CURRENT DEVELOPMENTS IN THE LAW

A Survey of Federal Cases Involving the Constitutionality of the Violence Against Women Act

On January 11, 2000 the United States Supreme Court will hear oral arguments in *United States v. Morrison*, a case testing the constitutionality of the Violence Against Women Act (VAWA). *See* Brzonkala v. Virginia Polytechnic Institute and State University, 169 F.3d 820 (4th Cir. 1999) *(en banc)*, *certiorari granted by* United States v. Morrison, 120 S.Ct. 11 (1999). This section provides an overview of cases recently decided in the federal district courts on the VAWA. It is not intended to be a comprehensive collection.

Bergeron v. Bergeron, 48 F. Supp. 2d 628 (M.D. La. 1999). ON MOTION TO DISMISS ON CONSTITUTIONAL GROUNDS, THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA HELD THAT: (1) CONGRESS EXCEEDED ITS POWERS UNDER THE COMMERCE CLAUSE BY ENACTING THE VIOLENCE AGAINST WOMEN ACT, AND (2) THE VIOLENCE AGAINST WOMEN ACT WAS NOT A VALID EXERCISE OF CONGRESS'S ENFORCEMENT POWER UNDER THE FOURTEENTH AMENDMENT.

I. INTRODUCTION

The plaintiff, Christina Bergeron, filed an action in the United States District Court for the Middle District of Louisiana against her ex-husband under Subtitle C of the Violence Against Women Act,[1] claiming that he subjected her to crimes of violence motivated by gender.[2] The defendant, Paul Bergeron, filed a motion to dismiss on constitutional grounds.[3] Oppositions to this motion were filed by the

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[1] 42 U.S.C. § 13981 (1994).

[2] *See* Bergeron v. Bergeron, 48 F. Supp. 2d 628, 629 (M.D. La. 1999).

[3] *See id.*

plaintiff and the United States, as intervenor.[4] Section 13981(c) of the Violence Against Women Act grants a cause of action to victims of violent crimes motivated by gender.[5] The District Court held that § 13981 is unconstitutional in that its enactment exceeded the powers granted to Congress under the Commerce Clause, and that it was not a valid exercise of Congress's enforcement powers under the Fourteenth Amendment.[6]

II. BACKGROUND

In 1994, Congress passed the Violence Against Women Act to address the "escalating problem of violent crimes against women."[7] In addition to other measures, such as the allocation of federal funds to reduce violence against women, the act grants a civil rights remedy to the victims of gender motivated violence.[8] Specifically, § 13981(c) states that a person who commits a crime of violence motivated by gender shall be liable to the injured party in an action for compensatory and punitive damages, injunctive and declaratory relief, and other relief a court may deem appropriate.[9] Section 13981(d)(1) defines a "crime of violence motivated by gender" as "a crime of violence committed because of gender or on the basis of gender, and due, at least in part, to an animus based on the victim's gender."[10] A "crime of violence" is defined as an act or series of acts that would constitute a felony under state or federal law and that has as an element "the use, attempted use, or threatened use of physical force."[11]

Plaintiff filed suit under § 13981(c), claiming that the defendant, her ex-husband, repeatedly committed crimes of violence motivated by gender upon her for over a year and a half.[12] According to the plaintiff, these crimes included simple battery, aggravated battery, attempted forcible rape, and aggravated assault.[13] Plaintiff moved for summary judgment upon statutory grounds.[14] The court denied the motion, finding that there were genuine issues of material fact as to whether the defendant committed acts constituting a crime of violence motivated by gender.[15]

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[4] *See id.*

[5] *See id.*

[6] *See id.* at 628.

[7] *Id.* at 629 (quoting S. Rep. No. 103-138, at 37 (1993)).

[8] *See Bergeron,* 48 F. Supp. 2d at 629.

[9] *See id.* (citing 42 U.S.C. § 13981(c)).

[10] *Id.* (quoting 42 U.S.C. § 13981(d)(1)).

[11] *Id.* at note 4. In defining a "crime of violence" § 13981(d)(2)(A) refers to § 16 of Title 18, which defines the phrase as "an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another . . . ." *Id.*

[12] *See id.* at 629.

[13] *See id.*

[14] *See Bergeron,* 48 F. Supp. 2d at 629.

[15] *See id.*

The court also ruled that the only viable claim against the defendant was forcible rape and that the plaintiff did state a claim under § 13981.[16]

The court then considered the motion by the defendant to dismiss plaintiff's claim on the grounds that § 13981 is unconstitutional.[17] Opposition to this motion was filed by the plaintiff and by the United States, as intervenor.[18] The United States intervened, pursuant to 28 U.S.C. § 2403(a), after the court certified to the Attorney General that the constitutionality of § 13981 was being drawn into question.[19]

III. ANALYSIS

A. Commerce Clause

1. The "Substantially Affects" Test

The plaintiff and the government argued that the Commerce Clause afforded Congress the authority to enact § 13981.[20] Pursuant to Article I, Section 8, Clause 3 of the United States Constitution, Congress has the power to regulate commerce among the several states.[21] There are three well established categories of activities that Congress may regulate under the Commerce Clause: (1) the channels of interstate commerce; (2) the instrumentalities of interstate commerce; and (3) activities having a substantial relation to interstate commerce.[22] The court found the third category, those activities having a substantial relation to interstate commerce, to be applicable in the instant case.[23]

The U.S. Supreme Court employed the "substantially affects" test in *United States v. Lopez*.[24] In *Lopez*, the Court struck down a statute that made it a federal crime to knowingly possess a firearm in a school zone.[25] The Court recognized that the Constitution creates a federal government of specific, enumerated powers.[26] Congress, it found, had exceeded its powers under the Commerce Clause in enacting the statute.[27] The Court noted that the proper test for such analysis is whether the regulated activity "substantially affects interstate commerce."[28] The

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[16] *See id.* at note 3.
[17] *See id.* at 629.
[18] *See id.*
[19] *See id.* at note 1.
[20] *See Bergeron*, 48 F. Supp. 2d at 631.
[21] *See id.* at 632.
[22] *See id.* (citing United States v. Lopez, 514 U.S. 549 (1995)).
[23] *See id.* (citing *Lopez, supra* note 22, at 549).
[24] *See id.*
[25] *See id*
[26] *See Bergeron*, 48 F. Supp. 2d at 632.
[27] *See id.*
[28] *See id.* (citing *Lopez, supra* note 22, at 1631).

following findings were central to the Court's analysis in *Lopez*: the statute was a criminal statute having nothing to do with commerce; the statute was not an essential part of a larger regulation of economic activity; the statute contained no jurisdictional element to ensure, through a case-by-case inquiry, that the activity affects interstate commerce; and neither the statute nor the legislative history contained any express legislative findings regarding the activity's affect upon interstate commerce.[29]

The government in *Lopez* tried to establish that the statute in question did regulate an activity that substantially affects interstate commerce.[30] First, the government offered its "costs of crime" argument that the substantial costs of violent crime are spread through the population through rising insurance costs.[31] The other tier to this argument is that violent crime reduces the willingness of individuals to travel to unsafe areas.[32] Secondly, the government offered its "national productivity" argument that the presence of guns in schools threatens the learning environment and results in a less productive citizenry.[33] The Court rejected both of these arguments as tenuous and cautioned that Congress's legislative power under the Commerce Clause must be interpreted as having "judicially enforceable outer limits."[34] In establishing such outer limits, however, the Court in *Lopez* left intact the proposition in *Wickard v. Filburn* that Congress may regulate noncommercial, intrastate activity that substantially affects interstate commerce.[35]

2. The Standard of Review for Congressional Invocations of the Commerce Clause

The applicable standard of review for congressional invocations of the Commerce Clause was illustrated by the Fifth Circuit in *United States v. Robinson*.[36] In reviewing such congressional invocations, the Fifth Circuit held that the proper standard of review is the "rational basis test."[37] If Congress could rationally have concluded that the activity substantially affects interstate commerce, the legislation will be upheld.[38] The Fifth Circuit noted that this standard will likely be met if the statute contains a jurisdictional element ensuring that an affect on interstate commerce must be proved on a case-by-case basis.[39] Without such an

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[29] *See id.* (citing *Lopez, supra* note 22, at 1631, 1632).

[30] *See id.* at 633.

[31] *See id.* at note 7 (citing *Lopez, supra* note 22, at 1632).

[32] *See Bergeron,* 48 F. Supp. 2d, at note7.

[33] *See id.* at note 8 (citing *Lopez, supra* note 22, at 1632).

[34] *See id.* (citing *Lopez, supra* note 22, at 1628, 1633).

[35] *See id.* (citing *Lopez, supra* note 22, at 1628 (quoting Wickard v. Filburn, 317 U.S. 111, 120-122 (1942)).

[36] *See id.* (citing United States v. Robinson, 199 F.3d 1205, 1210 (5th Cir. 1997)).

[37] *See id.* at 634 (citing *Robinson, supra* note 36, at 1210).

[38] *See Bergeron,* 48 F. Supp. 2d at 634 (citing *Robinson, supra* note 36, at 1211-1212).

[39] *See id.* (citing *Robinson, supra* note 36, at 1211-1212).

element, the statute will be upheld if the regulated conduct's connection to interstate commerce is so manifest that it is "visible to the naked eye."[40] Finally, the statute will also be upheld if the regulated activity's effect on interstate commerce is satisfactorily explained by legislative history or congressional findings.[41]

3. *Brzonkala v. Virginia Polytechnic Institute and State University*

After detailing the appropriate legal framework for deciding the constitutionality of § 13981, the court in the instant case relied on the Fourth Circuit's decision in *Brzonkala v. Virginia Polytechnic Institute and State University* to assist in its Commerce Clause analysis.[42] In *Brzonkala*, the Fourth Circuit held that Congress exceeded its powers under the Commerce Clause by enacting the civil remedy provision of § 13981.[43] According to the Fourth Circuit, the Supreme Court in *Lopez* limited the powers of Congress under the Commerce Clause to enact statutes that either: (1) "arise out of or are connected with a commercial transaction, which viewed in the aggregate, substantially affects interstate commerce"; or (2) include a jurisdictional element for a case by case determination of the activity's affect on interstate commerce.[44] As § 13981 contains no such jurisdictional element, the Fourth Circuit focused its analysis on the first criteria.[45]

The Fourth Circuit in *Brzonkala* concluded that § 13981 lacks any meaningful connection with commerce or any form of economic enterprise, noting that crimes with economic motives are not covered by the act.[46] The Fourth Circuit also held that § 13981 could not be sustained as "an essential part of a larger regulation of economic activity," under the umbrella of federal anti-discriminatory laws.[47] Although § 13981 and Title VII share a general concern with discrimination, the Fourth Circuit reasoned that these statutes were written "without regard for the concerns that animate the other," and thus could not be viewed as a single, interdependent regulatory scheme.[48]

The government's arguments in *Bzronkala* were that violence motivated by gender animus imposes medical and legal costs; discourages people from traveling, working, or transacting business in places or times that are considered unsafe; and, as a result, inhibits productivity and decreases the supply and demand for interstate products.[49] The Fourth Circuit found these arguments to be the equivalent of the

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[40] *See id.* (citing *Robinson*, *supra* note 36, at 1211-1212).

[41] *See id.* (citing *Robinson*, *supra* note 36, at 1211-1212).

[42] *See id.* (citing Brzonkala v. Virginia Polytechnic Inst. and State Univ., 169 F.3d 820 (4th Cir. 1999).

[43] *See id.* (citing *Brzonkala*, *supra* note 42).

[44] *Bergeron*, 48 F. Supp. 2d at 634.

[45] *See id.*

[46] *See id.* at 635 (citing *Brzonkala*, *supra* note 42, at 834).

[47] *Id.* (citing *Brzonkala*, *supra* note 42, at 834-835).

[48] *Id.*

[49] *See id.*

"costs of crime" and "decreased national productivity" arguments rejected by the Supreme Court in *Lopez*.[50] In addition, the Fourth Circuit noted that the primary focus of § 13981 is domestic violence, a type of violence traditionally regulated by the several states.[51]

Following *Lopez*, the Fourth Circuit held that the issue of whether the "substantially affects" test was met is ultimately a judicial determination, not a legislative one.[52] After reviewing the legislative record, the Fourth Circuit found the relationship between gender-motivated violence and interstate commerce "somewhat conclusory" and too attenuated to survive constitutional scrutiny.[53] Ultimately, the Fourth Circuit held that there is no rational basis for the legislative findings that gender-motivated violence substantially affects interstate commerce.[54]

4. Congress Exceeded its Authority Under the Commerce Clause by Enacting § 13981

The court in the instant case agreed with the Fourth Circuit that there is no manifest connection between gender-motivated violence and interstate commerce.[55] Therefore, the court next considered whether either the legislative history or congressional findings provided a rational basis for concluding that gender-motivated violence substantially affects interstate commerce.[56] House Conference Report No. 103-711 found that gender-motivated violence had such an effect "by deterring potential victims from traveling interstate, from engaging in employment in interstate business . . . by diminishing national productivity, increasing medical and other costs, and decreasing the supply of and demand for interstate products."[57] Likewise, Senate Report No. 103-138 found that

> gender-based crimes and the fear of gender-based crimes restricts movement, reduces employment opportunities, increases health expenditures, and reduces consumer spending, all of which affect interstate commerce and the national economy. Gender-based violence bars its most likely targets—women—from full participation in the national economy. For example, studies report that almost 50% of rape victims lose their jobs or are forced to quit in the aftermath of the crime.[58]

The court held that these findings amount to generalized conclusions and are the equivalent of the "costs of crime" and "decreased national productivity" arguments

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[50] *See Bergeron*, 48 F. Supp. 2d at 635.

[51] *See id.* at 635-636 (citing *Brzonkala, supra* note 42, at 842).

[52] *See id.* at 636 (citing *Brzonkala, supra* note 42).

[53] *See id.* (citing *Brzonkala, supra* note, at 851).

[54] *See id.* (citing *Brzonkala, supra* note, at 859).

[55] *See id.* at 637.

[56] *See Bergeron*, 48 F. Supp. 2d at 637.

[57] *Id.* (quoting H.R. Rep. No. 103-711, at 385 (1994), reprinted in U.S.C.C.A.N. 1839, 1853).

[58] *Id.* (quoting S. Rep. No. 103-138, at 54 & n. 70 (footnotes omitted)).

rejected by the Supreme Court in *Lopez*.[59] The court did recognize that the data shows that gender-motivated violence is a serious problem, resulting in increased costs and decreased productivity and mobility of women in the workplace.[60] However, the court stated that this could be said about crime in general.[61] Ultimately, the court held that there is no rational basis for the legislative findings that gender-motivated violence substantially affects interstate commerce.[62] Citing *Lopez* for the existence of "outer limits" to the congressional authority under the Commerce Clause, the court held that Congress exceeded the bounds of such limits in enacting § 13981.[63]

B. Equal Protection Analysis

Section Five of the Fourteenth Amendment provides that "Congress shall have the power to enforce, by appropriate legislation, the provisions of this article."[64] The plaintiff and the government argued that Congress was properly enforcing the equal protection clause of Section One of the Fourteenth Amendment, which provides that: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."[65] The court points out, however, that the equal protection clause is directed at the states.[66] In *City of Boerne v. Flores*, the U.S. Supreme Court made clear that statutes enacted pursuant to Section Five must be remedial in nature, meaning that they make substantive prohibitions against state and state actors.[67] Therefore, as § 13981 unquestionably regulates "purely private conduct, without any individualized showing of unconstitutional state action," the court held that it cannot be upheld as an exercise of Congress's enforcement power under the Fourteenth Amendment.[68]

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[59] *See id.*

[60] *See id.* at 638.

[61] *See id.*

[62] *See Bergeron*, 48 F. Supp. 2d at 638.

[63] *See id.*

[64] *Id.*

[65] *Id.*

[66] *See id.*

[67] *See id.* (citing City of Boerne v. Flores, 521 U.S. 507 (1997)).

[68] *See Bergeron*, 48 F. Supp. 2d at 638-39 (quoting *Brzonkala*, *supra* note 42, at 862). The government argued, nevertheless, that § 13981 was enacted as an indirect or alternative means of remedying state discrimination. *See id.* at 639. The court considered this argument to be the same as the argument by the government in *Brzonkala*, namely, that § 13981 regulates private violence as a means of remedying the bias against women in the States' criminal justice systems. *See id.* (citing *Brzonkala*, *supra* note 42, at 874). Following the Fourth Circuit's reasoning, the court rejected this argument, labeling it as too "out of proportion" to the remedial objective of § 13981 to fairly be considered a response to unconstitutional behavior. *See id.* (citing *Brzonkala*, *supra* note 42, at 887-888).

IV. CONCLUSION

The United States District Court for the Middle District of Louisiana held that Congress exceeded its powers under the Commerce Clause in enacting the Violence Against Women Act. The court found no rational basis for the legislative findings that gender-motivated violence substantially affects interstate commerce. Additionally, the court held that the Violence Against Women Act regulates purely private conduct and was therefore not a valid exercise of Congress's enforcement power.

Derek W. Kelley

Culberson v. Doan, 1999 WL 765970 (S.D. Ohio). ON DEFENDANT'S MOTION TO DISMISS, THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION HELD THAT: (1) DEFENDANT'S ACTIONS WERE SUFFICIENT TO ALLEGE GENDER ANIMUS UNDER THE VIOLENCE AGAINST WOMEN ACT (VAWA); (2) THE VAWA IS A VALID EXERCISE OF CONGRESS'S COMMERCE CLAUSE AUTHORITY; (3) PLAINTIFF'S COMPLAINT DOES SUFFICIENTLY ALLEGE A VIOLATION OF 42 U.S.C. § 1983; AND (4) SUPPLEMENTAL JURISDICTION OVER THE STATE LAW CLAIMS IS APPROPRIATE.

I. INTRODUCTION

The plaintiffs, the Estate of Clarissa Ann Culberson ("Carrie"), Carrie's parents, Debra and Roger Culberson, and Carrie's sister, Christina Marie Culberson, filed an action in the United States District Court for the Southern District of Ohio, Western Division, seeking: (1) monetary and injunctive relief under the Violence Against Women Act (VAWA),[1] (2) relief under 42 U.S.C. § 1983, and (3) relief based on "state law claims of emotional distress, wrongful death, obstruction of justice and conspiracy."[2] Defendant, Vincent Doan ("Doan"), moved to dismiss for plaintiffs' failure to state a claim upon which relief can be granted.[3] Doan challenged the constitutionality of the VAWA on its face and as applied.[4] Additionally, Doan argued that plaintiffs' claim under 42 U.S.C. § 1983 should be dismissed for failure to state a claim upon which relief can be granted and that the state law claims should be dismissed for lack of supplemental jurisdiction.[5] The government intervened pursuant to 28 U.S.C. § 2403 (a) and supported the constitutionality of the VAWA.[6] The National Organization of Women Legal Defense and Education Fund ("NOW") filed an amici curiae brief in support of the constitutionality of the VAWA. The VAWA provides a "claimant with a civil right to be free from crimes of violence motivated by gender and provides a federal civil rights cause of action for victims of crimes of violence motivated by gender."[7] The District Court held that: (1) defendant's actions were sufficient to allege gender animus under the VAWA; (2) the VAWA is a valid exercise of Congress'd Commerce Clause authority; (3) plaintiff's complaint does sufficiently allege a violation of § 1983; and (4) supplemental jurisdiction over the state law claims is appropriate.

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[1] *See* 42 U.S.C. § 13981.

[2] Culberson v. Doan, 1999 WL 765970 at *2 (S.D. Ohio).

[3] *See id.* at *3.

[4] *See id.*

[5] *See id.*

[6] *See id.*

[7] *Id* at *4 (citing 42 U.S.C. §§ 13981 (a)-(c)).

II. BACKGROUND

The facts alleged the disappearance and subsequently ruled death of Carrie and "tell a grim tale of domestic abuse."[8] During 1995, Carrie and Doan dated on a regular basis, and that fall he began physically abusing her.[9] Doan injured Carrie's head and kidneys in an April 1996 attack.[10] Carrie subsequently filed a report with the Blanchester police, but the police did not bring any charges against defendant.[11] On July 5, 1996, Doan forced his way into Carrie's home, threatened her not to have any contact with other men, and pushed Debra Culberson in an unsuccessful attempt to assault Carrie.[12] After this, Debra Culberson filed a criminal report with the Blanchester police, but the police did not respond.[13] Doan attacked Carrie on July 28, 1996, when she came to his house on an errand.[14] During this assault he threw her across the room and struck her head with a metal object causing her to need surgical staples in her scalp.[15] Carrie sought criminal charges through the Blanchester Police Department but was unsuccessful.[16] On August 26, 1996, approximately three days before Doan allegedly murdered Carrie, he held her at gunpoint in a barn.[17]

On August 29, 1996, around 12:20 a.m., Doan's neighbor witnessed him hit Carrie in the head.[18] At approximately 1:30 a.m., Doan spoke with Lawrence Baker on the telephone.[19] At 3:15 a.m. Doan arrived at Tracey Baker's residence with blood on his chest, arms, and pants.[20] He showered and left the residence with Tracey Baker, who carried a handgun and garbage bags.[21]

Debra Culberson reported Carrie missing at 11:00 a.m. to Blanchester Police Chief Payton and reminded him of Carrie's criminal reports against defendant.[22] Chief Payton responded, "Why does she keep going back to it?"[23] Plaintiffs assert that Chief Payton did not investigate Carrie's disappearance but went to the Baker residence warning Lawrence that Carrie had been reported missing and that defendant would be a suspect.[24]

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[8] *Culberson*, 1999 WL 765970 at *1.
[9] *See id.*
[10] *See id.*
[11] *See id.*
[12] *See id.*
[13] *See id.*
[14] *See Culberson*, 1999 WL 765970 at *1.
[15] *See id.*
[16] *See id.*
[17] *See id.*
[18] *See id.* at *2
[19] *See id.*
[20] *See Culberson*, 1999 WL 765970 at *2.
[21] *See id.*
[22] *See id.*
[23] *Id.*
[24] *See id.*

The Blanchester Police Department searched Lawrence Baker's junkyard on September 3, 1996.[25] A bloodhound and a cadaver dog brought the search party's attention to a small pond.[26] The search team officers told Chief Payton they wanted the pond drained, but he declined to proceed that day and told everyone to leave the premises.[27] The next day the pond was drained and footprints were visible on the bottom of the pond with a muddy path of weeds, which led away from the pond.[28]

Although Carrie's body was never found, her disappearance was ruled a homicide.[29] On October 24, 1997, plaintiffs filed a complaint against defendants Vincent Doan, Lawrence Baker, Tracey Baker, Chief of Police Richard Payton, and the Village of Blanchester seeking: (1) monetary and injunctive relief under the Violence Against Women Act (VAWA),[30] (2) relief under 42 U.S.C. § 1983, and (3) relief under various state law claims including emotional distress, wrongful death, obstruction of justice and conspiracy.[31]

Doan brought a motion to dismiss for plaintiffs' failure to state a claim upon which relief can be granted.[32] Doan contended that: (1) the VAWA is unconstitutional on its face and as applied; (2) plaintiffs' claim under 42 U.S.C. § 1983 should be dismissed for failure to state a claim; and (3) the state law claims should be dismissed for lack of supplemental jurisdiction.[33]

The United States District Court for the Southern District of Ohio, Western Division denied Doan's Motions to Dismiss.[34]

III. ANALYSIS

A. Standard of Review

The purpose of a motion to dismiss[35] is simply to determine if the plaintiff is entitled to relief if all of the allegations in the complaint are true.[36] The complaint

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[25] *See id.*

[26] *See Culberson*, 1999 WL 765970 at *2.

[27] *See id.*

[28] *See id.*

[29] *See id.* On August 7, 1997 a jury found Doan guilty of aggravated murder and kidnapping and he was sentenced to life imprisonment without parole. Tracey Baker was found guilty, on June 4, 1998, of obstruction of justice and tampering with evidence. On August 25, 1998 Lawrence Baker was found not guilty in Carrie's disappearance. *See id.*

[30] *See id.* Plaintiffs assert that defendant's abusive language and actions toward Carrie reflect his animus toward women in general. *See id.*

[31] *See id.*

[32] *See Culberson*, 1999 WL 765970 at *3.

[33] *See id.*

[34] *See id.* at *14.

[35] *See* Fed.R.Civ.P. 12(b)(6).

[36] *See Culberson*, 1999 WL 765970 at *3 (citing Mayer v. Mylod, 988 F.2d 635, 638 (6th Cir. 1993)).

need only provide "a short and plain statement" of the claim.[37] Granting a motion to dismiss is an extraordinary remedy that should not be done "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief."[38]

B. Plaintiffs' Claim Under the Violence Against Women Act

The civil provisions of the VAWA provide a claimant with a civil right to be free from crimes of violence motivated by gender and provide a federal civil right cause of action for victims of crimes of violence motivated by gender.[39] To establish a cause of action under the VAWA, it must be shown: (1) that plaintiff was a victim of a crime of violence,[40] and (2) that the crime was motivated based on gender.[41] The plaintiffs point to defendant's violent attacks on Carrie as motivated primarily based on her gender.[42] Defendant argued that the plaintiffs failed to show that his actions satisfied "gender-based violence" under the VAWA.[43] "[T]he appropriate determination as to whether a particular act of violence is gender-motivated is based on the totality of the circumstances."[44] The District Court found that the complaint did sufficiently set forth a claim under the VAWA and that the allegations were consistent with a showing that defendant's actions were gender-motivated.[45] Accordingly, the court denied defendant's motion to dismiss on this ground.[46]

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[37] *See* Fed. R. Civ. P. 8(a)(2).

[38] *Culberson*, 1999 WL 765970 at *3 (quoting Conley v. Gibson, 355 U.S. 41, 54-46 (1957)).

[39] *See id.* at *4 n.3 ('[a]ll persons within the United States shall have the right to be free from crimes of violence motivated by gender." 42 U.S.C. §§ 13981. Although Congress provided both criminal and civil provisions in the VAWA to address acts of violence against women, for the purposes of the instant matter, all references to the Act are in regard to the civil provisions.).

[40] The Act defines a "crime of violence" as "an act or series of acts that would constitute a felony . . . whether or not those acts have actually resulted in criminal charges, prosecution, or conviction." 42 U.S.C. §§ 13981 (d)(2)(A).

[41] *See* 42 U.S.C. §§ 13981 (c). The Act defines "crime motivated by gender" as being done by the defendant "because of the gender or on the basis of gender, and due, at least in part, to an animus based on the victim's gender. . . ." 42 U.S.C. §§ 13981 (d)(1). "Gender motivation" is to be determined through the use of circumstantial evidence in light of the totality of the circumstances similar to the manner determinations are made in cases of race and gender discrimination claims. *See* S.Rep. No. 102-197 at 50 (1991).

[42] *See Culberson*, 1999 WL 765970 at *4.

[43] *Id.* Defendant did not contest that murder satisfies the definition of a crime of violence.

[44] *See id.* The court notes that this is a question of fact.

[45] *See id.* For instance, on one occasion defendant attempted to assault Carrie and told her to stay away from other men.

[46] *See id.*

C. The Constitutionality of the Violence Against Women Act

The Commerce Clause authorizes Congress to regulate matters of interstate commerce.[47] Doan argued that the VAWA is unconstitutional because Congress exceeded its authority under the Commerce Clause and the Fourteenth Amendment and, therefore, plaintiffs' claim pursuant to the Act must be dismissed.[48]

In *Gibbons v. Ogden*,[49] the Supreme Court indicated that Congress's Commerce Clause authority could be used to address all matters of commercial intercourse.[50] In 1937, the court indicated that Congress had authority under the Commerce Clause to regulate commercial activity that directly affects interstate commerce.[51] The rational basis standard was established in 1941 to determine whether Congress acted within its Commerce Clause authority.[52] First, under this standard the court must defer to a congressional finding that a regulated activity affects interstate commerce if there is any rational basis for such a finding.[53] Second, the court must ensure that Congress's means are "reasonably adapted to the end permitted by the Constitution."[54]

The Supreme Court "recently uprooted legislation passed by Congress pursuant to its authority under the Commerce Clause."[55] The court will consider any legislative and congressional committee findings regarding a particular activity's effect on interstate commerce to the extent that the findings enable the Court to evaluate legislative judgment rather than rely on Congress's mere accumulation of "institutional expertise."[56]

In 1994, Congress passed the Violence Against Women Act pursuant to its authority under both the Commerce Clause and the Fourteenth Amendment.[57] "The

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[47] *See* U.S. CONST. art. I, § 8, cl. 3. (authorizing Congress "to regulate commerce . . . among the several states").

[48] *See Culberson*, 1999 WL 765970 at *5. Defendant specifically argued that there must be a greater "nexus" between the regulated activity, gender-based violence, and interstate commerce. *See id.*

[49] 22 U.S. 1 (1824).

[50] *See Culberson*, 1999 WL 765970 at *5.

[51] *See id.* (citing NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1, 37 (1937)).

[52] *See id.* (citing United States v. Darby, 312 U.S. 100, 120-21 (1941)).

[53] *See id.* (citing Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 258 (1964); Katzenbach v. McClung, 379 U.S. 294, 303-04 (1964)).

[54] *Id.* (citing Hodel v. Virginia Surface Mining & Reclamation Assn., 452 U.S. 264, 276 (1981)).

[55] *Id* at *6 (citing United States v. Lopez, 514 U.S. 549, 552 (1995) (holding the Gun-Free School Zones Act of 1990 was an unconstitutional usage of Congress's Commerce Clause authority)).

[56] *See Culberson*, 1999 WL 765970 at *6 (citing *Lopez*, 514 U.S. at 562-63). In *Lopez* neither the Act nor its legislative history contained any express findings regarding the effect upon interstate commerce.

[57] *See id.* n.8 (Section One of the Fourteenth Amendment provides that "No state shall deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. CONST. amend. XIV, §

VAWA is Congress's attempt to address the widespread problems of violence against women in America."[58] Significant documentation and hearings were held over a four-year period and demonstrated how violence against women affects interstate commerce and interferes with a woman's ability to enjoy equal protection.[59]

After *Lopez*, there have been many challenges to the VAWA. Courts typically analyze the constitutionality of the VAWA pursuant to Congress's Commerce Clause authority and examine whether the Act regulates an activity that substantially affects interstate commerce and pursuant to Congress's Enforcement Clause power under the Fourteenth Amendment.[60] Doan cited *Brzonkala v. Virginia Polytechnic Inst. and State Univ.*[61] in support of the court finding the VAWA unconstitutional, and argued that according to *Lopez*, there must be a "nexus" between the interstate commerce and the regulated activity.[62]

Under the doctrine of judicial restraint, "[c]ourts generally review acts of Congress with deference, as they are entitled to a strong presumption of validity and constitutionality."[63] The court must defer to Congress's findings if there is any rational basis for a finding that the activity affects interstate commerce and that it is reasonably adapted to its intended end.[64] After four years of hearings Congress determined that "crimes of violence motivated by gender have a substantial adverse effect on interstate commerce."[65] However, just because Congress declared that an

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1. The Enforcement Clause gives Congress the authority to "enforce by appropriate legislation" the provisions of the Fourteenth Amendment. U.S. CONST. amend. XIV, §5).

[58] *Id.* at *7.

[59] *See id.* Testimony was taken from a diverse group of people and organizations. At the conclusion of the hearings Congress found that: (1) violence is the leading cause of injury to women ages 15-44; (2) in 1991, at least 21,000 domestic crimes were reported to police every week and at least 1.1 million reported assaults were committed against women in their homes that year; (3) every week, during 1991, more than 2,000 women were raped and more than 90 women were murdered–9 out of 10 times by men; and (4) an estimated 4 million American women are battered each year by their husbands or partners and approximately 95% of all domestic violence victims are women. *See id.* at *7-8 (citing S.Rep. 103-138 (1993); H.R.Rep. 95, 103d Cong., 1st Sess., Violence Against Women Act of 1993, No. 103-395 (1993)).

[60] *See id.* at *8. Most courts have found that the VAWA is a constitutionally sound enactment by Congress. *See id.* Only one court has found the civil remedies provision of the VAWA unconstitutional. *See id.* (citing Brzonkala v. Virginia Polytechnic Inst. and State Univ., 169 F.3d 820 (1999)).

[61] 169 F.3d 820 (1999).

[62] *See Culberson*, 1999 WL 765970 at *9.

[63] *Id.* (citing Mistretta v. United States, 488 U.S. 361, 384 (1989)).

[64] *See id.* (citing *Hodel*, 452 U.S. at 276).

[65] *Id.* at *10. Congress determined that domestic violence alone costs employers an estimated $3 billion a year due to absenteeism in the workplace; the effect of violence against women also takes a significant toll on the healthcare and criminal justice system ($5 to $10 billion a year to counter the effects); and takes a toll on society economically and non-economically. *See id.*

activity affects interstate commerce, it is not proven.[66] Doan asserted that despite Congress' findings in enacting the VAWA, it is unconstitutional because of *Lopez*.[67]

The District Court disagreed with Doan's argument and found the VAWA to be "significantly distinguishable from the Gun-Free School Zones Act."[68] First, "[w]ithout doubt, the evidence before Congress revealed a significant incidence of violence against women" based on gender and substantial evidence that the violence dramatically affects women's lives and the national market by affecting women's ability to participate in the national economy.[69] Furthermore, due deference is to be given to congressional findings under the rational basis test and *Lopez* does not change this application.[70] Secondly, the Gun-Free School Zones Act was criticized as being strictly criminal in nature and having nothing to do with a commercial purpose or economic enterprise.[71] The VAWA contains both criminal and civil provisions, both of which are justified on the grounds that violence against women effects interstate commerce.[72] Congress determined that "the aggregate affect of violence against women substantially burdens interstate commerce."[73] Third, although Doan asserted that the VAWA is unconstitutional because it lacks a jurisdictional element, in *Lopez* the court recognized that a jurisdictional element is only one way for Congress to link a statute to interstate commerce.[74] The District Court concluded "that an analysis of *Lopez* only strengthens the court's view that there is a rational basis for Congress's findings that gender-motivated violence substantially impacts interstate commerce."[75]

Still it must be determined whether the chosen means to address gender-motivated violence are reasonably adapted to the intended end.[76] The court determined that the means are reasonably adapted to the intended end.[77] The VAWA is consistent with other civil rights legislation upheld as constitutional

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[66] *See id.* (citing *Katzenbach*, 379 U.S. at 303 ("the mere fact that Congress has said when particular activity shall be deemed to affect commerce does not preclude further examination by this Court")).

[67] *See id.* Defendant specifically "asserts that (1) both the Gun-Free School Zones Act and the VAWA are criminal in nature; (2) both are noncommercial in nature; (3) both lack a requisite jurisdictional element; (4) both only have a remote, if any, effect on interstate commerce; and (5) both are encroachments of Congress's commerce clause power." *Id.*

[68] *Culberson*, 1999 WL 765970 at *10. In fact, "application of a *Lopez* analysis strengthens the case for its constitutionality."

[69] *Id.*

[70] *See id.* at *11 (citing United States v. Wall, 92 F.3d 1444, 1451-52 (6th Cir. 1996)).

[71] *See id.* (citing *Lopez*, 514 U.S. at 559).

[72] *See id.*

[73] *Id.*

[74] *See Culberson*, 1999 WL 765970 at *11.

[75] *Id.*

[76] *See id.* at *12.

[77] *See id.*

under the Commerce Clause.[78] In examining the VAWA and its legislative history the court concluded that Congress did not exceed its authority under the Commerce Clause, and therefore the court denied defendant's motion to dismiss on the grounds that the VAWA is unconstitutional.[79]

D. Plaintiff's Claim Under 42 U.S.C. § 1983

The District Court set out the standard for the § 1983 claim and denied Defendant's motion to dismiss. This section has been omitted.

E. State Law Claims

Since the claims under the VAWA and . § 1983 were not dismissed, the District Court found it appropriate to continue to exercise supplemental jurisdiction over the state law claims. This section has been omitted.

IV. CONCLUSION

The United States District Court for the Southern District of Ohio, Western Division held that Doan's actions were sufficient to allege gender animus under the VAWA. The court also found that Congress had authority to pass the VAWA under the Commerce Clause since gender-based violence has a substantial effect on interstate commerce. The court also held that plaintiff's complaint did sufficiently allege a violation of § 1983 and that supplemental jurisdiction over the state law claims was appropriate.

Jennifer E. Sherven

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[78] *See id.*

[79] *See id.* The court stated that it did not need to discuss the constitutionality of the VAWA under the Fourteenth Amendment, since it found the VAWA constitutional based on the Commerce Clause. *See id.*

Doe v. Mercer, 37 F. Supp. 2d 64 (D. Mass. 1999). ON DEFENDANT'S MOTION TO DISMISS, THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS HELD THAT THE VIOLENCE AGAINST WOMEN ACT (VAWA) DID NOT EXCEED CONGRESSIONAL AUTHORITY UNDER THE COMMERCE CLAUSE.

I. INTRODUCTION

Doe ("Plaintiff") was a pseudonymous plaintiff, and the three defendants were Ronald Mercer, Michael Irvin, and Chauncey Billups ("Defendants").[1] Plaintiff brought a civil action for damages under the VAWA, 42 U.S.C. § 13981, alleging that defendants had raped her.[2] Plaintiff also brought a claim of negligence against a fourth defendant for failing to protect her, but this charge was dismissed.[3] Plaintiff has filed pendent state law claims for assault and battery and intentional infliction of emotional distress against each defendant.[4] Defendants moved to dismiss, arguing that the VAWA is facially unconstitutional under the Commerce Clause.[5] The United States intervened as a matter of right to defend the constitutionality of the statute.[6] The National Organization of Women ("NOW") Legal Defense and Education Fund and ten others have filed a joint brief amici curiae.[7] The United States District Court for the District of Massachusetts held that the VAWA is not facially unconstitutional under the Commerce Clause.[8] Specifically the court found that: 1) the legislative record for the VAWA provides detailed findings of fact regarding the impact of violence against women on interstate commerce;[9] 2) the VAWA does not encroach on traditional areas of state power;[10] 3) the VAWA regulates activity with a substantial affect on interstate commerce;[11] and 4) no jurisdiction selecting provision is required when a statute is adequately supported by congressional findings of fact on the record.[12]

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1 *See* Doe v. Mercer, 37 F. Supp. 2d 64, 65 (D. Mass. 1999).
2 *See id.*
3 *See id.* n. 1
4 *See id.* n. 2
5 *See id.*
6 *See id.* n. 3
7 *See Mercer*, 37 F. Supp. 2d at n3.
8 *See id.* at 68.
9 *See id.*
10 *See id.* at 69.
11 *See id.*
12 *See id.*

II. BACKGROUND

This case comes to the United States District Court for the District of Massachusetts as the trial court. The defendants filed a motion to dismiss that is before the court in this opinion.

III. ANALYSIS

A. Commerce Clause Jurisprudence

The VAWA provides a private right of action for survivors and victims of gender-motivated violence, and makes available compensatory and punitive damages and equitable relief.[13] Congress passed the VAWA under the authority of the Commerce Clause of the United States Constitution, as well as under the remedial action provisions of the Fourteenth Amendment.[14] The purpose of the VAWA is to "protect the civil rights of victims of gender-motivated violence and to promote public safety, health, and activities affecting interstate commerce."[15]

The defendants have alleged in their motion to dismiss that the VAWA is facially unconstitutional under the Commerce Clause.[16] In order for a statute to be a valid exercise of congressional power under the Commerce Clause, it must regulate one of three broad categories of commercial activity.[17] These categories are: 1) the use of the channels of interstate commerce; 2) the instrumentalities of interstate commerce; or 3) activities having a substantial relationship to interstate commerce.[18] All parties agreed that the VAWA is predicated on the third category of regulation: activities with substantial relationship to interstate commerce.

B. Key Precedents: Brzonkala and Lopez

The defendants relied on *Brzonkala v. Virginia Polytechnic Institute and State University*, 935 F. Supp. 779 (W.D.Va. 1996).[19] In *Brzonkala*, the District Court held that the VAWA was structurally and contextually identical to the Gun Free School Zones Act, which the United States Supreme Court struck down as exceeding the authority of the Commerce Clause in *United States v. Lopez*, 514 U.S. 549 (1995). The District Court for the Western District of Virginia found specifically that: 1) the VAWA purported to regulate as commercial wholly non-commercial activity; 2) the VAWA contained no jurisdictional element ensuring a commercial

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[13] *See* 42 U.S.C. § 13981 (c). "[A] person . . . who commits a crime of violence motivated by gender. . . shall be liable to the party injured, in an action for recovery of compensatory and punitive damages, injunctive and declaratory relief." *Id.*

[14] *See* 42 U.S.C. § 13981(a).

[15] *Id.*

[16] *See Mercer*, 37 F. Supp. 2d at 65.

[17] *See id.*

[18] *See id.* at 65-66 (citing United States v. Lopez, 514 U.S. 549, 558-559 (1995)).

[19] *See id.* at 66.

context in each application of the statute; and 3) the VAWA was an overextension of federal power into an area of traditional state regulation.[20]

Every other district examining the VAWA, however, has found it to be constitutional.[21] The District Courts have generally distinguished the statute at issue in *Lopez* from the VAWA based on the difference in the legislative record of the two statutes.[22] Specifically, the legislative record of the VAWA reflects more than four years of hearings and contains explicit legislative findings regarding the impact of violence against women on interstate commerce.[23] These findings included the annual cost of domestic violence to employers ($3-$5 billion annually), and the cost of health care and criminal justice related to acts of gender-based violence ($5 - $10 billion annually).[24]

The existence of detailed legislative findings is important in this analysis. Although legislative findings are not required to uphold a statute, their presence may allow the court to evaluate cngressional judgment that the regulated activity does in fact have a substantial affect on interstate commerce.[25] The absence of legislative findings was key to the court's holding in *Lopez* that the challenged statute was in fact facially invalid.[26]

C. Constitutionality of the VAWA

The United States District Court for the District of Massachusetts found that the VAWA was constitutional under the Commerce Clause for four reasons.

First, the court found that although legislative findings are not dispositive, they support the Congressional judgment that the regulated activity has a substantial commercial affect.[27] The court noted that the effects of violence against women were far from trivial, and that "the Commerce Clause permits Congress to regulate the national economy to its very bottom."[28] Even though this understanding of the Commerce Clause gives Congress broad regulatory power, the court underscores that political, practical and constitutional limits continue to constrain cngressional power within the bounds of the Federalist principle.[29]

Second, the court found that the scope of the VAWA did not intrude on areas of traditional state power.[30] Specifically, the VAWA does not contain any provision encroaching on the power of state law enforcement, but instead it only provides a

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[20] *See id.*

[21] *See id.* (citations omitted).

[22] *See Mercer,* 37 F. Supp. 2d at 66.

[23] *See id.* at 66-67 (citing Ansimov v. Lake, 982 F. Supp. 531 (N.D. Ill.1997)).

[24] *See id.* (citing 139 CONG. REC. H10349-01, at H10365 (Nov. 20 1997); S. REP. NO. 103-138 at 41 (1993).

[25] *See id.* at 68 (citing *Lopez,* 514 U.S. at 564).

[26] *See id.*

[27] *See id.*

[28] *Mercer,* 37 F. Supp. 2d at 68.

[29] *See id.* at 68-69.

[30] *See id.* at 69.

federal private right of action for survivors of violence against women.[31] This right of action exists as an alternative to, and does not supplant, state rights of action.[32] The court analogized this scheme to existing federal law providing a right of action for employment discrimination.[33]

Third, the court noted that although the VAWA does not directly regulate interstate commerce, the statute is still valid under the Commerce Clause.[34] The test of validity is not whether the regulated activity is itself commercial, but whether its cumulative effect on interstate commerce is substantial.[35]

Fourth, the court addressed the fact that the VAWA did not contain a jurisdictional element, ensuring that there was a commercial context each time the statute was applied.[36] The *Brzonkala* court had cited this as a key reason for finding the VAWA unconstitutional.[37] However, *Lopez* stands for the proposition that no jurisdiction-selecting provision is required if a statute is already supported by legislative findings.[38] Such congressional action should not be second guessed "except for the most compelling constitutional reasons."[39]

IV. CONCLUSION

The United States District Court for the District of Massachusetts held that the VAWA was not facially unconstitutional under the Commerce Clause.[40] The court distinguished other statutes that were held invalid under the Commerce Clause from the VAWA by referring to the extensive legislative findings in the VAWA's legislative record.[41] Although findings are not required to validate a statute, they support congressional judgment by detailing the required commercial effect.[42] The court went on to find specifically that: 1) the legislative record for the VAWA provides extensive findings of fact regarding the impact of violence against women on interstate commerce;[43] 2) the VAWA does not encroach on traditional areas of state power;[44] 3) the VAWA regulates activity with a substantial affect on interstate commerce;[45] and 4) no jurisdiction selecting provision is required when a statute is

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[31] *See id.*

[32] *See id.* n. 9

[33] *See id.* at 69.

[34] *See Mercer,* 37 F. Supp. 2d at 69.

[35] *See id.* (citing Wickard v. Filburn, 317 U.S. 111, 125 (1942)). The court noted that the *Lopez* court had also cited to *Wickard. See id.*

[36] *See id.*

[37] *See id.* at 66.

[38] *See id.* at 69-70.

[39] *Id.* (citing Mistretta v. United States, 488 U.S. 361, 384 (1989)).

[40] *See Mercer,* 37 F. Supp. 2d at 68.

[41] *See id.* at 66.

[42] *See Lopez* 514 U.S. at 564.

[43] *See Mercer,* 37 F. Supp. 2d at 68.

[44] *See id.*

[45] *See id.* at 69.

adequately supported by congressional findings of interstate commercial effect on the record.[46]

The analysis of the *Mercer* court successfully distinguishes the VAWA and other statutes with strong findings of fact on the legislative record from statutes held invalid under the Commerce Clause.[47] This analysis is an application of the reasoning of *Lopez*, in which the United States Supreme Court refined the boundaries of congressional authority under the Commerce Clause.[48]

Judith Feinberg

[46] *See id.*
[47] *See id.* at 68-69.
[48] *See generally Lopez*, 514 U.S. at 549.

Ericson v. Syracuse University, 45 F. Supp. 2d 344 (S.D.N.Y. 1999). THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK HELD THAT SUBTITLE C OF THE VIOLENCE AGAINST WOMEN ACT (VAWA), WHICH ENTITLES ANY PERSON INJURED BY GENDER-MOTIVATED CRIME OF VIOLENCE TO SUE PERPETRATOR IN FEDERAL COURT, IS A LAWFUL EXERCISE OF CONGRESS'S POWER UNDER THE COMMERCE CLAUSE.

I. INTRODUCTION

On March 25, 1999, the United States District Court for the Southern District of New York upheld the constitutionality of Subtitle C of the VAWA,[1] which entitles any person injured by a gender-motivated crime of violence to sue the perpetrator in federal court.[2] *Ericson* was shortly thereafter settled. This court, however, decided to summarize in writing the reasons for its conclusions.[3]

II. BACKGROUND

Congress enacted the Violence Against Women Act (VAWA)[4] in September 1994 because Congress "was concerned that gender-based acts of violence were sufficiently widespread and unchecked as to significantly and negatively affect commerce among the states."[5] Congress found that violence against women "substantially impacts the ability of women to function in interstate commerce activities."[6] Additionally, 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 business, and from transacting with business, and in places involved, in interstate commerce."[7]

Congress felt federal action was necessary since "the states have been unable or, in some cases, unwilling to address gender-based violence with the same assiduousness with which they address other forms of violence."[8] One of

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[1] *See* 42 U.S.C. § 13981.

[2] *See* Ericson v. Syracuse University, 45 F. Supp. 2d 344, 345 (S.D.N.Y. 1999).

[3] *See id.* (The court notes that "this Court's decision was apparently the first to address the question of the constitutionality of section 13891 since the Fourth Circuit held that section unconstitutional in *Brzonkala v. Virginia Polytechnic Inst. and State Univ.*, 169 F.3d 820 (4th Cir. 1999) (en banc)").

[4] 42 U.S.C. § 13981.

[5] *Ericson*, 45 F. Supp. 2d at 345.

[6] *Id.* at 345-346. (citing S. REP. NO. 103-138 at 41).

[7] H. R. CONF. REP. NO. 103-711 at 385 (1994).

[8] S. REP. NO. 102-197 at 43 (1991) ("Study after study commissioned by the highest

Congress's goals in enacting the VAWA was to "implement Congress's plenary power to regulate among the several states."[9] As one part of that Act Congress, in § 13981, provided victims of gender-motivated violence with a private federal remedy. The purpose of the Act is to allow victims to obtain the redress not afforded them by the states, and in the process, they might also effectively serve as 'private attorney generals,' helping to combat this clog on commerce.[10]

III. ANALYSIS

A. Congressional Authority to Pass the VAWA Under the Commerce Clause

The District Court found that Congress had the constitutional authority to enact the VAWA under the Commerce Clause and the Necessary and Proper Clause. "Since women—the usual victims of gender-motivated violence—are increasingly involved in every aspect of commercial activity, violence that removes them from the workplace, denies their right to travel, and reduces their productivity has an immediate and substantial impact on the national economy."[11] Therefore, the District Court concluded that "if the states, in the exercise of their general police power, fail adequately to deter such a burden on interstate commerce, it is necessary and proper that the federal government do so."[12]

The District Court reviewed the congressional findings at the time of enactment of VAWA and determined that it was necessary and proper for the federal government to pass the VAWA.[13]

B. The Constitutionality of the VAWA

The District Court referred to the "rational basis" standard to review the constitutionality of the VAWA. A federal court should pause long and hard before declaring unconstitutional a statutory provision that is the product of such lengthy inquiry and detailed findings by a Congress itself consisting of the democratically-

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courts of the States—from Florida to New York, California to New Jersey, Nevada to Minnesota—has concluded that crimes disproportionately affecting women are often treated less seriously than comparable crimes against men." *Id.*).

[9] *Ericson*, 45 F. Supp. 2d at 346 (quotations omitted).

[10] *See id.*

[11] *Id.* at 345.

[12] *Id.* (citing U.S. CONST. art I, § 8, cl. 18).

[13] *See id.* at 346-347. "Violence is the leading cause of injuries to women ages 15 to 44, more common than automobile accidents, muggings, and cancer deaths combined. As many as 4 million women a year are the victims of domestic violence. Three out of four women will be the victim of a violent crime sometime during their life." H. R. REP. NO. 103-395, at 26 (1993). "Since 1988, the rate of incidence of rape has risen four and a half times as fast as the total crime rate." H. R. REP. NO. 103-395, at 26 (1993). "[S]tudies report that almost 50 percent of rape victims lose their jobs or are forced to quit in the aftermath of the crime." S.REP. NO. 103-138 at 54 n. 70.

elected representatives of the several states.[14] The District Court noted that in the case of legislation designed to implement a specified federal power, such as in *Ericson*,[15] federal courts ordinarily uphold the constitutionality of a statute that has any rational relationship to effectuating that power.[16] The District Court stated that this standard of review is deferential and "accords not only with the role assigned to the judiciary under the Constitution, but also with the properly limited role of the courts in a democratic society."[17]

The District Court also noted that some statutes, unlike the VAWA, do not meet this rational basis standard of review. "There are statutes whose facial irrelevance to any federal power, coupled with an absence of any congressional finding offering some reasoned connection to any federal power, leaves a court with no rational basis upon which to premise constitutionality."[18] The District Court then proceeded to distinguish the VAWA from the statute in *United States v. Lopez*,[19] where the Supreme Court declared the Gun-Free School Zones Act of 1990[20] unconstitutional since there was no rational basis to sustain the statute.[21]

The Court further distinguished *Ericson*[22] from *Brzonkala v. Virginia Polytechnic Institute and State University*.[23] The *Brzonkala* court interpreted *Lopez* as requiring that the subject matter of a statute must itself be economic activity in order to make out the necessary connection to the Commerce Clause.[24] The District Court determined that the *Brzonkala* court's interpretation "construes *Lopez* as greatly narrowing, if not silently overruling a host of past precedents . . . . Functionally, moreover, the *Brzonkala* court's view of the Commerce Clause considerably limits the ability of Congress to address the complex interaction of social and economic forces typical of a modern state."[25] Therefore, the District Court concluded that the "Fourth Circuit's restrictive interpretation of *Lopez* and the Commerce Clause has not commended itself to other courts."[26]

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[14] *See* Walters v. National Ass'n of Radiation Survivors, 473 U.S. 305, 319 (1985).

[15] *See Ericson*, 45 F. Supp. 2d at 346-347.

[16] *See* Hodel v. Virginia Surface Min. and Reclamation Ass'n. Inc., 452 U.S. 264, 276 (1981).

[17] *Ericson*, 45 F. Supp. 2d at 347 (citations omitted).

[18] *Id.*

[19] United States v. Lopez, 514 U.S. 549 (1995).

[20] 18 U.S.C. § 922(q).

[21] *See Ericson*, 45 F. Supp. 2d at 347. The Gun-Free School Zones Act of 1990 "neither dealt with commerce on its face nor was the subject of congressional findings supporting a rational connection to the regulation of interstate commerce. To uphold its constitutionality the Supreme Court would have had to 'pile inference upon inference' in a manner more tantamount to speculation than ratiocination." (quoting *Lopez*, 514 U.S. at 567).

[22] *Id.*

[23] Brzonkala v. Virginia Polytechnic Inst. and State Univ., 169 F.3d 820 (4th Cir. 1999) (en banc).

[24] *See Ericson*, 45 F. Supp. 2d at 347.

[25] *Id.*

[26] *Id.* "As the Second Circuit Court of Appeals, interpreting *Lopez*, stated only last year:

The District Court ruled that the *Brzonkala* court's narrow interpretation of the Commerce Clause warrants a different conclusion in *Ericson*.[27] The District Court determined that § 13981 does not deal with the mere threat of violence involved in the Gun-Free School Zones Act, overturned in *Lopez*, but § 13981 "deals with actual acts of gender-based violence, whose impact on interstate commerce, though indirect, is far from remote or speculative."[28] Additionally, the District Court noted that the violence against women is a "form of violence that the states have chosen not to address adequately."[29] Therefore, the District Court concluded that Congress is not overstepping its federal duties by enacting VAWA.[30]

Furthermore, the District Court ruled VAWA does not interfere with the State's powers. The District Court noted that § 13981 provides victims with a remedy that they often lack under state practice.[31] According to the District Court, when the remedy provided by § 13981 is concurrent with state law remedies, the states' police power would simply be enhanced, and not supplanted.[32] Since the states' do not have an "affirmative and express policy of denying relief to victims of gender-based violence,"[33] the District Court reasoned that VAWA would not interfere with states' powers.[34] Therefore, the District Court concluded that congressional enactment of VAWA does not violate federalism, or the balance of power between the states and the federal government.

IV. CONCLUSION

The United States District Court for the Southern District of New York held that Subtitle C of the Violence Against Women Act is a lawful exercise of Congress's

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"Congress may regulate to prevent the inhibition or diminution of interstate commerce. . .even when the activity controlled is not itself commercial." (citations omitted).

[27] *See id.* at 347-348.

> The *Brzonkala* court's mincing view of the Commerce Clause appears to rest on the misapprehension of the concerns that led the Supreme Court in *Lopez* to warn that premising federal legislation on attenuated relationships to interstate commerce would convert congressional authority under the Commerce Clause to a general police power of the sort retained by the states. Section 13981 warrants no such fears. (citations omitted).

[28] *Id.* at 348.

[29] *Id.*

[30] *Ericson*, 45 F. Supp. 2d at 348. "Where the states fail to exercise their police power to combat a form of antisocial activity—violence against women—that also negatively impacts interstate commerce, the federal government need not likewise default but may instead seek to remedy these indirect but substantial injuries to the functioning of the national economy." *Id.*

[31] *See id.*

[32] *See id.*

[33] *Id.*

[34] *Id.* "The definition of acts of violence under section 13981 is expressly grounded in state (as well as federal criminal law)." *Id.*

power under the Commerce Clause. The District Court found Congress's constitutional power to enact VAWA was under the Commerce Clause and the necessary and proper clause. The District Court determined that Congress had a rational basis to enact VAWA since the violence against women was widespread throughout the United States and this violence interfered with women's ability to function in interstate commercial activities. Furthermore, the District Court concluded that its holding would not violate *Lopez* and, hence, the Fourth Circuit wrongly decided *Brzonkala*. Ultimately, Congress had the power to enact VAWA since its enactment did not interfere with the States' powers.

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