

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

Nos. 99–5 and 99–29

99–5 UNITED STATES, PETITIONER
v.
ANTONIO J. MORRISON ET AL.

99–29 CHRISTY BRZONKALA, PETITIONER
v.
ANTONIO J. MORRISON ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[May 15, 2000]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

In these cases we consider the constitutionality of 42 U. S. C. §13981, which provides a federal civil remedy for the victims of gender-motivated violence. The United States Court of Appeals for the Fourth Circuit, sitting en banc, struck down §13981 because it concluded that Congress lacked constitutional authority to enact the section’s civil remedy. Believing that these cases are controlled by our decisions in *United States v. Lopez*, 514 U. S. 549 (1995), *United States v. Harris*, 106 U. S. 629 (1883), and the *Civil Rights Cases*, 109 U. S. 3 (1883), we affirm.

I

Petitioner Christy Brzonkala enrolled at Virginia Polytechnic Institute (Virginia Tech) in the fall of 1994. In

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September of that year, Brzonkala met respondents Antonio Morrison and James Crawford, who were both students at Virginia Tech and members of its varsity football team. Brzonkala alleges that, within 30 minutes of meeting Morrison and Crawford, they assaulted and repeatedly raped her. After the attack, Morrison allegedly told Brzonkala, “You better not have any . . . diseases.” Complaint ¶22. In the months following the rape, Morrison also allegedly announced in the dormitory’s dining room that he “like[d] to get girls drunk and . . .” *Id.*, ¶31. The omitted portions, quoted verbatim in the briefs on file with this Court, consist of boasting, debased remarks about what Morrison would do to women, vulgar remarks that cannot fail to shock and offend.

Brzonkala alleges that this attack caused her to become severely emotionally disturbed and depressed. She sought assistance from a university psychiatrist, who prescribed antidepressant medication. Shortly after the rape Brzonkala stopped attending classes and withdrew from the university.

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

Virginia Tech’s dean of students upheld the judicial committee’s sentence. However, in July 1995, Virginia Tech informed Brzonkala that Morrison intended to initiate a court challenge to his conviction under the Sexual Assault Policy. University officials told her that a second hearing would be necessary to remedy the school’s error in prosecuting her complaint under that policy, which had

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not been widely circulated to students. The university therefore conducted a second hearing under its Abusive Conduct Policy, which was in force prior to the dissemination of the Sexual Assault Policy. Following this second hearing the Judicial Committee again found Morrison guilty and sentenced him to an identical 2-semester suspension. This time, however, the description of Morrison's offense was, without explanation, changed from "sexual assault" to "using abusive language."

Morrison appealed his second conviction through the university's administrative system. On August 21, 1995, Virginia Tech's senior vice president and provost set aside Morrison's punishment. She concluded that it was "excessive when compared with other cases where there has been a finding of violation of the Abusive Conduct Policy," 132 F. 3d 950, 955 (CA4 1997). Virginia Tech did not inform Brzonkala of this decision. After learning from a newspaper that Morrison would be returning to Virginia Tech for the fall 1995 semester, she dropped out of the university.

In December 1995, Brzonkala sued Morrison, Crawford, and Virginia Tech in the United States District Court for the Western District of Virginia. Her complaint alleged that Morrison's and Crawford's attack violated §13981 and that Virginia Tech's handling of her complaint violated Title IX of the Education Amendments of 1972, 86 Stat. 373–375, 20 U. S. C. §§1681–1688. Morrison and Crawford moved to dismiss this complaint on the grounds that it failed to state a claim and that §13981's civil remedy is unconstitutional. The United States, petitioner in No. 99–5, intervened to defend §13981's constitutionality.

The District Court dismissed Brzonkala's Title IX claims against Virginia Tech for failure to state a claim upon which relief can be granted. See *Brzonkala v. Virginia Polytechnic and State Univ.*, 935 F. Supp. 772 (WD Va. 1996). It then held that Brzonkala's complaint stated a

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claim against Morrison and Crawford under §13981, but dismissed the complaint because it concluded that Congress lacked authority to enact the section under either the Commerce Clause or §5 of the Fourteenth Amendment. *Brzonkala v. Virginia Polytechnic and State Univ.*, 935 F. Supp. 779 (WD Va. 1996).

A divided panel of the Court of Appeals reversed the District Court, reinstating Brzonkala's §13981 claim and her Title IX hostile environment claim.¹ *Brzonkala v. Virginia Polytechnic and State Univ.*, 132 F. 3d 949 (CA4 1997). The full Court of Appeals vacated the panel's opinion and reheard the case en banc. The en banc court then issued an opinion affirming the District Court's conclusion that Brzonkala stated a claim under §13981 because her complaint alleged a crime of violence and the allegations of Morrison's crude and derogatory statements regarding his treatment of women sufficiently indicated that his crime was motivated by gender animus.² Nevertheless, the court by a divided vote affirmed the District Court's conclusion that Congress lacked constitutional authority to enact §13981's civil remedy. *Brzonkala v. Virginia Polytechnic and State Univ.*, 169 F. 3d 820 (CA4 1999). Because the Court of Appeals invalidated a federal statute on constitutional grounds, we granted certiorari. 527 U. S. 1068 (1999).

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¹The panel affirmed the dismissal of Brzonkala's Title IX disparate treatment claim. See 132 F. 3d, at 961–962.

²The en banc Court of Appeals affirmed the District Court's conclusion that Brzonkala failed to state a claim alleging disparate treatment under Title IX, but vacated the District Court's dismissal of her hostile environment claim and remanded with instructions for the District Court to hold the claim in abeyance pending this Court's decision in *Davis v. Monroe County Bd. of Ed.*, 526 U. S. 629 (1999). *Brzonkala v. Virginia Polytechnic and State Univ.*, 169 F. 3d 820, 827, n. 2 (CA4 1999). Our grant of certiorari did not encompass Brzonkala's Title IX claims, and we thus do not consider them in this opinion.

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Section 13981 was part of the Violence Against Women Act of 1994, §40302, 108 Stat. 1941–1942. It states that “[a]ll persons within the United States shall have the right to be free from crimes of violence motivated by gender.” 42 U. S. C. §13981(b). To enforce that right, subsection (c) declares:

“A person (including a person who acts under color of any statute, ordinance, regulation, custom, or usage of any State) who commits a crime of violence motivated by gender and thus deprives another of the right declared in subsection (b) of this section shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate.”

Section 13981 defines a “crim[e] of violence motivated by gender” as “a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim’s gender.” §13981(d)(1). It also provides that the term “crime of violence” includes any

“(A) . . . act or series of acts that would constitute a felony against the person or that would constitute a felony against property if the conduct presents a serious risk of physical injury to another, and that would come within the meaning of State or Federal offenses described in section 16 of Title 18, whether or not those acts have actually resulted in criminal charges, prosecution, or conviction and whether or not those acts were committed in the special maritime, territorial, or prison jurisdiction of the United States; and

“(B) includes an act or series of acts that would constitute a felony described in subparagraph (A) but for the relationship between the person who takes such action and the individual against whom such action is taken.” §13981(d)(2).

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Further clarifying the broad scope of §13981's civil remedy, subsection (e)(2) states that "[n]othing in this section requires a prior criminal complaint, prosecution, or conviction to establish the elements of a cause of action under subsection (c) of this section." And subsection (e)(3) provides a §13981 litigant with a choice of forums: Federal and state courts "shall have concurrent jurisdiction" over complaints brought under the section.

Although the foregoing language of §13981 covers a wide swath of criminal conduct, Congress placed some limitations on the section's federal civil remedy. Subsection (e)(1) states that "[n]othing in this section entitles a person to a cause of action under subsection (c) of this section for random acts of violence unrelated to gender or for acts that cannot be demonstrated, by a preponderance of the evidence, to be motivated by gender." Subsection (e)(4) further states that §13981 shall not be construed "to confer on the courts of the United States jurisdiction over any State law claim seeking the establishment of a divorce, alimony, equitable distribution of marital property, or child custody decree."

Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution. "The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the constitution is written." *Marbury v. Madison*, 1 Cranch 137, 176 (1803) (Marshall, C. J.). Congress explicitly identified the sources of federal authority on which it relied in enacting §13981. It said that a "federal civil rights cause of action" is established "[p]ursuant to the affirmative power of Congress . . . under section 5 of the Fourteenth Amendment to the Constitution, as well as under section 8 of Article I of the Constitution." 42 U. S. C. §13981(a). We address Congress' authority to enact this remedy under each of these constitutional provisions in turn.

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II

Due respect for the decisions of a coordinate branch of Government demands that we invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds. See *United States v. Lopez*, 514 U. S., at 568, 577–578 (KENNEDY, J., concurring); *United States v. Harris*, 106 U. S., at 635. With this presumption of constitutionality in mind, we turn to the question whether §13981 falls within Congress’ power under Article I, §8, of the Constitution. Brzonkala and the United States rely upon the third clause of the Article, which gives Congress power “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”

As we discussed at length in *Lopez*, our interpretation of the Commerce Clause has changed as our Nation has developed. See *Lopez*, 514 U. S., at 552–557; *id.*, at 568–574 (KENNEDY, J., concurring); *id.*, at 584, 593–599 (THOMAS, J., concurring). We need not repeat that detailed review of the Commerce Clause’s history here; it suffices to say that, in the years since *NLRB v. Jones & Laughlin Steel Corp.*, 301 U. S. 1 (1937), Congress has had considerably greater latitude in regulating conduct and transactions under the Commerce Clause than our previous case law permitted. See *Lopez*, 514 U. S., at 555–556; *id.*, at 573–574 (KENNEDY, J., concurring).

Lopez emphasized, however, that even under our modern, expansive interpretation of the Commerce Clause, Congress’ regulatory authority is not without effective bounds. *Id.*, at 557.

“[E]ven [our] modern-era precedents which have expanded congressional power under the Commerce Clause confirm that this power is subject to outer limits. In *Jones & Laughlin Steel*, the Court warned that the scope of the interstate commerce power ‘must

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be considered in the light of our dual system of government and may not be extended so as to embrace effects upon interstate commerce so indirect and remote that to embrace them, in view of our complex society, would effectually obliterate the distinction between what is national and what is local and create a completely centralized government.” *Id.*, at 556–557 (quoting *Jones & Laughlin Steel*, *supra*, at 37).³

As we observed in *Lopez*, modern Commerce Clause jurisprudence has “identified three broad categories of activity that Congress may regulate under its commerce power.” 514 U. S., at 558 (citing *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U. S. 264, 276–277 (1981); *Perez v. United States*, 402 U. S. 146, 150 (1971)). “First, Congress may regulate the use of the channels of interstate commerce.” 514 U. S., at 558 (citing *Heart of Atlanta Motel, Inc. v. United States*, 379 U. S. 241, 256 (1964); *United States v. Darby*, 312 U. S. 100, 114 (1941)). “Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities.” 514 U. S., at 558 (citing *Shreveport Rate Cases*, 234 U. S. 342 (1914); *Southern R. Co. v. United States*, 222 U. S. 20 (1911); *Perez*, *supra*, at 150). “Finally, Congress’ commerce

³ JUSTICE SOUTER’s dissent takes us to task for allegedly abandoning *Jones & Laughlin Steel* in favor of an inadequate “federalism of some earlier time.” *Post*, at 15–17, 29. As the foregoing language from *Jones & Laughlin Steel* makes clear however, this Court has always recognized a limit on the commerce power inherent in “our dual system of government.” 301 U. S., at 37. It is the dissent’s remarkable theory that the commerce power is without judicially enforceable boundaries that disregards the Court’s caution in *Jones & Laughlin Steel* against allowing that power to “effectually obliterate the distinction between what is national and what is local.” *Ibid.*

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authority includes the power to regulate those activities having a substantial relation to interstate commerce, . . . *i.e.*, those activities that substantially affect interstate commerce.” 514 U. S., at 558–559 (citing *Jones & Laughlin Steel, supra*, at 37).

Petitioners do not contend that these cases fall within either of the first two of these categories of Commerce Clause regulation. They seek to sustain §13981 as a regulation of activity that substantially affects interstate commerce. Given §13981’s focus on gender-motivated violence wherever it occurs (rather than violence directed at the instrumentalities of interstate commerce, interstate markets, or things or persons in interstate commerce), we agree that this is the proper inquiry.

Since *Lopez* most recently canvassed and clarified our case law governing this third category of Commerce Clause regulation, it provides the proper framework for conducting the required analysis of §13981. In *Lopez*, we held that the Gun-Free School Zones Act of 1990, 18 U. S. C. §922(q)(1)(A), which made it a federal crime to knowingly possess a firearm in a school zone, exceeded Congress’ authority under the Commerce Clause. See 514 U. S., at 551. Several significant considerations contributed to our decision.

First, we observed that §922(q) was “a criminal statute that by its terms has nothing to do with commerce’ or any sort of economic enterprise, however broadly one might define those terms.” *Id.*, at 561. Reviewing our case law, we noted that “we have upheld a wide variety of congressional Acts regulating intrastate economic activity where we have concluded that the activity substantially affected interstate commerce.” *Id.*, at 559. Although we cited only a few examples, including *Wickard v. Filburn*, 317 U. S. 111 (1942); *Hodel, supra*; *Perez, supra*; *Katzenbach v. McClung*, 379 U. S. 294 (1964); and *Heart of Atlanta Motel, supra*, we stated that the pattern of analysis is clear.

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Lopez, 514 U. S., at 559–560. “Where economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained.” *Id.*, at 560.

Both petitioners and JUSTICE SOUTER’s dissent downplay the role that the economic nature of the regulated activity plays in our Commerce Clause analysis. But a fair reading of *Lopez* shows that the noneconomic, criminal nature of the conduct at issue was central to our decision in that case. See, e.g., *id.*, at 551 (“The Act [does not] regulat[e] a commercial activity”), 560 (“Even *Wickard*, which is perhaps the most far reaching example of Commerce Clause authority over intrastate activity, involved economic activity in a way that the possession of a gun in a school zone does not”), 561 (“Section 922(q) is not an essential part of a larger regulation of economic activity”), 566 (“Admittedly, a determination whether an intrastate activity is commercial or noncommercial may in some cases result in legal uncertainty. But, so long as Congress’ authority is limited to those powers enumerated in the Constitution, and so long as those enumerated powers are interpreted as having judicially enforceable outer limits, congressional legislation under the Commerce Clause always will engender legal uncertainty”), 567 (“The possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce”); see also *id.*, at 573–574 (KENNEDY, J., concurring) (stating that *Lopez* did not alter our “practical conception of commercial regulation” and that Congress may “regulate in the commercial sphere on the assumption that we have a single market and a unified purpose to build a stable national economy”), 577 (“Were the Federal Government to take over the regulation of entire areas of traditional state concern, areas having nothing to do with the regulation of commercial activities, the boundaries between the spheres of federal and state authority would blur”), 580 (“[U]nlike the earlier

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cases to come before the Court here neither the actors nor their conduct has a commercial character, and neither the purposes nor the design of the statute has an evident commercial nexus. The statute makes the simple possession of a gun within 1,000 feet of the grounds of the school a criminal offense. In a sense any conduct in this interdependent world of ours has an ultimate commercial origin or consequence, but we have not yet said the commerce power may reach so far” (citation omitted)). *Lopez*’s review of Commerce Clause case law demonstrates that in those cases where we have sustained federal regulation of intrastate activity based upon the activity’s substantial effects on interstate commerce, the activity in question has been some sort of economic endeavor. See *id.*, at 559–560.⁴

The second consideration that we found important in analyzing §922(q) was that the statute contained “no express jurisdictional element which might limit its reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce.” *Id.*, at 562. Such a jurisdictional element may establish that the enactment is in pursuance of Congress’ regulation of interstate commerce.

Third, we noted that neither §922(q) “nor its legislative history contain[s] express congressional findings regarding the effects upon interstate commerce of gun possession in a school zone.” *Ibid.* (quoting Brief for United States, O.T. 1994, No. 93–1260, pp. 5–6). While “Congress nor-

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⁴JUSTICE SOUTER’S dissent does not reconcile its analysis with our holding in *Lopez* because it apparently would cast that decision aside. See *post*, at 10–16. However, the dissent cannot persuasively contradict *Lopez*’s conclusion that, in every case where we have sustained federal regulation under *Wickard*’s aggregation principle, the regulated activity was of an apparent commercial character. See, e.g., *Lopez*, 514 U. S., at 559–560, 580.

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mally is not required to make formal findings as to the substantial burdens that an activity has on interstate commerce,” 514 U. S., at 562 (citing *McClung*, 379 U. S., at 304; *Perez*, 402 U. S., at 156), the existence of such findings may “enable us to evaluate the legislative judgment that the activity in question substantially affect[s] interstate commerce, even though no such substantial effect [is] visible to the naked eye.” 514 U. S., at 563.

Finally, our decision in *Lopez* rested in part on the fact that the link between gun possession and a substantial effect on interstate commerce was attenuated. *Id.*, at 563–567. The United States argued that the possession of guns may lead to violent crime, and that violent crime “can be expected to affect the functioning of the national economy in two ways. First, the costs of violent crime are substantial, and, through the mechanism of insurance, those costs are spread throughout the population. Second, violent crime reduces the willingness of individuals to travel to areas within the country that are perceived to be unsafe.” *Id.*, at 563–564 (citation omitted). The Government also argued that the presence of guns at schools poses a threat to the educational process, which in turn threatens to produce a less efficient and productive workforce, which will negatively affect national productivity and thus interstate commerce. *Ibid.*

We rejected these “costs of crime” and “national productivity” arguments because they would permit Congress to “regulate not only all violent crime, but all activities that might lead to violent crime, regardless of how tenuously they relate to interstate commerce.” *Id.*, at 564. We noted that, under this but-for reasoning:

“Congress could regulate any activity that it found was related to the economic productivity of individual citizens: family law (including marriage, divorce, and child custody), for example. Under the[se] theories

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... , it is difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement or education where States historically have been sovereign. Thus, if we were to accept the Government's arguments, we are hard pressed to posit any activity by an individual that Congress is without power to regulate." *Ibid.*

With these principles underlying our Commerce Clause jurisprudence as reference points, the proper resolution of the present cases is clear. Gender-motivated crimes of violence are not, in any sense of the phrase, economic activity. While we need not adopt a categorical rule against aggregating the effects of any noneconomic activity in order to decide these cases, thus far in our Nation's history our cases have upheld Commerce Clause regulation of intrastate activity only where that activity is economic in nature. See, *e.g.*, *id.*, at 559–560, and the cases cited therein.

Like the Gun-Free School Zones Act at issue in *Lopez*, §13981 contains no jurisdictional element establishing that the federal cause of action is in pursuance of Congress' power to regulate interstate commerce. Although *Lopez* makes clear that such a jurisdictional element would lend support to the argument that §13981 is sufficiently tied to interstate commerce, Congress elected to cast §13981's remedy over a wider, and more purely intrastate, body of violent crime.⁵

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⁵Title 42 U. S. C. §13981 is not the sole provision of the Violence Against Women Act of 1994 to provide a federal remedy for gender-motivated crime. Section 40221(a) of the Act creates a federal criminal remedy to punish "interstate crimes of abuse including crimes committed against spouses or intimate partners during interstate travel and crimes committed by spouses or intimate partners who cross State lines to continue the abuse." S. Rep. No. 103–138, p. 43 (1993). That criminal provision has been codified at 18 U. S. C. §2261(a)(1), which states:

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In contrast with the lack of congressional findings that we faced in *Lopez*, §13981 is supported by numerous findings regarding the serious impact that gender-motivated violence has on victims and their families. See, e.g., H. R. Conf. Rep. No. 103–711, p. 385 (1994); S. Rep. No. 103–138, p. 40 (1993); S. Rep. No. 101–545, p. 33 (1990). But the existence of congressional findings is not sufficient, by itself, to sustain the constitutionality of Commerce Clause legislation. As we stated in *Lopez*, “[S]imply because Congress may conclude that a particular activity substantially affects interstate commerce does not necessarily make it so.” 514 U. S., at 557, n. 2 (quoting *Hodel*, 452 U. S., at 311 (REHNQUIST, J., concurring in judgment)). Rather, “[w]hether particular operations affect interstate commerce sufficiently to come under the constitutional power of Congress to regulate them is ultimately a judicial rather than a legislative question, and can be settled finally only by this Court.” 514 U. S., at 557, n. 2 (quoting *Heart of Atlanta Motel*, 379 U. S., at 273 (Black, J., concurring)).

In these cases, Congress’ findings are substantially weakened by the fact that they rely so heavily on a method of reasoning that we have already rejected as unworkable if we are to maintain the Constitution’s enumeration of

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“A person who travels across a State line or enters or leaves Indian country with the intent to injure, harass, or intimidate that person’s spouse or intimate partner, and who, in the course of or as a result of such travel, intentionally commits a crime of violence and thereby causes bodily injury to such spouse or intimate partner, shall be punished as provided in subsection (b).”

The Courts of Appeals have uniformly upheld this criminal sanction as an appropriate exercise of Congress’ Commerce Clause authority, reasoning that “[t]he provision properly falls within the first of *Lopez*’s categories as it regulates the use of channels of interstate commerce—i.e., the use of the interstate transportation routes through which persons and goods move.” *United States v. Lankford*, 196 F. 3d 563, 571–572 (CA5 1999) (collecting cases) (internal quotation marks omitted).

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powers. Congress found that gender-motivated violence affects interstate commerce

“by deterring potential victims from traveling interstate, from engaging in employment in interstate business, and from transacting with business, and in places involved in interstate commerce; . . . by diminishing national productivity, increasing medical and other costs, and decreasing the supply of and the demand for interstate products.” H. R. Conf. Rep. No. 103–711, at 385.

Accord, S. Rep. No. 103–138, at 54. Given these findings and petitioners’ arguments, the concern that we expressed in *Lopez* that Congress might use the Commerce Clause to completely obliterate the Constitution’s distinction between national and local authority seems well founded. See *Lopez, supra*, at 564. The reasoning that petitioners advance seeks to follow the but-for causal chain from the initial occurrence of violent crime (the suppression of which has always been the prime object of the States’ police power) to every attenuated effect upon interstate commerce. If accepted, petitioners’ reasoning would allow Congress to regulate any crime as long as the nationwide, aggregated impact of that crime has substantial effects on employment, production, transit, or consumption. Indeed, if Congress may regulate gender-motivated violence, it would be able to regulate murder or any other type of violence since gender-motivated violence, as a subset of all violent crime, is certain to have lesser economic impacts than the larger class of which it is a part.

Petitioners’ reasoning, moreover, will not limit Congress to regulating violence but may, as we suggested in *Lopez*, be applied equally as well to family law and other areas of traditional state regulation since the aggregate effect of marriage, divorce, and childrearing on the national econ-

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omy is undoubtedly significant. Congress may have recognized this specter when it expressly precluded §13981 from being used in the family law context.⁶ See 42 U. S. C. §13981(e)(4). Under our written Constitution, however, the limitation of congressional authority is not solely a matter of legislative grace.⁷ See *Lopez, supra*, at 575–579

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⁶We are not the first to recognize that the but-for causal chain must have its limits in the Commerce Clause area. In *Lopez*, 514 U. S., at 567, we quoted Justice Cardozo’s concurring opinion in *A. L. A. Schechter Poultry Corp. v. United States*, 295 U. S. 495 (1935):

“There is a view of causation that would obliterate the distinction between what is national and what is local in the activities of commerce. Motion at the outer rim is communicated perceptibly, though minutely, to recording instruments at the center. A society such as ours is an elastic medium which transmits all tremors throughout its territory; the only question is of their size.” *Id.*, at 554 (quoting *United States v. A. L. A. Schechter Poultry Corp.*, 76 F. 2d 617, 624 (CA2 1935) (L. Hand, J., concurring)).

⁷JUSTICE SOUTER’s dissent theory that *Gibbons v. Ogden*, 9 Wheat. 1 (1824), *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U. S. 528 (1985), and the Seventeenth Amendment provide the answer to these cases, see *post*, at 19–26, is remarkable because it undermines this central principle of our constitutional system. As we have repeatedly noted, the Framers crafted the federal system of government so that the people’s rights would be secured by the division of power. See, e.g., *Arizona v. Evans*, 514 U. S. 1, 30 (1995) (GINSBURG, J., dissenting); *Gregory v. Ashcroft*, 501 U. S. 452, 458–459 (1991) (cataloging the benefits of the federal design); *Atascadero State Hospital v. Scanlon*, 473 U. S. 234, 242 (1985) (“The constitutionally mandated balance of power between the States and the Federal Government was adopted by the Framers to ensure the protection of our fundamental liberties”) (quoting *Garcia, supra*, at 572 (Powell, J., dissenting)). Departing from their parliamentary past, the Framers adopted a written Constitution that further divided authority at the federal level so that the Constitution’s provisions would not be defined solely by the political branches nor the scope of legislative power limited only by public opinion and the legislature’s self-restraint. See, e.g., *Marbury v. Madison*, 1 Cranch 137, 176 (1803) (Marshall, C. J.) (“The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the constitution is written”). It is thus a “permanent and

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(KENNEDY, J., concurring); *Marbury*, 1 Cranch, at 176–178.

We accordingly reject the argument that Congress may

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indispensable feature of our constitutional system” that “the federal judiciary is supreme in the exposition of the law of the Constitution.” *Miller v. Johnson*, 515 U. S. 900, 922–923 (1995) (quoting *Cooper v. Aaron*, 358 U. S. 1, 18 (1958)).

No doubt the political branches have a role in interpreting and applying the Constitution, but ever since *Marbury* this Court has remained the ultimate expositor of the constitutional text. As we emphasized in *United States v. Nixon*, 418 U. S. 683 (1974), “[I]n the performance of assigned constitutional duties each branch of the Government must initially interpret the Constitution, and the interpretation of its powers by any branch is due great respect from the others. . . . Many decisions of this Court, however, have unequivocally reaffirmed the holding of *Marbury* . . . that [i]t is emphatically the province and duty of the judicial department to say what the law is.” *Id.*, at 703 (citation omitted).

Contrary to JUSTICE SOUTER’s suggestion, see *post*, at 19–21, and n. 14, *Gibbons* did not exempt the commerce power from this cardinal rule of constitutional law. His assertion that, from *Gibbons* on, public opinion has been the only restraint on the congressional exercise of the commerce power is true only insofar as it contends that political accountability is and has been the only limit on Congress’ exercise of the commerce power *within that power’s outer bounds*. As the language surrounding that relied upon by JUSTICE SOUTER makes clear, *Gibbons* did not remove from this Court the authority to define that boundary. See *Gibbons*, *supra*, at 194–195 (“It is not intended to say that these words comprehend that commerce, which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States. . . . Comprehensive as the word ‘among’ is, it may very properly be restricted to that commerce which concerns more States than one. The phrase is not one which would probably have been selected to indicate the completely interior traffic of a State, because it is not an apt phrase for that purpose; and the enumeration of the particular classes of commerce to which the power was to be extended, would not have been made, had the intention been to extend the power to every description. The enumeration presupposes something not enumerated; and that something, if we regard the language or the subject of the sentence, must be the exclusively internal commerce of a State”).

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regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce. The Constitution requires a distinction between what is truly national and what is truly local. *Lopez*, 514 U. S., at 568 (citing *Jones & Laughlin Steel*, 301 U. S., at 30). In recognizing this fact we preserve one of the few principles that has been consistent since the Clause was adopted. The regulation and punishment of intrastate violence that is not directed at the instrumentalities, channels, or goods involved in interstate commerce has always been the province of the States. See, e.g., *Cohens v. Virginia*, 6 Wheat. 264, 426, 428 (1821) (Marshall, C. J.) (stating that Congress "has no general right to punish murder committed within any of the States," and that it is "clear . . . that congress cannot punish felonies generally"). Indeed, we can think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims.⁸ See, e.g., *Lopez*, 514 U. S., at 566 ("The

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⁸JUSTICE SOUTER disputes our assertion that the Constitution reserves the general police power to the States, noting that the Founders failed to adopt several proposals for additional guarantees against federal encroachment on state authority. See *post*, at 19–22, and n. 14. This argument is belied by the entire structure of the Constitution. With its careful enumeration of federal powers and explicit statement that all powers not granted to the Federal Government are reserved, the Constitution cannot realistically be interpreted as granting the Federal Government an unlimited license to regulate. See, e.g., *New York v. United States*, 505 U. S. 144, 156–157 (1992). And, as discussed above, the Constitution's separation of federal power and the creation of the Judicial Branch indicate that disputes regarding the extent of congressional power are largely subject to judicial review. See n. 7, *supra*. Moreover, the principle that "[t]he Constitution created a Federal Government of limited powers," while reserving a generalized police power to the States is deeply ingrained in our constitutional history. *New York*, *supra*, at 155 (quoting *Gregory v. Ashcroft*, *supra*, at 457; see

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Constitution . . . withhold[s] from Congress a plenary police power”); *id.*, at 584–585 (THOMAS, J., concurring) (“[W]e *always* have rejected readings of the Commerce Clause and the scope of federal power that would permit Congress to exercise a police power”), 596–597, and n. 6 (noting that the first Congresses did not enact nationwide punishments for criminal conduct under the Commerce Clause).

III

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

The principles governing an analysis of congressional legislation under §5 are well settled. Section 5 states that Congress may “enforce, by ‘appropriate legislation’ the constitutional guarantee that no State shall deprive any person of life, liberty or property, without due process of law, nor deny any person equal protection of the laws.” *City of Boerne v. Flores*, 521 U. S. 507, 517 (1997). Section 5 is “a positive grant of legislative power,” *Katzenbach v. Morgan*, 384 U. S. 641, 651 (1966), that includes authority to “prohibit conduct which is not itself unconstitutional and [to] intrud[e] into legislative spheres of autonomy previously reserved to the States.” *Flores, supra*, at 518 (quoting *Fitzpatrick v. Bitzer*, 427 U. S. 445, 455 (1976));

also *Lopez*, 514 U. S., at 584–599 (THOMAS, J., concurring) (discussing the history of the debates surrounding the adoption of the Commerce Clause and our subsequent interpretation of the Clause); *Maryland v. Wirtz*, 392 U. S. 183, 196 (1968).

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see also *Kimel v. Florida Bd. of Regents*, 528 U. S. ___, ___ (2000) (slip op., at 16). However, “[a]s broad as the congressional enforcement power is, it is not unlimited.” *Oregon v. Mitchell*, 400 U. S. 112, 128 (1970); see also *Kimel*, *supra*, at ___–___ (slip op., at 16–17). In fact, as we discuss in detail below, several limitations inherent in §5’s text and constitutional context have been recognized since the Fourteenth Amendment was adopted.

Petitioners’ §5 argument is founded on an assertion that there is pervasive bias in various state justice systems against victims of gender-motivated violence. This assertion is supported by a voluminous congressional record. Specifically, Congress received evidence that many participants in state justice systems are perpetuating an array of erroneous stereotypes and assumptions. Congress concluded that these discriminatory stereotypes often result in insufficient investigation and prosecution of gender-motivated crime, inappropriate focus on the behavior and credibility of the victims of that crime, and unacceptably lenient punishments for those who are actually convicted of gender-motivated violence. See H. R. Conf. Rep. No. 103–711, at 385–386; S. Rep. No. 103–138, at 38, 41–55; S. Rep. No. 102–197, at 33–35, 41, 43–47. Petitioners contend that this bias denies victims of gender-motivated violence the equal protection of the laws and that Congress therefore acted appropriately in enacting a private civil remedy against the perpetrators of gender-motivated violence to both remedy the States’ bias and deter future instances of discrimination in the state courts.

As our cases have established, state-sponsored gender discrimination violates equal protection unless it “serves ‘important governmental objectives and . . . the discriminatory means employed’ are ‘substantially related to the achievement of those objectives.’” *United States v. Virginia*, 518 U. S. 515, 533 (1996) (quoting *Mississippi Univ.*

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for Women v. Hogan, 458 U. S. 718, 724 (1982), in turn quoting *Wengler v. Druggists Mut. Ins. Co.*, 446 U. S. 142, 150 (1980)). See also *Craig v. Boren*, 429 U. S. 190, 198–199 (1976). However, the language and purpose of the Fourteenth Amendment place certain limitations on the manner in which Congress may attack discriminatory conduct. These limitations are necessary to prevent the Fourteenth Amendment from obliterating the Framers’ carefully crafted balance of power between the States and the National Government. See *Flores, supra*, at 520–524 (reviewing the history of the Fourteenth Amendment’s enactment and discussing the contemporary belief that the Amendment “does not concentrate power in the general government for any purpose of police government within the States”) (quoting T. Cooley, *Constitutional Limitations* 294, n. 1 (2d ed. 1871)). Foremost among these limitations is the time-honored principle that the Fourteenth Amendment, by its very terms, prohibits only state action. “[T]he principle has become firmly embedded in our constitutional law that the action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States. That Amendment erects no shield against merely private conduct, however discriminatory or wrongful.” *Shelley v. Kraemer*, 334 U. S. 1, 13, and n. 12 (1948).

Shortly after the Fourteenth Amendment was adopted, we decided two cases interpreting the Amendment’s provisions, *United States v. Harris*, 106 U. S. 629 (1883), and the *Civil Rights Cases*, 109 U. S. 3 (1883). In *Harris*, the Court considered a challenge to §2 of the Civil Rights Act of 1871. That section sought to punish “private persons” for “conspiring to deprive any one of the equal protection of the laws enacted by the State.” 106 U. S., at 639. We concluded that this law exceeded Congress’ §5 power because the law was “directed exclusively against the action of private persons, without reference to the laws of

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the State, or their administration by her officers.” *Id.*, at 640. In so doing, we reemphasized our statement from *Virginia v. Rives*, 100 U. S. 313, 318 (1880), that “these provisions of the fourteenth amendment have reference to State action exclusively, and not to any action of private individuals.” *Harris, supra*, at 639 (misquotation in *Harris*).

We reached a similar conclusion in the *Civil Rights Cases*. In those consolidated cases, we held that the public accommodation provisions of the Civil Rights Act of 1875, which applied to purely private conduct, were beyond the scope of the §5 enforcement power. 109 U. S., at 11 (“Individual invasion of individual rights is not the subject-matter of the [Fourteenth] [A]mendment”). See also, *e.g.*, *Romer v. Evans*, 517 U. S. 620, 628 (1996) (“[I]t was settled early that the Fourteenth Amendment did not give Congress a general power to prohibit discrimination in public accommodations”); *Lugar v. Edmondson Oil Co.*, 457 U. S. 922, 936 (1982) (“Careful adherence to the ‘state action’ requirement preserves an area of individual freedom by limiting the reach of federal law and federal judicial power”); *Blum v. Yaretsky*, 457 U. S. 991, 1002 (1982); *Moose Lodge No. 107 v. Irvis*, 407 U. S. 163, 172 (1972); *Adickes v. S. H. Kress & Co.*, 398 U. S. 144, 147 n. 2 (1970); *United States v. Cruikshank*, 92 U. S. 542, 554 (1876) (“The fourteenth amendment prohibits a state from depriving any person of life, liberty, or property, without due process of law; but this adds nothing to the rights of one citizen as against another. It simply furnishes an additional guaranty against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society”).

The force of the doctrine of *stare decisis* behind these decisions stems not only from the length of time they have been on the books, but also from the insight attributable to the Members of the Court at that time. Every Member

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had been appointed by President Lincoln, Grant, Hayes, Garfield, or Arthur— and each of their judicial appointees obviously had intimate knowledge and familiarity with the events surrounding the adoption of the Fourteenth Amendment.

Petitioners contend that two more recent decisions have in effect overruled this longstanding limitation on Congress' §5 authority. They rely on *United States v. Guest*, 383 U. S. 745 (1966), for the proposition that the rule laid down in the *Civil Rights Cases* is no longer good law. In *Guest*, the Court reversed the construction of an indictment under 18 U. S. C. §241, saying in the course of its opinion that “we deal here with issues of statutory construction, not with issues of constitutional power.” 383 U. S., at 749. Three Members of the Court, in a separate opinion by Justice Brennan, expressed the view that the *Civil Rights Cases* were wrongly decided, and that Congress could under §5 prohibit actions by private individuals. 383 U. S., at 774 (opinion concurring in part and dissenting in part). Three other Members of the Court, who joined the opinion of the Court, joined a separate opinion by Justice Clark which in two or three sentences stated the conclusion that Congress could “punis[h] all conspiracies— with or without state action— that interfere with Fourteenth Amendment rights.” *Id.*, at 762 (concurring opinion). Justice Harlan, in another separate opinion, commented with respect to the statement by these Justices:

“The action of three of the Justices who joined the Court’s opinion in nonetheless cursorily pronouncing themselves on the far-reaching constitutional questions deliberately not reached in Part II seems to me, to say the very least, extraordinary.” *Id.*, at 762, n. 1 (opinion concurring in part and dissenting in part).

Though these three Justices saw fit to opine on matters

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not before the Court in *Guest*, the Court had no occasion to revisit the *Civil Rights Cases* and *Harris*, having determined “the indictment [charging private individuals with conspiring to deprive blacks of equal access to state facilities] in fact contain[ed] an express allegation of state involvement.” 383 U. S., at 756. The Court concluded that the implicit allegation of “active connivance by agents of the State” eliminated any need to decide “the threshold level that state action must attain in order to create rights under the Equal Protection Clause.” *Ibid.* All of this Justice Clark explicitly acknowledged. See *id.*, at 762 (concurring opinion) (“The Court’s interpretation of the indictment clearly avoids the question whether Congress, by appropriate legislation, has the power to punish private conspiracies that interfere with Fourteenth Amendment rights, such as the right to utilize public facilities”).

To accept petitioners’ argument, moreover, one must add to the three Justices joining Justice Brennan’s reasoned explanation for his belief that the *Civil Rights Cases* were wrongly decided, the three Justices joining Justice Clark’s opinion who gave no explanation whatever for their similar view. This is simply not the way that reasoned constitutional adjudication proceeds. We accordingly have no hesitation in saying that it would take more than the naked dicta contained in Justice Clark’s opinion, when added to Justice Brennan’s opinion, to cast any doubt upon the enduring vitality of the *Civil Rights Cases* and *Harris*.

Petitioners also rely on *District of Columbia v. Carter*, 409 U. S. 418 (1973). *Carter* was a case addressing the question whether the District of Columbia was a “State” within the meaning of Rev. Stat. §1979, 42 U. S. C. §1983— a section which by its terms requires state action before it may be employed. A footnote in that opinion recites the same litany respecting *Guest* that petitioners rely on. This litany is of course entirely dicta, and in any

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event cannot rise above its source. We believe that the description of the §5 power contained in the *Civil Rights Cases* is correct:

“But where a subject has not submitted to the general legislative power of Congress, but is only submitted thereto for the purpose of rendering effective some prohibition against particular [s]tate legislation or [s]tate action in reference to that subject, the power given is limited by its object, any legislation by Congress in the matter must necessarily be corrective in its character, adapted to counteract and redress the operation of such prohibited state laws or proceedings of [s]tate officers.” 109 U. S., at 18.

Petitioners alternatively argue that, unlike the situation in the *Civil Rights Cases*, here there has been gender-based disparate treatment by state authorities, whereas in those cases there was no indication of such state action. There is abundant evidence, however, to show that the Congresses that enacted the Civil Rights Acts of 1871 and 1875 had a purpose similar to that of Congress in enacting §13981: There were state laws on the books bespeaking equality of treatment, but in the administration of these laws there was discrimination against newly freed slaves. The statement of Representative Garfield in the House and that of Senator Sumner in the Senate are representative:

“[T]he chief complaint is not that the laws of the State are unequal, but that even where the laws are just and equal on their face, yet, by a systematic maladministration of them, or a neglect or refusal to enforce their provisions, a portion of the people are denied equal protection under them.” Cong. Globe, 42d Cong., 1st Sess., App. 153 (1871) (statement of Rep. Garfield).

“The Legislature of South Carolina has passed a

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law giving precisely the rights contained in your supplementary civil rights bill.’ But such a law remains a dead letter on her statute-books, because the State courts, comprised largely of those whom the Senator wishes to obtain amnesty for, refuse to enforce it.” Cong. Globe, 42d Cong., 2d Sess., 430 (1872) (statement of Sen. Sumner).

See also, *e.g.*, Cong. Globe, 42d Cong., 1st Sess., at 653 (statement of Sen. Osborn); *id.*, at 457 (statement of Rep. Coburn); *id.*, at App. 78 (statement of Rep. Perry); 2 Cong. Rec. 457 (1874) (statement of Rep. Butler); 3 Cong. Rec. 945 (1875) (statement of Rep. Lynch).

But even if that distinction were valid, we do not believe it would save §13981’s civil remedy. For the remedy is simply not “corrective in its character, adapted to counteract and redress the operation of such prohibited [s]tate laws or proceedings of [s]tate officers.” *Civil Rights Cases*, 109 U. S., at 18. Or, as we have phrased it in more recent cases, prophylactic legislation under §5 must have a “congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end.” *Florida Prepaid Postsecondary Ed. Expense Bd. v. College Savings Bank*, 527 U. S. 627, 639 (1999); *Flores*, 521 U. S., at 526. Section 13981 is not aimed at proscribing discrimination by officials which the Fourteenth Amendment might not itself proscribe; it is directed not at any State or state actor, but at individuals who have committed criminal acts motivated by gender bias.

In the present cases, for example, §13981 visits no consequence whatever on any Virginia public official involved in investigating or prosecuting Brzonkala’s assault. The section is, therefore, unlike any of the §5 remedies that we have previously upheld. For example, in *Katzenbach v. Morgan*, 384 U. S. 641 (1966), Congress prohibited New York from imposing literacy tests as a

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prerequisite for voting because it found that such a requirement disenfranchised thousands of Puerto Rican immigrants who had been educated in the Spanish language of their home territory. That law, which we upheld, was directed at New York officials who administered the State's election law and prohibited them from using a provision of that law. In *South Carolina v. Katzenbach*, 383 U. S. 301 (1966), Congress imposed voting rights requirements on States that, Congress found, had a history of discriminating against blacks in voting. The remedy was also directed at state officials in those States. Similarly, in *Ex parte Virginia*, 100 U. S. 339 (1880), Congress criminally punished state officials who intentionally discriminated in jury selection; again, the remedy was directed to the culpable state official.

Section 13981 is also different from these previously upheld remedies in that it applies uniformly throughout the Nation. Congress' findings indicate that the problem of discrimination against the victims of gender-motivated crimes does not exist in all States, or even most States. By contrast, the §5 remedy upheld in *Katzenbach v. Morgan*, *supra*, was directed only to the State where the evil found by Congress existed, and in *South Carolina v. Katzenbach*, *supra*, the remedy was directed only to those States in which Congress found that there had been discrimination.

For these reasons, we conclude that Congress' power under §5 does not extend to the enactment of §13981.

IV

Petitioner Brzonkala's complaint alleges that she was the victim of a brutal assault. But Congress' effort in §13981 to provide a federal civil remedy can be sustained neither under the Commerce Clause nor under §5 of the Fourteenth Amendment. If the allegations here are true, no civilized system of justice could fail to provide her a

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remedy for the conduct of respondent Morrison. But under our federal system that remedy must be provided by the Commonwealth of Virginia, and not by the United States. The judgment of the Court of Appeals is

Affirmed.