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United States v. Morrison: The Supreme Court Declares 42 U.S.C. §13981 Unconstitutional

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Summary

In *United States v. Morrison*, the Supreme Court considered the constitutionality of 42 U.S.C. §13981, which provided a federal civil cause of action to any victim of gender-motivated violence. Analyzing §13981 according to the framework delineated in *United States v. Lopez*, the Court held that gender motivated violence is not a commercial activity and is not substantially connected to interstate commerce, rendering the statute invalid under the Commerce Clause. The Court further determined that, since it targeted private actors, §13981 was outside the scope of the Fourteenth Amendment.

Determining that widespread and pervasive acts of gender-motivated violence have a deleterious effect on the national economy and interstate commerce by removing women from the workplace, discouraging interstate travel, and reducing productivity, Congress enacted the Violence Against Women Act (VAWA) in 1994, pursuant to its authority to "regulate commerce...among the several States," as well as Section 5 of the Fourteenth Amendment.¹ Among the various criminal and civil provisions of the Act was 42 U.S.C. §13981, which established a substantive right to be free from crimes of violence motivated by gender, and created a private cause of action against anyone who commits such a crime, allowing an injured party to obtain damages and other compensatory relief.²

In *United States v. Morrison*, the plaintiff brought suit under §13981 against two men who allegedly assaulted and raped her, asserting that her right to be free from gender-motivated violence had been violated.³ Considering the statute pursuant to the strictures of *United States v. Lopez*, the Supreme Court affirmed the decision of the Court of Appeals for the Fourth Circuit, holding that the statute violated both the Commerce Clause

¹ *United States v. Morrison*, 2000 WL 574361, *1 (U.S.). The Vote in *Morrison* was 5 to 4, with Chief Justice Rehnquist writing the majority opinion. Justice Thomas issued a concurring opinion advocating rejection of the substantial effects test. *Id.* at *17.

² *Id.*; 42 U.S.C. §13981.

³ *Morrison*, 2000 WL 574361 at *1; *United States v. Lopez*, 514 U.S. 549 (1995).

and Section 5 of the Fourteenth Amendment.⁴ The Court's decision in *Morrison* settles the conflict among the lower courts regarding the validity of the Act. More importantly, though, the holding serves as a much needed clarification of *Lopez*, where the Supreme Court determined, for the first time in sixty years, that a federal statute exceeded the scope of congressional power under the Commerce Clause.⁵ In *Lopez*, the Supreme Court adjusted the judiciary's traditional approach to Commerce Clause analysis, maintaining that while the history of Commerce Clause jurisprudence represented an expansive interpretation of federal Commerce Clause power, the judiciary maintained the ability to enforce limits on that power.⁶ Specifically at issue was whether 18 U.S.C. §922(q), a federal statute prohibiting the possession of a firearm on school grounds, exceeded congressional authority. Arguing that the statute was a valid exercise of Commerce Clause power, the government contended that the possession of guns in school zones had a serious impact on interstate commerce by leading to violent crime and a plethora of other social ills. Addressing these arguments, Chief Justice Rehnquist discussed the judicially enforceable limits of the Commerce Clause, delineating three categories of activity which come within its ambit. First, Congress possesses the authority to regulate the use of the channels of interstate commerce. Second, Congress may regulate the instrumentalities of interstate commerce, or persons or things in interstate commerce. Finally, Congress may also regulate activities which have a substantial relation to, and effect on, interstate commerce.⁷ In applying these standards to the case before it, the Supreme Court determined that §922(q) was neither a regulation of the instrumentalities or channels of interstate commerce, making the determination of the case hinge on the "substantial effects" test.⁸ In conducting its analysis under this category, the Court identified four major problems with the regulation at issue. First, it was determined that §922(q) was a criminal statute which, by its terms, had no connection with commerce or any sort of economic enterprise, and did not play an essential role in a larger regulatory scheme. Secondly, the Supreme Court also found it significant that there was no jurisdictional element in the statute, which would ensure that firearm possession affected interstate commerce in a particular case. Third, the Court stated that the lack of congressional findings regarding the impact of the offense on the national economy detracted from any substantial relation it might have to interstate commerce. Finally, the Court held that if a regulation based on such expansive reasoning was upheld, it would "convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States."⁹ Determining that the substantial effects doctrine delineated in *Lopez* was controlling, the Supreme Court in *Morrison* first noted that §13981 could not be classified as a regulation of economic activity. In particular, the court explained that "gender-motivated crimes are not, in any sense of the phrase, economic activity."¹⁰ Furthermore, the court stressed that, while it was not adopting a categorical rule "against aggregating the effects of any

⁴ *Morrison*, 2000 WL 574361 at *1. See also, *Brzonkala v. Virginia Polytechnic Institute and State University*, 169 F.3d 820 (4th Cir. 1999).

⁵ 514 U.S. 549.

⁶ *Id.*

⁷ *Id.* at 558.

⁸ *Id.* at 559.

⁹ *Id.* at 561-567.

¹⁰ *Morrison*, 2000 WL 574361 at *8.

noneconomic activity,” its prior precedent has “upheld Commerce Clause regulation of interstate activity only where that activity is economic in nature.”¹¹ Turning to the second prong of the *Lopez* analysis, the Court noted that, like the Gun-Free School Zones Act, §13981 lacked a “jurisdictional element establishing that the federal cause of action is in pursuance of Congress’ power to regulate interstate commerce.”¹² Stating that the presence of such a jurisdictional element would support the argument that a sufficient link existed between gender-motivated violence and interstate commerce, the Court noted that “Congress elected to cast §13981’s remedy over a wider, and more purely intrastate, body of violent crime.”¹³

The court then discussed the importance of congressional findings regarding the effects of gender-motivated violence on the national economy and interstate commerce. While noting that §13981 was indeed supported by “numerous findings,” the Court stressed it’s declaration in *Lopez* that “[s]imply because Congress may conclude that a particular activity substantially affects interstate commerce does not necessarily make it so.” Rather, according to the court, legislative findings serve to clarify the relationship between the regulation at issue and interstate commerce, with the constitutionality of the law ultimately hinging on the legal aspects of the substantial effects doctrine.¹⁴ Applying this maxim, the Court held that the congressional findings made in support of §13981 were constitutionally insufficient. In particular, the court explained that while voluminous findings were made regarding the deleterious economic effects of violence against women, they were weakened by the fact that they were predicated on a line of reasoning the Court had “already rejected as unworkable if we are to maintain the Constitution’s enumeration of powers.”¹⁵ In reaching this conclusion, the Court addressed the argument that §13981 was justified in light of the fact that gender-motivated violence leads to higher medical costs and discourages economic interaction in areas and fields seen as susceptible to such violence, thereby inhibiting productivity and reducing the demand for interstate products.¹⁶ The Court rejected these justifications, declaring that they were identical to the reasoning deemed unacceptable in *Lopez*, and, if accepted, would imbue Congress with the power “to regulate any crime as long as the nationwide, aggregated impact of that crime has substantial effects on employment, production, transit, or consumption.” Further, the Court noted that if §13981 were upheld, Congress would necessarily have the power to regulate all types of violence, given that gender-motivated violence, “as a subset of all violent crime,” would have a smaller economic impact “than the larger class of which it is a part.”¹⁷ Expanding upon this observation, the Court noted that to allow such regulation of a noneconomic activity would enable federal regulation of almost any activity, including “family law and other areas of traditional state regulation since the aggregate effect of marriage, divorce, and childbearing on the national economy is undoubtedly significant.” The Court also noted that Congress itself recognized this possibility, leading it to expressly

¹¹ *Id.* at *9.

¹² *Id.* at *10.

¹³ *Id.* at *10.

¹⁴ *Id.* at *10.

¹⁵ *Id.* at *10.

¹⁶ *Id.* at *10.

¹⁷ *Id.* at *10.

prohibit the application of §13981 in the family law context. The Court was unpersuaded by this self imposed limitation, stating that “the limitation of congressional authority is not a matter of legislative grace.”¹⁸

In light of these factors, the Court rejected the argument that “Congress may regulate noneconomic, violent criminal conduct based solely on that conduct’s aggregate effect on interstate commerce,” further declaring that “the Constitution requires a distinction between what is truly national and what is truly local.”¹⁹ The Court stressed that this maxim “preserves one of the few principles that has been consistent since the clause was adopted,” namely that “the regulation and punishment of intrastate violence that is not directed at the instrumentalities, channels or goods involved in interstate commerce has always been the province of the States.”²⁰

Having rejected the validity of §13981 on Commerce Clause grounds, the Court next addressed the question of whether the provision could be upheld pursuant to Congress’ remedial power under Section 5 of the Fourteenth Amendment. The Court began by stating that Section 5 establishes that Congress may enforce the constitutional guarantee that a State may not deprive any person of “‘life liberty or property, without due process of law,’ nor deny any person ‘equal protection of the laws.’”²¹ In asserting Section 5 authority for enacting the civil remedy provision of the Act, Congress relied on a “voluminous congressional record in determining “that there is pervasive bias in various state justice systems against victims of gender-motivated violence.” The Court noted that supporters of §13981 maintain that this bias results in insufficient investigation and prosecution, denying victims of such violence equal protection of the laws, enabling Congress to enact a “private civil remedy against perpetrators of gender-motivated violence to both remedy the States’ bias and deter future instances of discrimination in the state courts.”²²

Reaffirming prior cases establishing that state-sponsored gender discrimination is violative of the Fourteenth Amendment, the Court stressed that the language and purpose of the Amendment “place certain limitations on the manner in which Congress may attack discriminatory conduct” that are “necessary to prevent the Fourteenth Amendment from obliterating the Framers’ carefully crafted balance of power between the States and National Government.”²³ The most important of these limitations, according to the Court, is the maxim that the Amendment extends only to state action, and cannot be used to target “‘merely private conduct, however discriminatory or wrongful.’”²⁴ Rejecting the argument that “recent cases have in effect overruled this longstanding limitation on Congress’ §5 authority,” the Court again declared that governmental action under the

¹⁸ *Id.* at *11.

¹⁹ *Id.* at *11.

²⁰ *Id.* at *11.

²¹ *Id.* at *12 (quoting *City of Boerne v. Flores*, 521 U.S. 507, 517 (1997)).

²² *Morrison*, 2000 WL 574361 at *12.

²³ *Id.*

²⁴ *Id.* (quoting *Shelley v. Kraemer*, 334 U.S. 1, 13 (1948)).

Fourteenth Amendment must be corrective in nature, and designed to counteract and redress the operation of unconstitutional state action.²⁵

The Court also dismissed the argument that “gender-based disparate treatment by state authorities” justified §13981. Specifically, the Court declared that the remedy was not corrective in nature, and did not directly target the perceived state discrimination. Clarifying this point, the Court explained that §13981 “visits no consequence whatever on any...public official involved in investigating or prosecuting” an allegation of gender-motivated violence, placing the provision outside the scope of any Section 5 remedy previously upheld by the Court.²⁶ Further, the Court found it significant that §13981 applied “uniformly throughout the Nation”, irrespective of the fact that the congressional findings supporting the provision indicated that the “problem of discrimination against the victims of gender-motivated crimes does not exist in all States, or even most States.”²⁷ Because of these characteristics, the Court held that “Congress’ power under §5 does not extend to the enactment of §13981.”²⁸ Having rejected the validity of §13981 on both Commerce Clause and Fourteenth Amendment grounds, the Court concluded its disposition of the case by stating that “no civilized system of justice could fail to provide” victims of gender-motivated violence with a remedy. The Court stressed, though, that “under our federal system that remedy must be provided by” the states, as opposed to the federal government.²⁹

The dissent, written by Justice Souter and joined by Justices Stevens, Ginsburg and Breyer, disagreed with the majority's application of the substantial effects test pursuant to *Lopez*.³⁰ Specifically, Justice Souter maintained that Congress has the power to regulate any activity that, in the aggregate, has a substantial effect on interstate commerce, and further, that the existence of such substantial effects is not a question for the courts.³¹ Distinguishing §13981 from *Lopez*, Justice Souter stated that the large body of congressional findings regarding the effects of violence against women on interstate commerce established an explicit predicate for governmental regulation.³² In particular, the dissent maintained that “the sufficiency of the evidence before Congress to provide a rational basis for the finding cannot seriously be questioned.”³³ The dissent went on to argue that regulation was justified, given that such violence would have a detrimental

²⁵ *Morrison*, 2000 WL 574361 at *14.

²⁶ *Id.* at *16.

²⁷ *Id.* at *17.

²⁸ *Id.* at *17.

²⁹ *Id.* at *17.

³⁰ *Id.* at *18. Justice Breyer also penned a dissent, joined by Justice Stevens, and joined in part by Justices Souter and Ginsberg. This opinion largely echoes the points made by Justice Souter, and questions the Court’s reasoning regarding its rejection of congressional authority for §13981 on Fourteenth Amendment grounds. *Id.* at *30.

³¹ *Id.* at *18.

³² *Id.* at *20.

³³ *Id.* at *20.

effect on the economy akin to the production of wheat for home consumption at issue in *Wickard v. Filburn*.³⁴

The dissent then asserted that §13981 would have been deemed valid at any point “between *Wickard* in 1942 and *Lopez* in 1995, a period in which the law enjoyed a stable understanding that congressional power under the Commerce Clause...extended to all activity that...has a substantial effect on interstate commerce.”³⁵ Justice Souter opined that the fact that §13981 was not upheld indicated that the majority was adhering to the substantial effects test only nominally, suggesting “that the...analysis is not a factual enquiry, for Congress in the first instance with subsequent judicial review looking only to the rationality of the congressional conclusion, but one of a rather different sort, dependent upon a uniquely judicial competence.”³⁶ Building on this interpretation, Justice Souter surmised that whereas early Commerce Clause jurisprudence maintained a “formalistic distinction” between commercial and noncommercial activities to further laissez-faire economics, the Court’s rejection of §13981 employed “categorical formalism” to further a “conception of federalism.”³⁷ Criticizing this approach, the dissent argued that prior law repudiated the notion that the “traditional state concern” theory could support a limit on the Congress’ Commerce Clause power. The dissent also argued that in addition to improperly relying on “state spheres of action in commerce analysis,” the Court mistakenly rejected the precept that “politics, not judicial review, should mediate between state and national interests.”³⁸ In support of this point, Justice Souter maintained that the Court erred in not giving weight to the fact that a majority of states expressly supported the civil remedy, thus forcing them “to enjoy the new federalism whether they want it or not.”³⁹ The dissent also asserted that the Court’s decision blurred the substantial effects test to such a degree that ensuing cases would have to be reviewed ad hoc.⁴⁰

In closing, the dissent stated that the Court was ignoring the “facts of integrated national commerce and a political relationship between States and Nation much affected by their respective treasuries and constitutional modifications adopted by the people. The federalism of some earlier time is no more adequate to account for those facts today than the theory of laissez-faire was able to govern the national economy 70 years ago.”⁴¹

³⁴ *Id.* at *21.

³⁵ *Id.* at *21.

³⁶ *Id.* at *22.

³⁷ *Id.* at *24-25.

³⁸ *Id.* at *26.

³⁹ *Id.* at *29.

⁴⁰ *Id.* at *30.

⁴¹ *Id.* at *30.

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