liggett case," 336 U.S. at 336 U.S. 225, had deprived the words "unreasonable" and "arbitrary" of the meaning which Liggett ascribed to them" (Page 414 U.S. 164).

Quote 2: "The Liggett case was a creation at war with the earlier constitutional view of legislative power" (Page 414 U.S. 167).

Quote 1 highlights *Louis K. Liggett Co*'s inconsistency with subsequent Court cases: though this particular quote does not list these other cases, the Court thoroughly goes through these other cases elsewhere in the majority opinion. Quote 2 highlights the Court majority's clear main argument contesting the constitutional implications of *Louis K. Liggett Co.*

Factors: Inconsistency with Court precedent, constitutionality/ framer's intent.

Andrews v. Louisville & Nashville Railroad Co (1972) overturned *Moore v. Illinois Central Railroad Co.* (1941)

Quote 1: "Later cases from this Court have repudiated the reasoning advanced in support of the result reached in Moore" (Page 406 U.S. 322).

Quote 2: "Provision for arbitration of a discharge grievance, a minor dispute, is not a matter of voluntary agreement under the Railway Labor Act; the Act compels the parties to

arbitrate minor disputes before the National Railroad Adjustment Board established under the Act" (Page 406 U.S. 322)

The Court also addresses several ways in which the precedent has already been overturned- and then reinforces those arguments (Page 406 U.S. 322).

Quotes 1 & 3 highlight the Court majority arguing the inconsistency with Court precedent and the reinforced overturn of the precedent; while quote addresses the faulty interpretation of legislation done by the *Moore* Court.

Factors: Inconsistency with Court precedent, reinforced overturn, interpretation of legislation.