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January 10, 2000, Monday, Final Edition

States' Role at Issue in Rape Suit; High Court to Review Congressional Action

Joan Biskupic, Washington Post Staff Writer

SECTION: A SECTION; Pg. A17; THE FEDERAL PAGE

LENGTH: 948 words

Throughout the 1990s, the Supreme Court handed down a series of controversial decisions that curtailed federal power and bolstered the authority of the states. But the practical consequences were modest, and the decisions left Congress with many other ways to fulfill its legislative agenda.

This week could be different.

On Tuesday, the justices will hear oral arguments in a dispute concerning federal penalties for rapists and other perpetrators of violence against women. The case presents a direct challenge to the Rehnquist Court's signature effort to rein in federal laws that encroach on the states.

At issue is a key provision of the 1994 Violence Against Women Act that allows women to sue their attackers in federal court for money damages. In passing the law, Congress said it was responding to "a national tragedy played out every day in the lives of millions of American women at home, in the workplace, and on the street."

Congress said it could authorize the lawsuits for what traditionally have been state crimes based on its power to regulate interstate commerce--for example, to ensure that women weren't intimidated from looking for jobs in other states--and to enforce civil rights--in this case, to take care of victims of "gender-motivated violence" and ensure equal protection of the laws. Even as Congress was considering whether to pass the law, Chief Justice William H. Rehnquist had singled it out in his complaints that Congress was increasingly federalizing crimes for symbolic reasons.

The case in hand was brought by a Virginia Polytechnic Institute student who claimed she was raped by two football players. The U.S. Court of Appeals for the 4th Circuit rejected the congressional reasoning behind the law in a ruling last year, saying, "Such a statute . . . simply cannot be reconciled with the principles of limited federal government upon which this nation is founded."

The Justice Department and lawyers for Christy Brzonkala, trying to use the law to sue Antonio J. Morrison and James L. Crawford for an alleged 1994 dormitory attack, say that if the Supreme Court agrees with the 4th Circuit it will hamper Congress's power to enforce an individual's constitutional rights and seriously curb its ability to regulate interstate commerce. The 4th Circuit had said Congress's commerce power is limited to regulating activities that are "economic" in nature.

Solicitor General Seth P. Waxman has asserted that it's not the character of the activity, but its impact on interstate commerce, that should matter. Regarding congressional power on behalf of civil rights, he said extensive federal hearings demonstrated "pervasive bias" in state criminal justice systems that deny women who have been assaulted the equal

protection of the laws. He said bias and gender stereotypes were reflected in state laws, rules of evidence and "especially the attitudes of police, prosecutors, and judges."

Unlike earlier high court battles between Congress and the states, the states are on the side of the federal government here. Thirty-six states, including Maryland but not Virginia, signed a "friend of the court" brief offering a rendition of the human suffering and billion-dollar public costs associated with violence against women. The states pointed to studies that showed that the total costs endured by rape victims are greater than costs suffered by victims of other violence, and that states bear a significant portion of that through emergency, medical, welfare and insurance payments.

Lawyers for Morrison and Crawford and their supporters assert that if the high court reverses the 4th Circuit it will open the door to unlimited congressional meddling and a violation of the nation's basic constitutional framework. They say domestic relations and criminal law belong in the hands of local police and courts.

"The Constitution created a federal government of enumerated powers to ensure protection of our fundamental liberties," Morrison's lawyers argue, adding that he "has a right to be free from an overreaching Congress, just as he has the right to be free from a Congress that would pass a law abridging freedom of speech."

While numerous women's rights advocates and shelters have joined the side of Brzonkala, a few women's groups have signed on with Morrison and Crawford, including the Eagle Forum Education and Legal Defense Fund.

The main point of contention between the numerous organizations that have weighed in on the joint cases of *United States v. Morrison* and *Brzonkala v. Morrison* is not whether violence against women is a serious issue, but how it should be addressed.

Federal vs. State

In the following major cases, the court curtailed the power of Congress by striking down:

- * Portions of a federal law requiring states to regulate the disposal of low-level radioactive waste. (1992)
- * Congress's attempt to ban guns within 1,000 feet of local public schools. (1995)
- * Part of an Indian gaming regulation that allowed tribes to sue in federal court when states failed to negotiate reservation gambling compacts. (1996)
- * The Religious Freedom Restoration Act, which allowed governments to infringe on religious practices only if they had a health, safety or other "compelling interest" in doing so. (1997)
- * A part of the Brady Handgun Violence Prevention Act, which ordered local sheriffs to check the backgrounds of would-be handgun purchasers. (1997)
- * Parts of federal statutes that allowed individuals to sue a state for violating federal laws, in disputes involving overtime wages, patent infringement and a prohibition on false advertising. (1999)

LOAD-DATE: January 10, 2000

LANGUAGE: ENGLISH

GRAPHIC: IG,,TWP

Court to weigh case of violence statute; Constitutionality of federal law at issue The Washington Times January 10, 2000, Monday, Final Edition

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The Washington Times

January 10, 2000, Monday, Final Edition

Court to weigh case of violence statute; Constitutionality of federal law at issue

BYLINE: Herbert A. Sample; MCCLATCHY NEWSPAPERS

SECTION: PART A; NATION; Pg. A4

LENGTH: 634 words

In the fall of 1994, Virginia Tech freshman Christy Brzonkala was purportedly raped by two of the university's football players.

She didn't report the assault right away to local police, and the complaint she filed with the university was mishandled by its judicial system, so Miss Brzonkala went to federal court, invoking the 1994 federal Violence Against Women Act to sue the two players and the university for \$8.3 million for violating her civil rights.

A trial judge and a federal appeals court agreed that, while she suffered horrible violence, she couldn't seek a remedy in federal court because Congress overstepped its bounds in enacting the statute.

Tomorrow, the U.S. Supreme Court will take up her attempt to revive the law and her lawsuit with it in a dispute that highlights an age-old constitutional debate: What latitude does Congress have to address issues that seem to have little or nothing to do with Congress' constitutional power to regulate interstate commerce?

The case has energized conservative legal circles with the possibility that the justices will hand down a clear rule curbing Congress' tendency to pass laws on just about any subject.

But advocates of the Violence Against Women Act, including the Clinton administration and its congressional sponsors, insist the Constitution must be interpreted flexibly so Congress can respond to problems the Founding Fathers never could have imagined.

Miss Brzonkala, now 23 and living in the Washington area, said more laws to punish rapists are needed, though she and her attorneys won't say why they didn't go to state court.

"The more legal remedies that we provide women, the more we can make sure women who are raped don't become just another number," Miss Brzonkala says.

Few dispute that Miss Brzonkala was sexually assaulted in a Virginia Tech dormitory in October 1994.

She charged football players Antonio Morrison and James Crawford with attacking her. They countered that Miss Brzonkala was a willing participant.

Miss Brzonkala did not file a criminal or civil complaint with the Virginia justice system, but went first to the university's judicial panel.

That committee held a hearing and agreed to suspend Mr. Morrison for a year. When Mr. Morrison threatened to sue for violating his rights, the school held a second hearing. He again was ordered suspended for a year, but the school provost ruled a one-year suspension excessive and deferred any punishment until after football season.

That's when Miss Brzonkala sued under the Violence Against Women Act.

The act, passed as part of a larger anti-crime bill, also includes provisions that fund battered women's shelters and domestic abuse hot lines, and it criminalizes domestic violence that crosses state lines.

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Its congressional sponsors said a federal law was needed because state and local law enforcement had been inattentive to victims of domestic violence and rape.

Congressional backers also said federal action was warranted because violence based on one's sex has a negative impact on commerce by costing U.S. employers and the public billions of dollars and by keeping women from accepting certain jobs.

But U.S. District Judge Jackson Kiser said Congress failed to show federal action was justified to safeguard the economy from domestic violence's impact. Such reasoning would let Congress invoke its commerce power to regulate all areas of "family law, most criminal laws and even insomnia," Judge Kiser said.

A three-judge panel of the 4th U.S. Circuit Court of Appeals disagreed, voting 2-1 that it and other courts should defer to Congress when it offers reasonable proof that domestic violence or other issues affect commerce. But the full appeals court, on a 7-4 vote, reversed and struck down the law.

LOAD-DATE: January 10, 2000

LANGUAGE: ENGLISH

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The New York Times

January 12, 2000, Wednesday, Late Edition - Final

Justices Cool to Law Protecting Women

BYLINE: By LINDA GREENHOUSE

SECTION: Section A; Page 18; Column 1; National Desk

LENGTH: 1096 words

DATELINE: WASHINGTON, Jan. 11

If the Supreme Court wanted to underscore the constitutional vulnerability of the Violence Against Women Act, it could hardly have orchestrated a more convincing demonstration than it put on today.

Not only did the justices open their session by declaring, in a separate case argued three months ago, that Congress lacked authority to make the federal law against age discrimination binding on the states. But then, during arguments on the constitutionality of the Violence Against Women Act, members of the same five-justice majority in the age discrimination case made abundantly clear their deep skepticism about whether Congress had an adequate basis for opening federal courts to suits by victims of violence "motivated by gender" against their attackers.

Congress passed the Violence Against Women Act in 1994, just before the Supreme Court set itself on its current course of subjecting to searching scrutiny any Congressional action that could conceivably impinge on state sovereignty or traditional prerogatives. In a sense, the statute and the court's growing list of federalism rulings have been on an inevitable collision course that ended in the courtroom this morning, with little evidence that the 5-to-4 states' rights majority would shift course.

"Your approach would justify a federal remedy for alimony, child support, even contract disputes," Justice Sandra Day O'Connor said disapprovingly to Solicitor General Seth P. Waxman, who was arguing the government's appeal of a ruling that the law's civil damages provision was unconstitutional.

Some students of the court have speculated that Justice O'Connor's record of solicitude for women's interests might, in this case, trump her demonstrated commitment to keeping federal power within distinct boundaries. But she gave little sign that she saw this case as in any way different from the other federalism cases, including the age discrimination case in which she announced the court's majority opinion today.

The Violence Against Women Act case is an appeal by a former Virginia college student, and by the Clinton administration on her behalf, from a ruling last year by the federal appeals court in Richmond that barred her from using the law to sue two fellow students, football players who she said had raped her in her dormitory room. The woman, Christy Brzonkala, sued after Virginia Tech took no action against one of the men and gave the other a deferred suspension that permitted him to keep playing varsity football.

The 1994 law has several other provisions, including a criminal section that provides for federal prosecution of interstate crimes of sex-motivated violence. The court last year refused to hear a constitutional challenge to the criminal provision.

The section at issue today in *United States v. Morrison*, No. 99-5, providing for private civil suits for damages, does not depend on whether a defendant has crossed state lines, because Congress wanted to provide a remedy for violence in or near homes. The absence of an interstate "hook," as Justice O'Connor described it, is a decided liability before a court that has taken a limited view of Congress's power to act under its authority to regulate interstate commerce.

Both Solicitor General Waxman and Julie Goldscheid, representing Ms. Brzonkala on behalf of the NOW Legal Defense and Education Fund, told the court that violence against women had a substantial impact on interstate commerce by deterring women from taking certain jobs or continuing their education.

In striking down the civil damages provision, the United States Court of Appeals for the Fourth Circuit said the law did not come within Congress's power to regulate interstate commerce because it did not address commercial activity. The court today appeared wary of adopting quite such a hard and fast rule, particularly after Michael E. Rosman, representing the defendants in Ms. Brzonkala's lawsuit, Antonio Morrison and James Crawford, said that in his view, Congress lacked constitutional authority to prohibit possession of narcotics for personal use because the activity was not commercial.

But even under a more elastic definition of activity that affects the economy, the justices appeared dubious about accepting the Congressional findings on the economic impact of violence against women.

If the justices find the Violence Against Women Act provision to be invalid under Congress's commerce authority, they could nonetheless uphold it under Congress's authority to enforce the equal protection guarantee of the 14th Amendment, a basis that the Fourth Circuit also rejected. Mr. Rosman, the defendants' lawyer, argued today that the 14th Amendment, which governs only official action, could not be a basis for a law that applies to private behavior.

The law's defenders argue that the statute is aimed at the failure of states to provide adequate remedies for violence against women, an aspect of official action, or inaction, that is appropriately the subject of legislation under the 14th Amendment. But Ms. Goldscheid's and Mr. Waxman's time at the podium ran out before they could address this aspect of their argument.

Mr. Rosman, general counsel of the Center for Individual Rights, a conservative public interest law firm, warned the court that if it upheld this law, "Congress could pass virtually any law" and "relegate the states to a trivial and unimportant role in our federal structure."

Justice Ruth Bader Ginsburg challenged that depiction. "What is the clash here?" she asked. She said Congress's goal was not to displace state authority but "just to provide an alternate remedy, an alternate forum."

She continued: "We are just complementing what the states do. Why can't Congress do that?"

"The power to regulate is the power to pre-empt," Mr. Rosman replied.

Justice Ginsburg persisted, noting that "we have so many parallels in discrimination legislation," with both the states and the federal government barring discrimination in employment and in public accommodations. Why can't the Violence Against Women Act coexist with parallel state laws, she asked.

"Because this is not commerce," Mr. Rosman replied. "This is violence, interpersonal violence, the kind of thing states have had as their exclusive province ever since the start of our country."

The Violence Against Women Act has generally been welcomed on the state level, with 36 states joining a brief in this case in support of the law. Only one, Alabama, filed a brief asking the court to declare the provision unconstitutional.

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LOAD-DATE: January 12, 2000

LANGUAGE: ENGLISH

GRAPHIC: Photos: An effort by Christy Brzonkala to sue using the Violence Against Women Act is at issue. (Shana Raab for The New York Times); Members of the National Organization for Women demonstrated yesterday at the Supreme Court, as the justices heard arguments in a case on the rights of victims of sex-motivated violence to sue. (Agence France-Presse)

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May 16, 2000, Tuesday, Final Edition

Justices Reject Lawsuits For Rape; Court Again Limits Congress's Power

Joan Biskupic , Washington Post Staff Writer

SECTION: A SECTION; Pg. A01

LENGTH: 1066 words

A sharply divided Supreme Court struck down part of a law crafted to help survivors of rape and domestic violence, ruling 5-4 yesterday that Congress overstepped its power when it gave women a right to sue their attackers.

The decision lifts a portion of the Violence Against Women Act that was meant to guarantee that victims of sexual assaults would not be dependent on the decisions of local prosecutors and could themselves sue assailants in federal court.

But of broader consequence, yesterday's ruling continues the pattern of a five-justice majority limiting the power of Congress and its ability to intervene in matters normally addressed by states.

The case involved a Virginia Tech student who claimed she was raped by two football players and who brought the first lawsuit under the law. Joined by the Clinton administration, her attorneys contended that Congress had the authority to pass the act based on its constitutional power to regulate interstate commerce--arguing in effect that women who feared being attacked would be hindered from going out at night, taking public transportation or engaging in other activity that would help them find a job and contribute to the economy. Since some of that activity occurs across state lines, Congress believed it had the authority to deter violence against women trying to travel or do business around the country.

But in its decision, the court rebuffed that argument.

"Every law enacted by Congress must be based on one or more of its powers enumerated in the Constitution," Chief Justice William H. Rehnquist wrote, emphasizing that "gender-motivated crimes of violence are not, in any sense of the phrase, economic activity." He was joined by Justices Sandra Day O'Connor, Antonin Scalia, Anthony M. Kennedy and Clarence Thomas.

That fivesome has consistently reined in federal power in recent years, but yesterday's decision went further, marking the first time since the New Deal era that the court rejected extensive findings by Congress that an activity substantially affects interstate commerce. Congress's power under the commerce clause is important because it offers lawmakers a way to address problems--racial discrimination, most notably, in the 1960s--that federal lawmakers believe states have failed to handle properly themselves.

Responding to the ruling, Martha F. Davis, who represented former Virginia Tech student Christy Brzonkala, said the act's civil remedy "gave women a way to take matters in their own hands." Davis, of the NOW Legal Defense and Education Fund, said she was most concerned by the court's rejection of Congress's findings about the harmful effects that rape and domestic violence have on employment and other interstate commerce.

But Michael E. Rosman, of the Center for Individual Rights, who represented the men Brzonkala accused of raping her, countered that the framers of the Constitution "thought that if Congress could regulate whatever it wanted throughout the nation--and this law is just one small example--it would be dangerous."

Congress adopted the 1994 law after determining in four years of hearings that violent crimes against women were a pervasive problem but that states were failing to treat these offenses as seriously as other crimes. The law made rape and domestic abuse a federal crime if the assailants crossed state lines to attack their victims and provided hundreds of millions of dollars for local governments to enforce their own sexual assault laws.

A majority of the states had urged Congress to pass the provision allowing victims to win money damages in civil litigation and 36 states had entered yesterday's case on Brzonkala's side.

But the court said that, in the end, "gender-motivated" crimes are not the kind of economic activity covered by Congress's power to regulate interstate commerce. "If Congress may regulate gender-motivated violence, it would be able to regulate murder or any other type of violence," Rehnquist wrote, affirming the Richmond-based U.S. Court of Appeals for the 4th Circuit and relying primarily on a 1995 decision that rejected Congress's attempt to ban guns near local schools.

The federal government had argued that, in addition to the commerce clause, the act's private remedy was a valid exercise of Congress's power to enforce civil rights under the Fourteenth Amendment, which guarantees equal protection of the laws. Congress had found that discriminatory stereotypes about rape victims made it difficult for local jurisdictions to adequately investigate and prosecute violence against women.

But the court said Congress's constitutional power in this area covers only state actions, not individual wrongdoing, so the Violence Against Women provision improperly targets individuals who have committed crimes motivated by gender bias.

Justice David H. Souter, joined by Justices John Paul Stevens, Ruth Bader Ginsburg and Stephen G. Breyer, penned a vigorous dissent that addressed both the boundary between federal and state power, as well as the gravity of crime against women. They said the law should be upheld as a valid exercise of Congress' power to deal with an activity that has a substantial effect on interstate commerce.

Comparing the law to the Civil Rights Act of 1964, Souter wrote, "Gender-based violence in the 1990s was shown to operate in a manner similar to racial discrimination in the 1960s in reducing the mobility of employees and their production and consumption of goods shipped in interstate commerce."

Speaking to the majority's larger effort to keep the federal government out of the traditional business of the states, Souter criticized the majority's retreat to decades-old principles. "The federalism of some earlier time is no more adequate to account for [today's economy] than the theory of laissez-faire was able to govern the national economy 70 years ago."

Brzonkala brought her lawsuit against Antonio J. Morrison and James Crawford for the alleged 1994 dormitory attack, after first filing a complaint against the men under Virginia Polytechnic Institute's sexual assault policy. A committee found Morrison guilty of sexual assault and suspended him, but after subsequent hearings his offense was reduced and his punishment was set aside. The Justice Department joined the dispute, *United States v. Morrison*, on Brzonkala's side.

LOAD-DATE: May 16, 2000

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The New York Times

May 16, 2000, Tuesday, Late Edition - Final

THE SUPREME COURT: THE COURT ON FEDERALISM; WOMEN LOSE RIGHT TO SUE ATTACKERS IN FEDERAL COURT

BYLINE: By LINDA GREENHOUSE**SECTION:** Section A; Page 1; Column 6; National Desk**LENGTH:** 1528 words**DATELINE:** WASHINGTON, May 15

Declaring that "the Constitution requires a distinction between what is truly national and what is truly local," the Supreme Court today invalidated a six-year-old provision of federal law that permitted victims of rape, domestic violence and other crimes "motivated by gender" to sue their attackers in federal court.

The 5-to-4 decision, striking down the civil remedy provision of the Violence Against Women Act, was the latest application of the court's newly restrictive view of Congressional power and of the degree of deference that Congress is owed by federal courts. Although one of the most sweeping of the justices' decisions in this area recently, it will almost certainly not be the last.

Chief Justice William H. Rehnquist's majority opinion rejected each of the two sources of constitutional authority that Congress had asserted as the basis for the legislation. The majority concluded that the civil remedy provision was neither a valid regulation of interstate commerce nor a proper means of enforcing the equal protection guarantee of the 14th Amendment. Excerpts, Page A20.

The decision affirmed a ruling last year by the federal appeals court in Richmond, Va., dismissing a suit brought by a college student against two varsity football players whom she accused of raping her in her dormitory room shortly after the start of her freshman year.

The plaintiff, Christy Brzonkala, withdrew from Virginia Polytechnic Institute and brought her suit after learning that the football players, Antonio Morrison and James Crawford, would not be disciplined by the college. When the defendants then challenged the constitutionality of the Violence Against Women Act, the federal government intervened in the suit to defend the law.

The law's supporters argued that widespread violence against women, and fear of violence, had a negative effect on the nation's economy, measured in the billions of dollars a year, by impairing the productivity and the mobility of female employees and students. To accept that reasoning, the chief justice said today, "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." But a general police power is something "which the founders denied the national government and reposed in the states," he added.

The Violence Against Women Act also has a criminal provision, making it a federal crime to cross state lines to engage in domestic violence or stalking. The Supreme Court last year refused to hear a challenge to that provision, which was not at issue in the case today but which the chief justice suggested in a footnote was constitutional because of the explicit requirement of interstate conduct. The law also provides federal money to the states for programs to prevent violence and assist victims.

Much of the attention and debate surrounding the law has focused on the civil damages provision at issue today, which the lower courts have applied some 50 times, a number that would probably have been larger had the law not been under a constitutional cloud. While most states have laws permitting people, including victims of sexual assaults, to seek

THE SUPREME COURT: THE COURT ON FEDERALISM; WOMEN LOSE RIGHT TO SUE ATTACKERS IN
FEDERAL COURT The New York Times May 16, 2000, Tuesday, Late Edition - Final

damages against their attackers, Congress acted after dozens of studies showed that women seeking such relief faced considerable obstacles from state judicial systems that regarded sex offenses as unworthy of serious attention.

Senator Joseph R. Biden Jr., the chief Senate sponsor of the Violence Against Women Act, said at a news conference today that "this decision is really all about power: who has the power, the court or Congress?"

Senator Biden, a Democrat from Delaware, said there had been notable improvement in the states since Congress put the issue on its agenda in the early 1990's. He predicted that the decision today "will have a lot less impact on violence against women than on the future role of the United States Congress," adding, "The damage done to the act is not as bad as the damage done to American jurisprudence."

Both Senator Biden and Senator Charles E. Schumer, a New York Democrat who was the law's chief sponsor when he represented Brooklyn in the House of Representatives, said years of hearings before the legislation was passed had been aimed at compiling a record of the scope of the problem, to persuade the Supreme Court that a national solution was warranted.

"Just at a time when the economic and social conditions of the world demand that we be treated as one country and not as 50 states, the Supreme Court seems poised to undo decades and decades of a consensus that the federal government has an active role to play," Senator Schumer said in an interview.

In a dissenting opinion today, Justice David H. Souter included three pages of the findings from various Congressional reports, and predicted that the majority's "new judicially derived federalism" would eventually prove as serious a wrong turn for the court as the decisions of the 1930's that, in rejecting elements of the New Deal, provoked the court-packing crisis of 1937. Referring to that episode's "pedigree of near-tragedy," Justice Souter said that "today's decision can only be seen as a step toward recapturing the prior mistakes."

The justices' 5-to-4 division was familiar from a series of decisions over the last five years that have struck down federal laws or created new state immunities from the application of federal law. Beginning with its ruling in *United States v. Lopez* in 1995, which overturned a law against carrying a gun near a school and marked the first time since the New Deal that the court had invalidated a law as exceeding the power of Congress to regulate interstate commerce, the court has also struck down part of the Brady gun control law and laws making states liable to suit in federal court for patent and trademark violations. Earlier this year, the court ruled that states could not be sued by their employees for violating the Age Discrimination in Employment Act.

Joining Chief Justice Rehnquist in the majority today, as in all the other decisions, were Justices Sandra Day O'Connor, Antonin Scalia, Anthony M. Kennedy and Clarence Thomas. Justice Thomas wrote a brief concurring opinion to say that the court should have put Congress under an even tighter rein. Justice Stephen G. Breyer wrote a dissenting opinion and also signed Justice Souter's dissent, as did Justices John Paul Stevens and Ruth Bader Ginsburg.

Although the tone of the opinions today, totaling 71 pages, was quite muted, the gulf between the two factions of the court is wide and growing wider. The court has already granted review in three more federalism cases, and the decision today, *United States v. Morrison*, No. 99-5, is likely to inspire more challenges to the reliance of Congress on its authority to regulate interstate commerce. Federal environmental regulations that restrict the use of private property might present an inviting target for such a challenge, some students of these recent developments believe.

Chief Justice Rehnquist's majority opinion today reiterated that the "economic nature of the regulated activity" was at the heart of any analysis of Congress's exercise of its commerce authority. "Gender-motivated crimes of violence are not, in any sense of the phrase, economic activity," he said.

The opinion stopped short of adopting a categorical rule that Congress can never do what it claimed to do in this law: address the aggregate economic effect of activity that itself may not be inherently economic. But the chief justice noted pointedly that the court had never endorsed such an approach. In any event, he said, the court is and will remain "the ultimate expositor of the constitutional text."

In his dissenting opinion, Justice Souter said that when it came to "supposed conflicts of sovereign political interests implicated by the Commerce Clause," the court should step back and let the political system work out the problem. Noting that 36 states had filed briefs supporting the law, he said it was "not the least irony" of the case that "the states will be forced to enjoy the new federalism whether they want it or not."

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Chief Justice Rehnquist said the provision could not be sustained under the 14th Amendment because that amendment prohibits discrimination by states or "state actors" rather than the private individuals whose conduct is the target of this law.

Kathryn J. Rodgers, executive director of the NOW Legal Defense and Education Fund, which represented Ms. Brzonkala (pronounced brahn-KAH-lah), criticized the decision, saying it took "the federal government out of the business of defining civil rights and creating remedies."

Michael E. Rosman, general counsel of the Center for Individual Rights, which challenged the law on behalf of the defendants, said the decision was a welcome reminder that "democratic majorities are limited by the text of the Constitution."

"This was an effort by Congress to aggrandize its authority," Mr. Rosman added, "and the court is now requiring Congress to toe the constitutional line."

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LOAD-DATE: May 16, 2000

LANGUAGE: ENGLISH

GRAPHIC: Photo: Martha F. Davis, left, and Kathryn J. Rodgers, officials of the NOW Legal Defense and Education Fund, after their defeat yesterday. (Fred R. Conrad/The New York Times)(pg. A20)

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