Cases that Shaped the Federal Courts

City of Boerne v. Flores

1997

Justice Anthony Kennedy

Federal Judicial Center
2020

Central Question

Could Congress reverse the Supreme Court's interpretation of the Constitution through a statute purportedly enforcing the Fourteenth Amendment?

Historical Context

After the U.S. Civil War (1861–1865), the nation ratified three constitutional amendments designed to abolish slavery and secure equal rights for freedpeople. These amendments are collectively known as the "Reconstruction Amendments." Each of the Reconstruction Amendments included language empowering Congress to pass "appropriate legislation" to enforce the new rights they created.

Congress initially adopted a broad understanding of this enforcement power. Thus, for example, in 1866, Congress passed civil rights legislation granting freedpeople U.S. citizenship under the enforcement powers granted by the Thirteenth Amendment, which abolished slavery. This law effectively reversed the Supreme Court's infamous *Dred Scott* (1857) decision, which held that African Americans could not become U.S. citizens. The Fourteenth Amendment (1868) made this change part of the Constitution. Some of the supporters of this amendment believed it was necessary to shore up the constitutional status of the 1866 law. Other politicians and lawyers argued that the enforcement language of the Thirteenth Amendment was sufficient to empower Congress to pass the law, even though it appeared to contradict the Supreme Court's decision in *Scott*.

In the *Civil Rights Cases* (1883) the Supreme Court invalidated an 1875 law that prohibited racial discrimination in many public places on the grounds that this law exceeded the scope of the Reconstruction Amendments. Since those amendments were designed to restrict the ability of states to discriminate on the basis of race, the Court reasoned, Congress could not use its enforcement power to govern the actions of private individuals or corporations, like the owners of hotels or theatres.

Later Supreme Court opinions held that Congress exceeded the literal meaning of an Amendment to enforce the spirit of its protections, but suggested limitations on the scope of that power. For example, a 1966 decision upheld a federal law suspending the use of literacy tests in elections. Although literacy tests did not violate the letter of the Fifteenth Amendment, which prohibits racial discrimination in voting, these tests were often enforced in a discriminatory manner, and the Court held that Congress could use its enforcement powers to prohibit them. A 1970 opinion, however, stressed that Congress's enforcement powers were not unlimited. Congress could not, for example, repeal another part of the Constitution or rob states of their governmental powers.

Legal Debates Before *City of Boerne*

Prior cases did not address whether Congress could circumvent a Supreme Court decision using its enforcement powers. That issue presented itself in the 1990s when many members of Congress reacted negatively to the Supreme Court's decision in *Employment Division v. Smith* (1990). Critics claimed that *Smith* narrowed the protection of religious practices against generally applicable laws in upholding the criminal prosecution of Native Americans in Oregon who smoked peyote, a drug some native tribes use in religious rituals. Members of both parties in Congress believed that the Court had failed to adequately protect the religious freedoms guaranteed by the First Amendment's Free Exercise Clause. The Free Exercise Clause is applied against the states through the Fourteenth Amendment. In 1993, Congress passed the Religious Freedom Restoration Act ("RFRA") with overwhelming bipartisan majorities in both houses. RFRA attempted to replace *Smith* with a more permissive Free Exercise test. On signing RFRA into law, President William "Bill" Clinton remarked that "[t]he power to reverse … a decision of the United States Supreme Court, is a power that is rightly hesitantly and infrequently exercised by the United States Congress. But this is an issue in which that extraordinary measure was clearly called for."

Congress's power to reverse *Smith* as it applied to the states was based on its authority to enforce the Fourteenth Amendment. Legal research conducted by the Congressional Research Service as Congress considered the bill acknowledged that the law "would provide religious exercise broader protection from State interference than does the Constitution (as interpreted in *Smith*)," but reasoned that Congress could employ a broader set of protections under its enforcement powers, much as it had done in banning literacy tests. Despite the overwhelming political support for RFRA, some claimed that it unconstitutionally intruded into the courts' power to interpret the meaning of the Constitution. Legal scholar Daniel Conkle, for instance, argued that RFRA improperly bypassed "the process of constitutional amendment, undermining the Supreme Court's role in interpreting the Bill of Rights."

The Case

City of Boerne began with a zoning dispute over St. Peter Catholic Church, located in Boerne, Texas, a city near San Antonio. City officials denied Patrick Flores, the Archbishop of San Antonio, a building permit to enlarge the church. The denial was based on a city ordinance designed to preserve buildings in a historic district that included part of the church. Flores sued the city in federal district court, alleging it had violated RFRA. The District Court invalidated the portion of RFRA that applied to state and local governments, holding that it violated the doctrine of separation of powers by effectively overturning the Supreme Court's decision in *Smith*. Flores appealed to the Court of Appeals

for the Fifth Circuit, which reversed the district court's decision, reasoning that Congress had the ability to offer a broader protection of religious freedom than the bare minimum established by the Constitution as interpreted in *Smith*. The City appealed to the Supreme Court of the United States.

The Supreme Court's Ruling

In an opinion written by Justice Anthony Kennedy, the Supreme Court reversed the Fifth Circuit and struck down the portions of RFRA that applied to state and local laws. Justice Kennedy reasoned that Congress had exceeded its power to enforce the Fourteenth Amendment in attempting to reverse the Court's decision in *Smith*. Analyzing the history of the Fourteenth Amendment, Kennedy determined that the Amendment's enforcement power was not designed to disturb the balance of a constitutional order in which the "power to interpret the Constitution in a case or controversy remains in the Judiciary." Quoting from *Marbury v. Madison* (1803), Kennedy emphasized that if "Congress could define its own powers by altering the Fourteenth Amendment's meaning, no longer would the Constitution be 'superior paramount law, unchangeable by ordinary means.'" Crafting a new test, Kennedy's opinion for the Court held that congressional enforcement action must be "congruent" and "proportional" to the rights it is trying to protect. Those rights, in turn, are defined by judicial interpretation.

Although there were several other opinions in the case, none of the other justices disagreed with Kennedy's assessment of Congress's enforcement powers and the need to preserve the courts' ability to interpret the Constitution free from legislative reversal. Justice John Paul Stevens wrote separately, arguing that RFRA violated the First Amendment's prohibition on laws "respecting an establishment of religion." Justice Antonin Scalia, joined by Justice Stevens, wrote a concurring opinion defending the Court's *Smith* decision against Justice Sandra Day O'Connor's dissenting opinion, which argued that *Smith* had been decided contrary to the intent of the Constitution's founders.

Aftermath and Legacy

City of Boerne did not strike down RFRA's restrictions on federal laws interfering with the exercise of religion. Those restrictions drew on a different set of congressional powers. Several states, moreover, have adopted their own versions of RFRA, implementing a stronger set of protections for free exercise of religion than those set out by *Smith*.

Discussion Questions

- Congress could have overturned the *Smith* decision through a constitutional amendment ratified by the states. Why do you think it did not? What does your answer tell you about the differences between legislation, constitutional amendments, and judicial opinions?
- The standard RFRA attempted to apply to Free Exercise claims was the same one the Court itself had used before *Smith*. Does this strengthen or weaken the Court's holding that Congress was improperly trying to redefine the Constitution?
- Before adopting the enforcement language that eventually became Section 5 of the Fourteenth Amendment, Congress considered an alternative form of enforcement power: "Congress shall have power to make all laws which shall be necessary and proper to secure to the citizens of each State all privileges and immunities of citizens in the several States, and to all persons in the several States equal protection in the rights of life, liberty, and property." Would this language have given Congress more or less power than the existing Section 5? Would RFRA have been constitutional had the nation ratified this version of the Fourteenth Amendment?

Documents

President William J. Clinton, *Statement on Signing the Religious Freedom Restoration Act of 1993*, November 16, 1993

Presidents routinely make statements when signing legislation into law, often to clarify their interpretation of the meaning of the new law. In this case, President Clinton explained his understanding of RFRA's purpose and defended its constitutionality while making it clear that he believed the Act directly reversed the Supreme Court's opinion in Smith.

We all have a shared desire here to protect perhaps the most precious of all American liberties, religious freedom. Usually the signing of legislation by a President is a ministerial act, often a quiet ending to a turbulent legislative process. Today this event assumes a more majestic quality because of our ability together to affirm the historic role that people of faith have played in the history of this country and the constitutional protections those who profess and express their faith have always demanded and cherished.

The power to reverse … by legislation, a decision of the United States Supreme Court, is a power that is rightly hesitantly and infrequently exercised by the United States Congress. But this is an issue in which that extraordinary measure was clearly called for. As the Vice President said, this act reverses the Supreme Court's decision Employment Division against Smith and reestablishes a standard that better protects all Americans of all faiths in the exercise of their religion in a way that I am convinced is far more consistent with the intent of the Founders of this Nation than the Supreme Court decision.

More than 50 cases have been decided against individuals making religious claims against Government action since that decision was handed down. This act will help to reverse that trend by honoring the principle that our laws and institutions should not impede or hinder but rather should protect and preserve fundamental religious liberties.

The free exercise of religion has been called the first freedom, that which originally sparked the development of the full range of the Bill of Rights. Our Founders cared a lot about religion. And one of the reasons they worked so hard to get the first amendment into the Bill of Rights at the head of the class is that they well understood what could happen to this country, how both religion and Government could be perverted if there were not some space created and some protection provided. They knew that religion helps to give our people the character without which a democracy cannot survive. They knew that there needed to be a space of freedom between Government and people of faith that otherwise Government might usurp.

They have seen now, all of us, that religion and religious institutions have brought forth faith and discipline, community and responsibility over two centuries for ourselves

and enabled us to live together in ways that I believe would not have been possible. We are, after all, the oldest democracy now in history and probably the most truly multiethnic society on the face of the Earth. And I am convinced that neither one of those things would be true today had it not been for the importance of the first amendment and the fact that we have kept faith with it for 200 years.

What this law basically says is that the Government should be held to a very high level of proof before it interferes with someone's free exercise of religion. This judgment is shared by the people of the United States as well as by the Congress. We believe strongly that we can never … be too vigilant in this work.…

We are a people of faith. We have been so secure in that faith that we have enshrined in our Constitution protection for people who profess no faith. And good for us for doing so. That is what the first amendment is all about. But let us never believe that the freedom of religion imposes on any of us some responsibility to run from our convictions. Let us instead respect one another's faiths, fight to the death to preserve the right of every American to practice whatever convictions he or she has, but bring our values back to the table of American discourse to heal our troubled land.…

Document Source: President William J. Clinton, *Statement on Signing the Religious Freedom Restoration Act of 1993*, November 16, 1993.

U.S. District Court for the Western District of Texas, Opinion in *Flores v. City of Boerne*, March 15, 1995

This order by District Judge Lucius Bunton III ruled RFRA unconstitutional. Unlike the Supreme Court's opinion, which focused on Congress's power under Section 5 of the Fourteenth Amendment, Judge Bunton emphasized the separation of powers questions the statute raised.

[U]nder normal circumstances [RFRA] would be readily enforceable by this Court; however, it has come to the Court's attention that this Act seeks to overturn an interpretation of the United States Constitution by the Supreme Court. Indeed, in the Congressional Findings and Declaration of Purposes, the Congress specifically sought to create a heightened burden of proof standard from that held in *Employment Division v. Smith*, 494 U.S. 872, 108 L. Ed. 2d 876, 110 S. Ct. 1595 (1990).…

According to the holding of *Marbury v. Madison*, "it is emphatically the province and duty of the judicial department to say what the law is." …

In *United States v. Nixon*, the Court stated:

Notwithstanding the deference each branch must accord the others, the 'judicial power of the United States' vested in the federal courts by Article III, §1, of the Constitution can no more be shared with the Executive Branch than the Chief Executive, for example, can share with the judiciary the veto power, or the Congress share with the Judiciary the power to override a Presidential veto. Any other conclusion would be contrary to the basic concept of separation of powers and the checks and balances that flow from the scheme of a tripartite government. We therefore reaffirm that it is the province and duty of this Court 'to say what the law is.…'"

In this instance, Congress specifically sought [to] overturn Supreme Court precedent as found in *Employment Division v. Smith* through the passage of RFRA. The Supreme Court in Smith found the heightened standard applied in *Sherbert v. Verner* to be limited over the years to cases within the unemployment compensation field. The *Smith* Court added, "even if we were inclined to breathe into Sherbert some life beyond the unemployment compensation field, we would not apply it to require exemptions from a generally applicable [] law." The Court is cognizant of Congress' [a]uthority under Section 5 of the Fourteenth Amendment, yet is convinced of Congress' violation of the doctrine of Separation of powers by intruding on the power and duty of the judiciary.

The Court is cautious in its opinion of RFRA's unconstitutionality as there has been insufficient case law, to date, construing it. Nevertheless, *Smith* remains the law in this area for this Court to follow pursuant to the doctrine of *stare decisis*.…

Document Source: *Flores v. City of Boerne*, 877 F. Supp. 355, 356–57 (W.D. Tex. 1995) (citations omitted).

Supreme Court of the United States, Opinion in *City of Boerne v. Flores*, June 25, 1997

This excerpt from Justice Anthony Kennedy's majority opinion in Boerne *focuses on the aspects of the opinion analyzing the separation-of-powers issues raised by the case. The concurring and dissenting opinions, which mostly concentrated on questions of the religion clauses of the First Amendment, are omitted.*

The parties disagree over whether RFRA is a proper exercise of Congress' § 5 power "to enforce" by "appropriate legislation" the constitutional guarantee that no State shall deprive any person of "life, liberty, or property, without due process of law," nor deny any person "equal protection of the laws."

In defense of the Act, respondent the Archbishop contends, with support from the United States, that RFRA is permissible enforcement legislation. Congress, it is said, is only protecting by legislation one of the liberties guaranteed by the Fourteenth Amendment's Due Process Clause, the free exercise of religion, beyond what is necessary under *Smith*. It is said the congressional decision to dispense with proof of deliberate or overt discrimination and instead concentrate on a law's effects accords with the settled understanding that § 5 includes the power to enact legislation designed to prevent, as well as remedy, constitutional violations. It is further contended that Congress' § 5 power is not limited to remedial or preventive legislation. All must acknowledge that § 5 is "a positive grant of legislative power" to Congress. In *Ex parte Virginia*, 100 U. S. 339, 345-346 (1880), we explained the scope of Congress' § 5 power in the following broad terms:

"Whatever legislation is appropriate, that is, adapted to carry out the objects the amendments have in view, whatever tends to enforce submission to the prohibitions they contain, and to secure to all persons the enjoyment of perfect equality of civil rights and the equal protection of the laws against State denial or invasion, if not prohibited, is brought within the domain of congressional power."

Legislation which deters or remedies constitutional violations can fall within the sweep of Congress' enforcement power even if in the process it prohibits conduct which is not itself unconstitutional and intrudes into "legislative spheres of autonomy previously reserved to the States." For example, the Court upheld a suspension of literacy tests and similar voting requirements under Congress' parallel power to enforce the provisions of the Fifteenth Amendment, see U. S. Const., Amdt. 15, § 2, as a measure to combat racial discrimination in voting, despite the facial constitutionality of the tests …. We have also concluded that other measures protecting voting rights are within Congress' power to enforce the Fourteenth and Fifteenth Amendments, despite the burdens those measures placed on the States.

It is also true, however, that "[a]s broad as the congressional enforcement power is, it is not unlimited." In assessing the breadth of § 5's enforcement power, we begin with its text. Congress has been given the power "to enforce" the "provisions of this article." We agree with respondent, of course, that Congress can enact legislation under § 5 enforcing the constitutional right to the free exercise of religion.…

Congress' power under § 5, however, extends only to "enforc[ing]" the provisions of the Fourteenth Amendment. The Court has described this power as "remedial[.]" The design of the Amendment and the text of § 5 are inconsistent with the suggestion that Congress has the power to decree the substance of the Fourteenth Amendment's restrictions on the States. Legislation which alters the meaning of the Free Exercise Clause cannot be said to be enforcing the Clause. Congress does not enforce a constitutional right by changing

what the right is. It has been given the power "to enforce," not the power to determine what constitutes a constitutional violation. Were it not so, what Congress would be enforcing would no longer be, in any meaningful sense, the "provisions of [the Fourteenth Amendment]."

While the line between measures that remedy or prevent unconstitutional actions and measures that make a substantive change in the governing law is not easy to discern, and Congress must have wide latitude in determining where it lies, the distinction exists and must be observed. There must be a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end. Lacking such a connection, legislation may become substantive in operation and effect. History and our case law support drawing the distinction, one apparent from the text of the Amendment.…

If Congress could define its own powers by altering the Fourteenth Amendment's meaning, no longer would the Constitution be "superior paramount law, unchangeable by ordinary means." It would be "on a level with ordinary legislative acts, and, like other acts,… alterable when the legislature shall please to alter it." Under this approach, it is difficult to conceive of a principle that would limit congressional power. Shifting legislative majorities could change the Constitution and effectively circumvent the difficult and detailed amendment process contained in Article V.…

RFRA cannot be considered remedial, preventive legislation, if those terms are to have any meaning. RFRA is so out of proportion to a supposed remedial or preventive object that it cannot be understood as responsive to, or designed to prevent, unconstitutional behavior. It appears, instead, to attempt a substantive change in constitutional protections. Preventive measures prohibiting certain types of laws may be appropriate when there is reason to believe that many of the laws affected by the congressional enactment have a significant likelihood of being unconstitutional. Remedial legislation under § 5 "should be adapted to the mischief and wrong which the [Fourteenth] [A]mendment was intended to provide against."

RFRA is not so confined. Sweeping coverage ensures its intrusion at every level of government, displacing laws and prohibiting official actions of almost every description and regardless of subject matter. RFRA's restrictions apply to every agency and official of the Federal, State, and local Governments. RFRA applies to all federal and state law, statutory or otherwise, whether adopted before or after its enactment. RFRA has no termination date or termination mechanism. Any law is subject to challenge at any time by any individual who alleges a substantial burden on his or her free exercise of religion.…

When Congress acts within its sphere of power and responsibilities, it has not just the right but the duty to make its own informed judgment on the meaning and force of the Constitution. This has been clear from the early days of the Republic. In 1789, when

a Member of the House of Representatives objected to a debate on the constitutionality of legislation based on the theory that "it would be officious" to consider the constitutionality of a measure that did not affect the House, James Madison explained that "it is incontrovertibly of as much importance to this branch of the Government as to any other, that the constitution should be preserved entire. It is our duty." Were it otherwise, we would not afford Congress the presumption of validity its enactments now enjoy. Our national experience teaches that the Constitution is preserved best when each part of the Government respects both the Constitution and the proper actions and determinations of the other branches. When the Court has interpreted the Constitution, it has acted within the province of the Judicial Branch, which embraces the duty to say what the law is. When the political branches of the Government act against the background of a judicial interpretation of the Constitution already issued, it must be understood that in later cases and controversies the Court will treat its precedents with the respect due them under settled principles, including *stare decisis*, and contrary expectations must be disappointed. RFRA was designed to control cases and controversies, such as the one before us; but as the provisions of the federal statute here invoked are beyond congressional authority, it is this Court's precedent, not RFRA, which must control.…

It is for Congress in the first instance to "determin[e] whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment," and its conclusions are entitled to much deference. Congress' discretion is not unlimited, however, and the courts retain the power, as they have since *Marbury v. Madison*, to determine if Congress has exceeded its authority under the Constitution. Broad as the power of Congress is under the Enforcement Clause of the Fourteenth Amendment, RFRA contradicts vital principles necessary to maintain separation of powers and the federal balance. The judgment of the Court of Appeals sustaining the Act's constitutionality is reversed.

Document Source: *City of Boerne v. Flores*, 521 U.S. 507, 517–20, 529, 532, 535–36 (1997) (citations omitted).

Michael W. McConnell, *Harvard Law Review*, 1997

This excerpt from an article by law professor (and, later, federal judge) Michael McConnell stresses that Congress has an important role in the broader process of constitutional interpretation and criticizes the Boerne *Court for adopting too narrow a conception of that role.*

It may seem odd to say that the legislative branch can engage in constitutional interpretation, but it should not. The congressional power to interpret the Fourteenth Amendment for purposes of passing Section Five enforcement legislation is one instance

of the general principle that each branch of government has the authority to interpret the Constitution for itself, within the scope of its own powers. Indeed, Congress has the last word on what the Constitution means when judicial review of the congressional action is unavailable—for example, because of justiciability limits. Such situations have occurred, not infrequently, throughout our history. This idea of congressional interpretive authority corresponds to the most straightforward reading of *Marbury* [*v. Madison*], in which judicial review is justified not by the peculiar status of the judiciary but by the supremacy of the Constitution over other sources of law, and the duty of all officials, not only judges, to enforce the Constitution. In the context of Section Five, this "interpretive" view does not mean that Congress has the last word. Because enforcement of RFRA gives rise to federal cases or controversies, such as *Boerne*, the Court necessarily will be required to determine whether the congressional action falls within the scope of Congress's enumerated powers. Resolution of that question could take any of several forms. . . .

The one approach that is not consistent with an "interpretive" understanding of the congressional role under Section Five is for the Court to treat Congress's reading of the Constitution as a usurpation of judicial authority. That, however, was the reaction of the *Boerne* Court. The Court did not recognize any distinction between a substantive authority to legislate what constitutional rights should be and an interpretive authority, similar to the Court's, to determine what the Constitution means. The Court did not reject the interpretive understanding; it simply failed to consider the possibility that interpretation differs from a general power of legislation.

This is evident in the Court's repeated suggestion that allowing congressional authority to go beyond a limited remedial role would be tantamount to allowing Congress to "change" or "amend" the Fourteenth Amendment without going through the procedures of Article Five. But Congress was not seeking to change the Free Exercise Clause. It was attempting to correct what it considered to be the Supreme Court's misinterpretation, which is not the same thing. The Court stated: "If Congress could define its own powers by altering the Fourteenth Amendment's meaning, no longer would the Constitution be 'superior paramount law, unchangeable by ordinary means.'" But no one—not Congress, not the parties, not the Fifth Circuit—thought Congress could "alter[] the Fourteenth Amendment's meaning." The question is which body's good faith interpretation of the Amendment—Congress's or the Supreme Court's—is entitled to legal force in this context. To illustrate, let us transpose the names of the branches in the sentence: "If the Supreme Court could define its own powers by altering the Fourteenth Amendment's meaning, no longer would the Constitution be superior paramount law." Unless we conclude that interpretation is indistinguishable from amendment—a descent into postmodern deconstructionism that I doubt Justice Kennedy intended—the argument no more applies to the

congressional enactment of RFRA than it does to the judicial decision in Smith. "Shifting legislative majorities" have no greater and no less capacity than shifting judicial majorities to "circumvent" the amendment process of Article V. Neither branch has proper authority to "alter" the Fourteenth Amendment's meaning. That does not answer whether Congress's interpretation is entitled to serious weight.

The Court maintained that *Smith* had decided the scope of free exercise protection, and saw no reason why Congress's challenge to that interpretation should merit a reconsideration, or even an answer. The majority did not even go through the motions of examining the constitutional arguments Congress had found persuasive—let alone entertain briefing and argument, as the three dissenters suggested. "It must be understood," the majority said, "that the Court will adhere to its prior decisions, and contrary expectations" generated by congressional disagreement "must be disappointed." Rather than seeing congressional action under Section Five as an invitation to dialogue, let alone as a decision deserving deference, the Boerne majority viewed congressional action as an irrelevance, if not an impertinence.…

The historical evidence presented in the *Boerne* opinion proves only that Congress was not intended to have authority to pass general legislation determining what the privileges and immunities of citizens should be. It does not support the more extreme claim that Congress lacks independent interpretive authority.

Document Source: Michael W. McConnell, "Institutions and Interpretation: A Critique of *City of Boerne v. Flores*," *Harvard Law Review* 111 (1997): 171, 173–74, 176 (footnotes omitted).

Cases that Shaped the Federal Courts

This series includes case summaries, discussion questions, and excerpted documents related to cases that had a major institutional impact on the federal courts. The cases address a range of political and legal issues including the types of controversies federal courts could hear, judicial independence, the scope and meaning of "the judicial power," remedies, judicial review, the relationship between federal judicial power and states' rights, and the ability of federal judges to perform work outside of the courtroom.

- *Hayburn's Case* (1792). Could Congress require the federal courts to perform non-judicial duties?
- *Chisholm v. Georgia* (1793). Could states be sued in federal court by individual citizens of another state?
- *Marbury v. Madison* (1803). Could federal courts invalidate laws made by Congress that violated the Constitution?
- *Fletcher v. Peck* (1810). Could federal courts strike down state laws that violated the Constitution?
- *United States v. Hudson and Goodwin* (1812). Did the federal courts have jurisdiction over crimes not defined by Congress?
- *Martin v. Hunter's Lessee* (1816). Were state courts bound to follow decisions issued by the Supreme Court of the United States?
- *Osborn v. Bank of the United States* (1824). Could Congress grant the Bank of the United States the right to sue and be sued in the federal courts?
- *American Insurance Co. v. Canter* (1828). Did the Constitution require Congress to give judges of territorial courts the same tenure and salary protections afforded to judges of federal courts located in the states?
- *Louisville, Cincinnati, and Charleston Rail-road Co. v. Letson* (1844). Should a corporation be considered a citizen of a state for purposes of federal jurisdiction?
- *Ableman v. Booth* (1859). Could state courts issue writs of habeas corpus against federal authorities?
- *Gordon v. United States* (1865). Could the Supreme Court hear an appeal from a federal court whose judgments were subject to revision by the executive branch?
- *Ex parte McCardle* (1869). Could Congress remove a pending appeal from the Supreme Court's jurisdiction?
- *Ex parte Young* (1908). Could a federal court stop a state official from enforcing an allegedly unconstitutional state law?
- *Moore v. Dempsey* (1923). How closely should federal courts review the fairness of state criminal trials on petitions for writs of habeas corpus?

- *Frothingham v. Mellon* (1923). Was being a taxpayer sufficient to give a plaintiff the right to challenge the constitutionality of a federal statute?
- *Crowell v. Benson* (1932). What standard should courts apply when reviewing the decisions of executive agencies?
- *Erie Railroad Co. v. Tompkins* (1938). What source of law were federal courts to use in cases where no statute applied and the parties were from different states?
- *Railroad Commission of Texas v. Pullman Co.* (1941). When should a federal court abstain from deciding a legal issue in order to allow a state court to resolve it?
- *Brown v. Allen* (1953). What procedures should federal courts use to evaluate the fairness of state trials in habeas corpus cases?
- *Monroe v. Pape* (1961). Did the Ku Klux Klan Act of 1871 permit lawsuits in federal court against police officers who violated the constitutional rights of suspects without authorization from the state?
- *Baker v. Carr* (1962). Could a federal court hear a constitutional challenge to a state's apportionment plan for the election of state legislators?
- *Glidden Co. v. Zdanok* (1962). Were the Court of Claims and the Court of Customs Appeals "constitutional courts" exercising judicial power, or "legislative courts" exercising powers of Congress?
- *United States v. Allocco* (1962). Were presidential recess appointments to the federal courts constitutional?
- *Walker v. City of Birmingham* (1967). Could civil rights protestors challenge the constitutionality of a state court injunction, having already been charged with contempt of court for violating the injunction?
- *Bivens v. Six Unknown Named Agents* (1971). Did the Fourth Amendment create an implied right to sue officials who conducted illegal searches and seizures?
- *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.* (1982). Did the Bankruptcy Reform Act of 1978 violate the Constitution by granting too much judicial power to bankruptcy judges?
- *Morrison v. Olson* (1988). Could Congress empower federal judges to appoint independent counsel investigating executive branch officials?
- *Mistretta v. United States* (1989). Could Congress create an independent judicial agency to guide courts in setting criminal sentences?
- *Lujan v. Defenders of Wildlife* (1992). Could an environmental organization sue the federal government to challenge a regulation regarding protected species?
- *City of Boerne v. Flores* (1997). Could Congress reverse the Supreme Court's interpretation of the Constitution through a statute purportedly enforcing the Fourteenth Amendment?