# [*United States v. Morrison*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:408B-6MN0-004C-200F-00000-00&context=)*[[1]](#footnote-1)*

Supreme Court of the United States

January 11, 2000, Argued ; May 15, 2000, [[2]](#footnote-2)\* Decided

Nos. 99-5 and 99-20

 **Reporter**

529 U.S. 598 \*; 120 S. Ct. 1740 \*\*; 146 L. Ed. 2d 658 \*\*\*; 2000 U.S. LEXIS 3422 \*\*\*\*; 68 U.S.L.W. 4351; 82 Fair Empl. Prac. Cas. (BNA) 1313; 77 Empl. Prac. Dec. (CCH) P46,376; 2000 Cal. Daily Op. Service 3788; 2000 Daily Journal DAR 5061; 2000 Colo. J. C.A.R. 2583; 13 Fla. L. Weekly Fed. S 287
UNITED STATES v. ANTONIO J. MORRISON, ET AL.; AND CHRISTY BRZONKALA v. ANTONIO J. MORRISON, ET AL.

**Judges:** REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. THOMAS, J., filed a concurring opinion. SOUTER, J., filed a dissenting opinion, in which STEVENS, GINSBURG, and BREYER, JJ., joined. BREYER, J., filed a dissenting opinion, in which STEVENS, J., joined, and in which SOUTER and GINSBURG, **[\*\*\*\*7]** JJ., joined as to Part I-A.

**Opinion by:** REHNQUIST

**Opinion**

**[\*601]  [\*\*1745]  [\*\*\*666]** *CHIEF JUSTICE* ***REHNQUIST*** delivered the opinion of the Court.

In these cases we consider the constitutionality of [*42 U.S.C. § 13981*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SHT-0732-D6RV-H1W7-00000-00&context=), which provides a federal civil remedy for the **[\*602]** victims of gender-motivated violence. . . .

The Violence Against Women Act of 1994, § 40302, 108 Stat. 1941-1942. **[\*\*\*\*13]** It states that "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)](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SHT-0732-D6RV-H1W7-00000-00&context=)*. 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."

. . . .

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](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-KWW0-003B-H16C-00000-00&context=)* [*v. Madison, 5 U.S. 137, 1 Cranch 137, 176, 2 L. Ed. 60 (1803)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-KWW0-003B-H16C-00000-00&context=) (Marshall, C. J.). Congress explicitly identified the sources of federal authority on which it relied in enacting [*§ 13981*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SHT-0732-D6RV-H1W7-00000-00&context=). It said that a "federal civil rights cause of action" is established "pursuant" 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**[\*\*\*\*16]** the Constitution." [*42 U.S.C. § 13981(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SHT-0732-D6RV-H1W7-00000-00&context=). We address Congress' authority to enact this remedy under each of these constitutional provisions in turn.

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](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)* [*v. Lopez, 514 U.S. at 568, 577-578*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=) (KENNEDY, J., concurring); *[United States](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-J140-003B-H3M7-00000-00&context=)* [*v. Harris, 106 U.S. at 635*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-J140-003B-H3M7-00000-00&context=).With this presumption of constitutionality in mind, we turn to the question whether [*§ 13981*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SHT-0732-D6RV-H1W7-00000-00&context=) 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 "to 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*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=) has changed as our Nation has developed. See *[Lopez](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)*[*, 514 U.S. at 552-557*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=); *[id.,](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)* [*at 568-574*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=) (KENNEDY, J., concurring); *[id.,](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)* [*at 584, 593-599*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=) (THOMAS, J., **[\*\*\*\*17]** concurring). We need not repeat that detailed review of **[\*608]** the [*Commerce Clause*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=)'s history here; it suffices to say that, in the years since *[NLRB v. Jones & Laughlin Steel Corp](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9C70-003B-721F-00000-00&context=)*[*., 301 U.S. 1, 81 L. Ed. 893, 57 S. Ct. 615 (1937)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9C70-003B-721F-00000-00&context=), Congress has had considerably greater latitude in regulating conduct and transactions under the [*Commerce Clause*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=) than our previous case law permitted. See *[Lopez](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)*[*, 514 U.S. at 555-556*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=); *[id](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)*[*., at 573-574*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=) (KENNEDY, J., concurring).

*Lopez* emphasized, however, that even under our modern, expansive interpretation of the [*Commerce* ***[\*\*\*670]*** *Clause*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=), Congress' regulatory authority is not without effective bounds. *[Id.](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)*[*, at 557*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=).

" Even [our] modern-era precedents which have expanded congressional power**[\*\*1749]** under the [*Commerce Clause*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=) 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 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**[\*\*\*\*18]** what is national and what is local and create a completely centralized government.'" *[Id.](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)*[*, at 556-557*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=) (quoting [*Jones & Laughlin Steel, supra, at 37*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9C70-003B-721F-00000-00&context=)).

As we observed in *Lopez*, modern [*Commerce Clause*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=) jurisprudence has "identified three broad categories of activity that Congress may regulate**[\*\*\*\*19]** under its commerce power." **[\*609]***[514 U.S. at 558](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)* (citing *[Hodel](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6B00-003B-S0DY-00000-00&context=)* [*v. Virginia Surface Mining & Reclamation Assn., Inc., 452 U.S. 264, 276-277, 69 L. Ed. 2d 1, 101 S. Ct. 2352 (1981)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6B00-003B-S0DY-00000-00&context=);*[Perez](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DM70-003B-S366-00000-00&context=)* [*v. United States, 402 U.S. 146, 150, 28 L. Ed. 2d 686, 91 S. Ct. 1357 (1971))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DM70-003B-S366-00000-00&context=)."First, Congress may regulate the use of the channels of interstate commerce." *[514 U.S. at 558](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)* (citing *Heart of Atlanta Motel, Inc*. v. *[United States](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GRN0-003B-S2PX-00000-00&context=)*[*, 379 U.S. 241, 256, 85 S. Ct. 348, 13 L. Ed. 2d 258 (1964)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GRN0-003B-S2PX-00000-00&context=); *[United States](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6GP0-003B-719R-00000-00&context=)* [*v. Darby, 312 U.S. 100, 114, 85 L. Ed. 609, 61 S. Ct. 451 (1941))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6GP0-003B-719R-00000-00&context=). "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](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)* (citing *[Shreveport Rate Cases](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-7G00-003B-H3HR-00000-00&context=)*[*, 234 U.S. 342 (1914)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-7G00-003B-H3HR-00000-00&context=); *Southern R. Co*. v. *[United States](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-8VH0-003B-H063-00000-00&context=)*[*, 222 U.S. 20, 32 S. Ct. 2, 56 L. Ed. 72 (1911)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-8VH0-003B-H063-00000-00&context=); [*Perez, supra, at 150*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DM70-003B-S366-00000-00&context=)). "Finally, Congress' commerce 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](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)***[\*\*\*\*20]** (citing [*Jones & Laughlin Steel, supra, at 37*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9C70-003B-721F-00000-00&context=)).

Petitioners do not contend that these cases fall within either of the first two of these categories of [*Commerce Clause*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=) regulation. They seek to sustain [*§ 13981*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SHT-0732-D6RV-H1W7-00000-00&context=) as a regulation of activity that substantially affects interstate commerce. Given [*§ 13981*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SHT-0732-D6RV-H1W7-00000-00&context=)'s focus on gender-motivated violence wherever it occurs (rather than violence directed at the instrumentalities of interstate commerce, interstate **[\*\*\*671]** 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*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=) regulation, it provides the proper framework for conducting the required analysis of [*§ 13981*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SHT-0732-D6RV-H1W7-00000-00&context=). In *Lopez*, we held that the Gun-Free School Zones Act of 1990, [*18 U.S.C. § 922(q)(1)(A)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H05V-00000-00&context=), which made it a federal crime to knowingly possess a firearm in a school zone, exceeded Congress' authority under the *[Commerce Clause](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=)*. See *[514 U.S. at 551](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)*.Several significant considerations contributed to our decision.

**[\*610]** First, we observed that [*§ 922(q)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H05V-00000-00&context=) was "a criminal statute that by its terms has nothing**[\*\*\*\*21]** to do with 'commerce' or any sort of economic enterprise, however**[\*\*1750]** broadly one might define those terms." *[514 U.S. at 561](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)*. 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." *[514 U.S. at 559](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)*. Although we cited only a few examples, including *[Wickard](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5300-003B-73MS-00000-00&context=)* [*v. Filburn, 317 U.S. 111, 87 L. Ed. 122, 63 S. Ct. 82 (1942)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5300-003B-73MS-00000-00&context=); [*Hodel, supra*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6B00-003B-S0DY-00000-00&context=)*;* [*Perez, supra*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DM70-003B-S366-00000-00&context=)*;* *[Katzenbach](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GRN0-003B-S2PY-00000-00&context=)* [*v. McClung, 379 U.S. 294, 13 L. Ed. 2d 290, 85 S. Ct. 377 (1964)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GRN0-003B-S2PY-00000-00&context=); and *[Heart of Atlanta Motel, supra](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GRN0-003B-S2PX-00000-00&context=)*, we stated that the pattern of analysis is clear.  *[Lopez](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)*[*, 514 U.S. at 559-560*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=). " Where economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained." *[514 U.S. at 560](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)*. Both petitioners and JUSTICE SOUTER's dissent downplay the role that the economic nature of the regulated activity plays in our [*Commerce Clause*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=) 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, **[\*\*\*\*22]** *e.g.*, *[id.,](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)* [*at 551*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=) ("The Act [does not] "regulate a commercial activity"), 560 ("Even *Wickard*, which is perhaps the most far reaching example of [*Commerce Clause*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=) 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)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H05V-00000-00&context=) 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*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=) 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 **[\*611]** elsewhere, substantially affect any sort of interstate commerce"); see also *[id.,](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)* [*at 573-574*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=) (KENNEDY, J., concurring) (stating that *Lopez* did not alter our "practical conception of commercial regulation" **[\*\*\*672]** and that Congress**[\*\*\*\*23]** 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 ("Unlike the earlier 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*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=) 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**[\*\*\*\*24]** endeavor. See *[id.,](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)* [*at 559-560*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=).

The second consideration that we found important in analyzing [*§ 922(q)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H05V-00000-00&context=) was that**[\*\*1751]** the statute contained "no express jurisdictional element which might limit its reach to a discrete set of firearm possessions that additionally have **[\*612]** an explicit connection with or effect on interstate commerce." *[Id.](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)*[*, at 562*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=).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)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H05V-00000-00&context=) "'nor**[\*\*\*\*25]** its legislative history contains 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 normally is not required to make formal findings as to the substantial burdens that an activity has on interstate commerce," *[514 U.S. at 562](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)* (citing *[McClung](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GRN0-003B-S2PY-00000-00&context=)*[*, 379 U.S. at 304*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GRN0-003B-S2PY-00000-00&context=);*[Perez](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DM70-003B-S366-00000-00&context=)*[*, 402 U.S. at 156*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DM70-003B-S366-00000-00&context=)), the existence of such findings may "enable us to evaluate the legislative judgment that the activity in question substantially affects interstate commerce, even though no such substantial effect [is] visible to the naked eye." *[514 U.S. at 563](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)*. 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](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)*[*., at 563-567*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=). The United States argued that the **[\*\*\*673]** 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**[\*\*\*\*26]** 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.](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)*[*, at 563-564*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=) (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 **[\*613]** 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.,](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)* [*at 564*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=). 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 these theories . . . , it is difficult to perceive any limitation on federal power, even in areas such as criminal law**[\*\*\*\*27]** 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*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=) 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*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=) regulation of intrastate activity only where that activity is economic in nature. See, *e.g.*, *[id](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)*[*., at 559-560*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=), and the cases cited therein. Like the Gun-Free School Zones Act at issue in *Lopez*, [*§ 13981*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SHT-0732-D6RV-H1W7-00000-00&context=) 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*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SHT-0732-D6RV-H1W7-00000-00&context=)**[\*\*1752]** is sufficiently tied to**[\*\*\*\*28]** interstate commerce, Congress elected to cast [*§ 13981*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SHT-0732-D6RV-H1W7-00000-00&context=)'s remedy over a wider, and more purely intrastate, body of violent crime.

**[\*614]  [\*\*\*\*29]  [\*\*\*674]** In contrast with the lack of congressional findings that we faced in *Lopez*, [*§ 13981*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SHT-0732-D6RV-H1W7-00000-00&context=) *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*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=) legislation. As we stated in *Lopez*, " 'Simply 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](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)* (quoting *[Hodel](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6B00-003B-S0DY-00000-00&context=)*[*, 452 U.S. at 311*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6B00-003B-S0DY-00000-00&context=) (REHNQUIST, J., concurring in judgment)). Rather, "'whether 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](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)* (quoting *Heart of Atlanta Motel*, 379 U.S. at 273 (Black, J., concurring)).

**[\*615]** In these cases, Congress' **[\*\*\*\*30]** 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 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*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=) to completely obliterate the Constitution's distinction between national and local authority seems well founded. See *[Lopez, supra](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)*[*, at 564*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=). 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' **[\*\*\*\*31]** police power) to every attenuated effect upon interstate commerce. If accepted, petitioners' reasoning would allow Congress to regulate any crime as long as the **[\*\*\*675]** nationwide, aggregated impact of that crime has substantial**[\*\*1753]** 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 **[\*616]** marriage, divorce, and childrearing on the national economy is undoubtedly significant. Congress may have recognized this specter when it expressly precluded [*§ 13981*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SHT-0732-D6RV-H1W7-00000-00&context=) from being used in the family law context. See [*42 U.S.C. § 13981(e)(4)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SHT-0732-D6RV-H1W7-00000-00&context=). Under our written Constitution, however, the limitation of congressional authority is not solely a matter of legislative grace.**[\*\*\*\*32]** See *[Lopez](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)*[*, supra, at 575-579*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=) **[\*\*\*676]** (KENNEDY, J., concurring); *[Marbury](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-KWW0-003B-H16C-00000-00&context=)*[*, 1 Cranch at 176-178*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-KWW0-003B-H16C-00000-00&context=).

**[\*617]** **[\*\*\*\*33]** We accordingly reject the argument that Congress may regulate noneconomic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce. The Constitution requires a distinction between what is **[\*618]** truly national and what is truly local.  *[Lopez](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)*[*, 514 U.S. at 568*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=) (citing *[Jones & Laughlin Steel](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9C70-003B-721F-00000-00&context=)*[*, 301 U.S. at 30*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9C70-003B-721F-00000-00&context=)). 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](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-KR80-003B-H0CY-00000-00&context=)* [*v. Virginia, 19 U.S. 264, 6 Wheat. 264, 426, 428, 5 L. Ed. 257 (1821)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-KR80-003B-H0CY-00000-00&context=) (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. See, *e.g.*, **[\*\*\*\*34]** *[Lopez](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)*[*, 514 U.S. at 566*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=) ("The Constitution . . . **[\*\*\*677]** withholds from Congress a plenary police power"); *[id.,](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)* [*at 584-585*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=) (THOMAS, J., concurring) ("We *always* have rejected readings **[\*619]** of the [*Commerce Clause*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=) 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*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=)).

III

**[\*\*\*\*35]** Because we conclude that the [*Commerce Clause*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=) does not provide Congress**[\*\*1755]** with authority to enact [*§ 13981*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SHT-0732-D6RV-H1W7-00000-00&context=), 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*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T5M2-D6RV-H38C-00000-00&context=) as a source of authority to enact [*§ 13981*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SHT-0732-D6RV-H1W7-00000-00&context=). 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](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S65-HXV0-003B-R16D-00000-00&context=)* [*v. Flores, 521 U.S. 507, 517, 138 L. Ed. 2d 624, 117 S. Ct. 2157 (1997)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S65-HXV0-003B-R16D-00000-00&context=). Section 5 is "a positive grant of legislative power," *[Katzenbach](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G3C0-003B-S2S4-00000-00&context=)* [*v. Morgan, 384 U.S. 641, 651, 16 L. Ed. 2d 828, 86 S. Ct. 1717 (1966)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G3C0-003B-S2S4-00000-00&context=), that includes authority to "prohibit conduct which is not itself unconstitutional and [to] intrude into 'legislative spheres of autonomy previously reserved to the States.'" *[Flores, supra,](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S65-HXV0-003B-R16D-00000-00&context=)* [*at 518*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S65-HXV0-003B-R16D-00000-00&context=) (quoting *[Fitzpatrick](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9V30-003B-S1YY-00000-00&context=)* [*v. Bitzer, 427 U.S. 445, 455, 49 L. Ed. 2d 614, 96 S. Ct. 2666 (1976))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9V30-003B-S1YY-00000-00&context=);**[\*\*\*\*36]** see also *[Kimel](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3Y9N-GRT0-004C-001C-00000-00&context=)* [*v. Florida Bd. of Regents, 528 U.S. 62,    , 145 L. Ed. 2d 522, 120 S. Ct. 631 (2000)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3Y9N-GRT0-004C-001C-00000-00&context=) (slip op., at 16). However, as broad as the congressional enforcement power is, it is not unlimited." *[Oregon](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DT20-003B-S50R-00000-00&context=)* [*v. Mitchell, 400 U.S. 112, 128, 27 L. Ed. 2d 272, 91 S. Ct. 260 (1970)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DT20-003B-S50R-00000-00&context=); 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*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T5M2-D6RV-H38C-00000-00&context=) 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 **[\*620]** 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**[\*\*\*\*37]** H. R. Conf. Rep. No. 103-711, at 385-386; S. Rep. No. 103-138, **[\*\*\*678]** 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](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S04-RPH0-003B-R241-00000-00&context=)* [*v. Virginia, 518 U.S. 515, 533, 135 L. Ed. 2d 735, 116 S. Ct. 2264 (1996)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S04-RPH0-003B-R241-00000-00&context=) (quoting *[Mississippi Univ. for Women](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5DB0-003B-S4DF-00000-00&context=)* [*v. Hogan, 458 U.S. 718, 724, 73 L. Ed. 2d 1090, 102 S. Ct. 3331 (1982)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5DB0-003B-S4DF-00000-00&context=), in turn quoting *[Wengler](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-7BY0-003B-S248-00000-00&context=)* [*v. Druggists Mut. Ins. Co., 446 U.S. 142, 150, 64 L. Ed. 2d 107, 100 S. Ct. 1540 (1980))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-7BY0-003B-S248-00000-00&context=).See also *[Craig](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9MB0-003B-S4RM-00000-00&context=)* [*v. Boren, 429 U.S. 190, 198-199, 50 L. Ed. 2d 397, 97 S. Ct. 451 (1976)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9MB0-003B-S4RM-00000-00&context=). However, the language and purpose of the [*Fourteenth Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T5M2-D6RV-H38C-00000-00&context=) place certain limitations on the manner in which Congress may attack**[\*\*\*\*38]** discriminatory conduct. These limitations are necessary to prevent the [*Fourteenth Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T5M2-D6RV-H38C-00000-00&context=) from obliterating the Framers' carefully crafted balance of power between the States and the National Government. See *[Flores](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S65-HXV0-003B-R16D-00000-00&context=)*[*, 521 U.S. at 520-524*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S65-HXV0-003B-R16D-00000-00&context=) (reviewing the history of the [*Fourteenth Amendment's*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T5M2-D6RV-H38C-00000-00&context=) enactment and discussing the contemporary belief**[\*\*1756]** that the Amendment "does **[\*621]** 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*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T5M2-D6RV-H38C-00000-00&context=), by its very terms, prohibits only state action. The principle has become firmly embedded in our constitutional law that the action inhibited by the first section of the [*Fourteenth Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T5M2-D6RV-H38C-00000-00&context=) 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](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-JSJ0-003B-S418-00000-00&context=)* [*v. Kraemer, 334 U.S. 1, 13, 92 L. Ed. 1161, 68 S. Ct. 836, and n. 12 (1948)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-JSJ0-003B-S418-00000-00&context=).

Shortly after the [*Fourteenth Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T5M2-D6RV-H38C-00000-00&context=) was adopted, we decided two cases interpreting the Amendment's provisions, **[\*\*\*\*39]** *[United States](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-J140-003B-H3M7-00000-00&context=)* [*v. Harris, 106 U.S. 629, 27 L. Ed. 290, 1 S. Ct. 601 (1883)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-J140-003B-H3M7-00000-00&context=), and the *[Civil Rights Cases](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-HW40-003B-H38X-00000-00&context=)*[*, 109 U.S. 3, 27 L. Ed. 835, 3 S. Ct. 18 (1883)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-HW40-003B-H38X-00000-00&context=). 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](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-J140-003B-H3M7-00000-00&context=)*. 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 the State, or their administration by her officers." *[106 U.S. at 640](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-J140-003B-H3M7-00000-00&context=)*. In so doing, we reemphasized our statement from *[Virginia](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-J6N0-003B-H4B9-00000-00&context=)* [*v. Rives, 100 U.S. 313, 318, 25 L. Ed. 667 (1880)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-J6N0-003B-H4B9-00000-00&context=), that "'these provisions of the [*fourteenth amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T5M2-D6RV-H38C-00000-00&context=) have reference to State action exclusively, and not to any action of private individuals.'" **[\*\*\*679]** [*Harris, supra, at 639*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-J140-003B-H3M7-00000-00&context=) (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**[\*\*\*\*40]** of the § 5 enforcement power. *[109 U.S. at 11](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-HW40-003B-H38X-00000-00&context=)* ("Individual invasion of individual rights is not the subject-matter of the [Fourteenth] Amendment. See also, *e.g.*, *[Romer](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RHM-BW90-003B-R0KN-00000-00&context=)* [*v.* ***[\*622]*** *Evans, 517 U.S. 620, 628, 134 L. Ed. 2d 855, 116 S. Ct. 1620 (1996)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RHM-BW90-003B-R0KN-00000-00&context=) (It was settled early that the [*Fourteenth Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T5M2-D6RV-H38C-00000-00&context=) did not give Congress a general power to prohibit discrimination in public accommodations"); *[Lugar](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5FN0-003B-S4K1-00000-00&context=)* [*v. Edmondson Oil Co., 457 U.S. 922, 936, 73 L. Ed. 2d 482, 102 S. Ct. 2744 (1982)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5FN0-003B-S4K1-00000-00&context=) ("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](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5FP0-003B-S4K3-00000-00&context=)* [*v. Yaretsky, 457 U.S. 991, 1002, 73 L. Ed. 2d 534, 102 S. Ct. 2777 (1982)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5FP0-003B-S4K3-00000-00&context=); *[Moose Lodge No. 107](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-D6M0-003B-S2K0-00000-00&context=)* [*v. Irvis, 407 U.S. 163, 172, 32 L. Ed. 2d 627, 92 S. Ct. 1965 (1972)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-D6M0-003B-S2K0-00000-00&context=); *[Adickes](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-F010-003B-S1XV-00000-00&context=)* [*v. S. H. Kress & Co., 398 U.S. 144, 147 n. 2, 26 L. Ed. 2d 142, 90 S. Ct. 1598 (1970)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-F010-003B-S1XV-00000-00&context=); *[United States](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-JGG0-003B-H0GG-00000-00&context=)* [*v. Cruikshank, 92 U.S. 542, 554, 23 L. Ed. 588 (1876)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-JGG0-003B-H0GG-00000-00&context=) ("The [*fourteenth amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T5M2-D6RV-H38C-00000-00&context=) 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**[\*\*\*\*41]** 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 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*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T5M2-D6RV-H38C-00000-00&context=).

Petitioners contend that two more recent decisions have in effect overruled this longstanding limitation on Congress' § 5 authority. They rely on *[United States](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G5P0-003B-S3PM-00000-00&context=)* [*v.****[\*\*1757]*** *Guest, 383 U.S. 745, 16 L. Ed. 2d 239, 86 S. Ct. 1170 (1966)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G5P0-003B-S3PM-00000-00&context=), 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*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5032-D6RV-H52S-00000-00&context=), 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](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G5P0-003B-S3PM-00000-00&context=)*. Three Members of the Court, in a separate opinion**[\*\*\*\*42]** by Justice Brennan, expressed the view that the *Civil Rights Cases* **[\*623]** were wrongly decided, and that Congress could under § 5 prohibit actions by private individuals. *[383 U.S. at 774](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G5P0-003B-S3PM-00000-00&context=)* (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 punish all conspiracies -- with or without state action -- that interfere with [*Fourteenth Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T5M2-D6RV-H38C-00000-00&context=) rights." *[Id.](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G5P0-003B-S3PM-00000-00&context=)* [*at 762*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G5P0-003B-S3PM-00000-00&context=) **[\*\*\*680]** (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.](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G5P0-003B-S3PM-00000-00&context=)*[*, at 762, n. 1*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G5P0-003B-S3PM-00000-00&context=) (opinion concurring in part and dissenting in part).

Though these three Justices saw fit to opine on matters not before the Court in *Guest*, the Court had no occasion to revisit the *Civil Rights* **[\*\*\*\*43]**  *Cases* and *Harris*, having determined "the indictment [charging private individuals with conspiring to deprive blacks of equal access to state facilities] in fact contained an express allegation of state involvement." *[383 U.S. at 756](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G5P0-003B-S3PM-00000-00&context=)*. 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*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T5M2-D6RV-H38C-00000-00&context=)." *Ibid.* All of this Justice Clark explicitly acknowledged. See *[id.](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G5P0-003B-S3PM-00000-00&context=)*[*, at 762*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G5P0-003B-S3PM-00000-00&context=) (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*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T5M2-D6RV-H38C-00000-00&context=) rights, such as the right to utilize public facilities").

**[\*624]** 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**[\*\*\*\*44]** 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](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-CYF0-003B-S4NX-00000-00&context=)* [*v. Carter, 409 U.S. 418, 34 L. Ed. 2d 613, 93 S. Ct. 602 (1973)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-CYF0-003B-S4NX-00000-00&context=). *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*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SHT-0712-D6RV-H526-00000-00&context=) -- 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 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 state legislation or state action in reference**[\*\*\*\*45]** to that subject, the power given is limited**[\*\*1758]** 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 **[\*\*\*681]** of state officers." *[109 U.S. at 18](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-HW40-003B-H38X-00000-00&context=)*.

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 **[\*625]** 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*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SHT-0732-D6RV-H1W7-00000-00&context=): 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:

The 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**[\*\*\*\*46]** 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 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*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SHT-0732-D6RV-H1W7-00000-00&context=)'s civil remedy. For the remedy is simply not "corrective in its character, adapted to counteract and redress the operation of such prohibited state laws or proceedings of state officers." *[Civil Rights Cases](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-HW40-003B-H38X-00000-00&context=)*[*, 109 U.S. at 18*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-HW40-003B-H38X-00000-00&context=).Or, as we have phrased**[\*\*\*\*47]** it in more recent cases, prophylactic legislation under § 5 must have a "'congruence **[\*626]** and proportionality between the injury to be prevented or remedied and the means adopted to that end." *[Florida Prepaid Postsecondary Ed. Expense Bd.](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3WSK-D180-004C-200B-00000-00&context=)* [*v. College Savings Bank, 527 U.S. 627, 639, 144 L. Ed. 2d 575, 119 S. Ct. 2199 (1999)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3WSK-D180-004C-200B-00000-00&context=); *[Flores](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S65-HXV0-003B-R16D-00000-00&context=)*[*, 521 U.S. at 526*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S65-HXV0-003B-R16D-00000-00&context=). [*Section 13981*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SHT-0732-D6RV-H1W7-00000-00&context=) is not aimed at proscribing discrimination by officials which the [*Fourteenth Amendment*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-T5M2-D6RV-H38C-00000-00&context=) 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*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SHT-0732-D6RV-H1W7-00000-00&context=) 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](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G3C0-003B-S2S4-00000-00&context=)* [*v. Morgan, 384 U.S. 641, 16 L. Ed. 2d 828, 86 S. Ct. 1717 (1966)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G3C0-003B-S2S4-00000-00&context=), Congress prohibited New York from imposing literacy tests as a prerequisite for voting because it found that such a requirement disenfranchised thousands **[\*\*\*682]** of Puerto Rican immigrants who had been educated in the Spanish language of their home territory. That**[\*\*\*\*48]** 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](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G6R0-003B-S3VT-00000-00&context=)* [*v. Katzenbach, 383 U.S. 301, 15 L. Ed. 2d 769, 86 S. Ct. 803 (1966)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G6R0-003B-S3VT-00000-00&context=), Congress imposed voting rights requirements on States that, Congress found, had a history of discriminating against blacks in voting. **[\*\*1759]** The remedy was also directed at state officials in those States. Similarly, in *[Ex parte Virginia](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-J6N0-003B-H4BB-00000-00&context=)*[*, 100 U.S. 339, 25 L. Ed. 676 (1880)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-J6N0-003B-H4BB-00000-00&context=), Congress criminally punished state officials who intentionally discriminated in jury selection; again, the remedy was directed to the culpable state official.

*[Section 13981](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SHT-0732-D6RV-H1W7-00000-00&context=)* 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](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G3C0-003B-S2S4-00000-00&context=)* [*v. Morgan, supra*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G3C0-003B-S2S4-00000-00&context=), **[\*627]** was directed only to the State where the evil found by Congress existed, and in *[South Carolina](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G6R0-003B-S3VT-00000-00&context=)* [*v. Katzenbach, supra*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-G6R0-003B-S3VT-00000-00&context=), the remedy was directed**[\*\*\*\*49]** 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*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SHT-0732-D6RV-H1W7-00000-00&context=).

IV

Petitioner Brzonkala's complaint alleges that she was the victim of a brutal assault. But Congress' effort in [*§ 13981*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SHT-0732-D6RV-H1W7-00000-00&context=) to provide a federal civil remedy can be sustained neither under the [*Commerce Clause*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=) nor under § 5 of the Fourteenth Amendment. If the allegations here are true, no civilized system of justice could fail to provide her a 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.*

**Concur by:** THOMAS

**Concur**

*JUSTICE* ***THOMAS***, concurring.

[Omitted: see his dissent in Lopez.]

**Dissent by:** SOUTER; BREYER

**Dissent**

**[\*628]** *JUSTICE* ***SOUTER***, with whom JUSTICE **STEVENS**, JUSTICE **GINSBURG**, and JUSTICE **BREYER** join, dissenting.

The Court says both that it leaves [*Commerce Clause*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=) precedent undisturbed and that the Civil Rights **[\*\*\*683]** Remedy of the Violence Against Women Act of 1994, [*42 U.S.C. § 13981*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SHT-0732-D6RV-H1W7-00000-00&context=), exceeds Congress's power under that Clause. I find the claims irreconcilable and respectfully dissent.

**[\*\*\*\*51]** I

Our cases, which remain at least nominally undisturbed, stand for the following propositions. Congress has the power to legislate with regard to activity that, in the aggregate, has a substantial effect on interstate commerce. See *[Wickard](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5300-003B-73MS-00000-00&context=)* [*v. Filburn, 317 U.S. 111, 124-128, 87 L. Ed. 122, 63 S. Ct. 82 (1942)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5300-003B-73MS-00000-00&context=); *[Hodel](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6B00-003B-S0DY-00000-00&context=)* [*v. Virginia Surface Mining & Reclamation Assn., 452 U.S. 264, 277, 69 L. Ed. 2d 1, 101 S. Ct. 2352 (1981)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6B00-003B-S0DY-00000-00&context=). The fact of such a substantial effect is not an issue for the courts in the first instance, *ibid.,* but for the Congress, whose institutional capacity for gathering evidence and taking testimony**[\*\*1760]** far exceeds ours. By passing legislation, Congress indicates its conclusion, whether explicitly or not, that facts support its exercise of the commerce power. The business of the courts is to review the congressional assessment, not for soundness but simply for the rationality of concluding that a jurisdictional basis exists in fact. See *ibid*. Any explicit findings that Congress chooses to make, though not dispositive of the question of rationality, may advance judicial review by identifying factual authority on which Congress relied. Applying those propositions in these cases can lead**[\*\*\*\*52]** to only one conclusion.

One obvious difference from *[United States](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)* [*v. Lopez, 514 U.S. 549, 131 L. Ed. 2d 626, 115 S. Ct. 1624 (1995)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=), is the mountain of data assembled by Congress, **[\*629]** here showing the effects of violence against women on interstate commerce. Passage of the Act in 1994 was preceded by four years of hearings, which included testimony **[\*\*\*684]** from physicians and law professors; from survivors **[\*630]** of rape and domestic violence; and from representatives of state law enforcement and private business. The record includes reports on gender bias from task forces in 21 States, and we have the benefit of specific factual **[\*\*1761]** findings **[\*631]** in the eight separate Reports issued by Congress and its committees over the long course leading to enactment. Compare *[Hodel](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6B00-003B-S0DY-00000-00&context=)*[*, 452 U.S. at 278-279*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6B00-003B-S0DY-00000-00&context=) (noting "extended hearings," "vast amounts of testimony and documentary evidence," and "years of the most thorough legislative consideration"). **[\*\*\*\*53]** **[\*\*\*\*54]** **[\*\*\*\*55]**

**[\*\*\*685]** With respect to domestic violence, Congress received evidence for the following findings:

[Omitted.]

**[\*\*1763]**Based on the data thus partially summarized, Congress found that

"crimes of violence motivated by gender have a substantial adverse effect on interstate commerce, by deterring potential victims from traveling interstate, from engaging in employment in interstate**[\*\*\*\*60]** 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, p. 385 (1994).

Congress thereby explicitly stated the predicate for the exercise of its [*Commerce Clause*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=) power. Is its conclusion irrational in view of the data amassed? True, the methodology of **[\*\*\*687]** particular studies may be challenged, and some of the figures arrived at may be disputed. But the sufficiency of the evidence before Congress to provide a rational basis for the finding cannot seriously be questioned. Cf. *[Turner Broadcasting System, Inc.](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S65-J0X0-003B-R27C-00000-00&context=)* [*v. FCC, 520 U.S. 180, 199, 137 L. Ed. 2d 369, 117 S. Ct. 1174 (1997)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S65-J0X0-003B-R27C-00000-00&context=) **[\*635]** ("The Constitution gives to Congress the role of weighing conflicting evidence in the legislative process"). . . .

If the analogy to the Civil Rights Act of 1964 is not plain enough, one can always look back a bit further. In *Wickard*, we upheld the application of the Agricultural Adjustment Act to the planting and**[\*\*\*\*63]** consumption of homegrown wheat. . . .

**[\*637]  [\*\*\*\*64]** II

The Act would have passed muster at any time 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*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=), complemented by the authority of the Necessary and Proper Clause, Art. I. § 8 cl. 18, extended to all activity that, when aggregated, has a substantial effect on interstate commerce. As already noted, this understanding was secure even against the turmoil at the passage of the Civil Rights Act of 1964, in the aftermath of which the Court not only reaffirmed the cumulative effects and rational basis features of the substantial effects test, see *[Heart of Atlanta, supra,](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GRN0-003B-S2PX-00000-00&context=)* [*at 258*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GRN0-003B-S2PX-00000-00&context=); *[McClung, supra,](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GRN0-003B-S2PY-00000-00&context=)* [*at 301-305*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GRN0-003B-S2PY-00000-00&context=), but declined to limit the commerce power through a formal distinction between legislation focused on "commerce" and statutes addressing "moral and social wrongs," *[Heart of Atlanta, supra,](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GRN0-003B-S2PX-00000-00&context=)* [*at 257*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GRN0-003B-S2PX-00000-00&context=).

The fact that the Act does not pass muster before the Court today is therefore proof, to a degree that *Lopez* was not, that the Court's nominal adherence to the substantial effects test is merely that. Although a new jurisprudence**[\*\*\*\*65]** has not emerged with any distinctness, it is clear that some congressional conclusions about obviously substantial, cumulative effects on commerce are being assigned lesser values than the once-stable doctrine would assign them. These devaluations are accomplished not by any express repudiation of the substantial effects test or its application through the aggregation of individual conduct, but by supplanting rational basis scrutiny with a new criterion of review.

**[\*638]** Thus the elusive heart of the majority's analysis in these cases is its statement that Congress's findings of fact are "weakened" by the presence of a disfavored "method of reasoning." *Ante,* at 14. This seems to suggest that the "substantial effects" analysis is not a **[\*\*\*689]** 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, **[\*\*1765]** dependent upon a uniquely judicial competence.

This new characterization of substantial effects has no support in our cases (the self-fulfilling prophecies of *Lopez* aside), least of all those the majority cites. Perhaps this explains why the majority is not content to**[\*\*\*\*66]** rest on its cited precedent but claims a textual justification for moving toward its new system of congressional deference subject to selective discounts. Thus it purports to rely on the sensible and traditional understanding that the listing in the Constitution of some powers implies the exclusion of others unmentioned. . . .

**[\*\*\*\*68]** The premise that the enumeration of powers implies that other powers are withheld is sound; the conclusion that some particular categories of subject matter are therefore presumptively beyond the reach of the commerce power is, however, a non sequitur. From the fact that Art. I, § 8, cl. 3 grants an authority limited to regulating commerce, it follows only that Congress may claim no authority under that section to address any subject that does not affect commerce. It does not at all follow that an activity affecting commerce nonetheless falls outside the commerce power, depending on the specific character of the activity, or the authority of a State to regulate it **[\*\*\*690]** along with Congress. My disagreement **[\*640]** with the majority is not, however, confined to logic, for history has**[\*\*1766]** shown that categorical exclusions have proven as unworkable in practice as they are unsupportable in theory. . . .

III

All of this convinces me that today's ebb of the commerce power rests on error, and at the same time leads me to doubt that the majority's view will prove to be enduring law. . . .

*JUSTICE BREYER*, with whom JUSTICE STEVENS joins, and with whom JUSTICE SOUTER and JUSTICE GINSBURG join as to Part I-A, dissenting.

No one denies the importance of the Constitution's federalist principles. Its state/federal division of authority protects liberty -- both by restricting the burdens that government can impose from a distance and by facilitating citizen participation in government that is closer to home. The question is how the judiciary can best implement that **[\*656]** original federalist understanding where the [*Commerce Clause*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=) is at issue.

I

. . . . I add that the majority's holding illustrates the difficulty of finding a workable judicial [*Commerce Clause*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=) touchstone**[\*\*\*\*95]** -- a set of comprehensible interpretive rules that courts might use to impose some meaningful limit, but not too great a limit, upon the scope of the legislative authority that the [*Commerce Clause*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8T9R-PP62-D6RV-H2XS-00000-00&context=) delegates to Congress.

A

Consider the problems. The "economic/noneconomic" distinction is not easy to apply. Does the local street corner mugger engage in "economic" activity or "noneconomic" activity when he mugs for money? See *[Perez](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DM70-003B-S366-00000-00&context=)* [*v. United States, 402 U.S. 146, 28 L. Ed. 2d 686, 91 S. Ct. 1357 (1971)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DM70-003B-S366-00000-00&context=) (aggregating local "loan sharking" instances); *[United States](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)* [*v. Lopez, 514 U.S. 549, 559, 131 L. Ed. 2d 626, 115 S. Ct. 1624 (1995)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=) (loan sharking is economic because it consists of "intrastate extortionate credit transactions"); *ante*, at 9. Would evidence that desire for economic domination underlies many brutal crimes against women save the present statute? See United States General Accounting Office, Health, Education, and Human Services Division, Domestic Violence: Prevalence and Implications for Employment Among Welfare Recipients 7-8 (Nov. 1998); Brief for Equal Rights Advocates, *et al.* as *Amicus Curiae* 10-12.

The line becomes yet harder to draw given the need for exceptions. The Court itself would**[\*\*\*\*96]** permit Congress to aggregate, hence regulate, "noneconomic" activity taking place **[\*657]** at economic establishments. See *[Heart of Atlanta Motel, Inc.](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GRN0-003B-S2PX-00000-00&context=)* [*v. United States, 379 U.S. 241, 13 L. Ed. 2d 258, 85 S. Ct. 348 (1964)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GRN0-003B-S2PX-00000-00&context=) (upholding civil rights laws forbidding discrimination at local motels); *[Katzenbach](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GRN0-003B-S2PY-00000-00&context=)* [*v. McClung, 379 U.S. 294, 13 L. Ed. 2d 290, 85 S. Ct. 377 (1964)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GRN0-003B-S2PY-00000-00&context=) (same for restaurants); *[Lopez, supra,](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)* [*at 559*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=) (recognizing congressional power to aggregate, hence forbid, noneconomically motivated discrimination at public accommodations); *ante*, at 9-10 (same). And it would permit Congress to regulate where that regulation**[\*\*1775]** is "an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated." *[Lopez, supra,](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)* [*at 561*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=); cf. Controlled Substances Act, [*21 U.S.C. § 801 et seq.*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SDD-0C82-8T6X-73GX-00000-00&context=) (regulating drugs produced for home consumption). Given the former exception, can Congress simply rewrite the present law and limit its application to restaurants, hotels, perhaps universities, and other places of public accommodation? Given the latter exception, can Congress save the present law**[\*\*\*\*97]** by including it, or much of it, in a broader "Safe Transport" or "Workplace Safety" act?

More important, why should we give critical constitutional importance to the economic, or noneconomic, nature of an interstate-commerce-affecting *cause*? If chemical emanations through indirect environmental change cause identical, severe commercial harm **[\*\*\*701]** outside a State, why should it matter whether local factories or home fireplaces release them? The Constitution itself refers only to Congress' power to "regulate Commerce . . . among the several States," and to make laws "necessary and proper" to implement that power. Art. I, § 8, cls. 3, 18. The language says nothing about either the local nature, or the economic nature, of an interstate-commerce-affecting cause.

This Court has long held that only the interstate commercial effects, not the local nature of the cause, are constitutionally relevant. See *[NLRB](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9C70-003B-721F-00000-00&context=)* [*v. Jones & Laughlin Steel Corp., 301 U.S. 1, 38-39, 81 L. Ed. 893, 57 S. Ct. 615 (1937)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9C70-003B-721F-00000-00&context=) (focusing upon interstate effects); *[Wickard](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5300-003B-73MS-00000-00&context=)* [*v. Filburn, 317 U.S. 111, 125, 87 L. Ed. 122, 63 S. Ct. 82 (1942)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-5300-003B-73MS-00000-00&context=) (aggregating **[\*658]** interstate effects of wheat grown for home consumption); *[Heart of Atlanta Motel, supra,](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GRN0-003B-S2PX-00000-00&context=)* [*at 258*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GRN0-003B-S2PX-00000-00&context=)**[\*\*\*\*98]** ("'If it is interstate commerce that feels the pinch, it does not matter how local the operation which applies the squeeze'" (quoting *[United States](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-JR30-003B-S2DK-00000-00&context=)* [*v. Women's Sportswear Mfrs. Assn., 336 U.S. 460, 464, 93 L. Ed. 805, 69 S. Ct. 714 (1949)))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-JR30-003B-S2DK-00000-00&context=). Nothing in the Constitution's language, or that of earlier cases prior to *Lopez*, explains why the Court should ignore one highly relevant characteristic of an interstate-commerce-affecting cause (how "local" it is), while placing critical constitutional weight upon a different, less obviously relevant, feature (how "economic" it is).

Most important, the Court's complex rules seem unlikely to help secure the very object that they seek, namely, the protection of "areas of traditional state regulation" from federal intrusion. *Ante*, at 15. The Court's rules, even if broadly interpreted, are underinclusive. The local pickpocket is no less a traditional subject of state regulation than is the local gender-motivated assault. Regardless, the Court reaffirms, as it should, Congress' well-established and frequently exercised power to enact laws that satisfy a commerce-related jurisdictional prerequisite -- for example, that some item relevant to the federally**[\*\*\*\*99]** regulated activity has at some time crossed a state line. *Ante*, at 8-9, 11, 13, and n. 5; *[Lopez, supra,](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=)* [*at 558*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S42-78N0-003B-R3NW-00000-00&context=); *[Heart of Atlanta Motel, supra,](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GRN0-003B-S2PX-00000-00&context=)* [*at 256*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-GRN0-003B-S2PX-00000-00&context=) ("'The authority of Congress to keep the channels of interstate commerce free from immoral and injurious uses has been frequently sustained, and is no longer open to question'" (quoting *[Caminetti](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6F80-003B-H1RV-00000-00&context=)* [*v. United States, 242 U.S. 470, 491, 61 L. Ed. 442, 37 S. Ct. 192 (1917)))*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-6F80-003B-H1RV-00000-00&context=); see also *[United States](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DCC0-003B-S06T-00000-00&context=)* [*v. Bass, 404 U.S. 336, 347-350, 30 L. Ed. 2d 488, 92 S. Ct. 515 (1971)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-DCC0-003B-S06T-00000-00&context=) (saving ambiguous felon-in-possession statute by requiring gun to have crossed state line); *[Scarborough](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9DK0-003B-S1X5-00000-00&context=)* [*v. United States, 431 U.S. 563, 575, 52 L. Ed. 2d 582, 97 S. Ct. 1963 (1977)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-9DK0-003B-S1X5-00000-00&context=) (interpreting same statute to require only that gun passed "in interstate commerce" "at some time," without questioning constitutionality); cf., *e.g.*, [*18 U.S.C. § 2261(a)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H0V7-00000-00&context=) (making it a federal crime for a person to cross state lines to commit **[\*659]** a crime of violence against a spouse or intimate partner); § 1951(a) (federal crime to commit**[\*\*1776]** robbery, extortion, physical violence or threat thereof, where "article or commodity in commerce" is affected, obstructed or delayed); **[\*\*\*\*100]** § 2315 (making unlawful **[\*\*\*702]** the knowing receipt or possession of certain stolen items that have "crossed a State . . . boundary"); [*§ 922(g)(1)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:8SG9-5042-D6RV-H05V-00000-00&context=) (prohibiting felons from shipping, transporting, receiving, or possessing firearms "in interstate . . . commerce"). . . .

1. This case has been more extensively edited than most that I have assigned. I have taken out many footnotes and discussion of caselaw. I have merely added marks of ellipses where there is missing text. [↑](#footnote-ref-1)
2. \*Together with No. 99-29, Brzonkala v. Morrison et al., also on certiorari to the same court. [↑](#footnote-ref-2)