

McDonald v. City of Chicago (2010)

Argued: March 2, 2010

Decided: June 28, 2010

Background

The Second Amendment protects “the right of the people to keep and bear Arms,” but there has been an ongoing national debate about exactly what that phrase means. The debate only intensified after the U.S. Supreme Court struck down a handgun ban in the District of Columbia in 2008 (*District of Columbia v. Heller*). Because of its unique constitutional status as the home of the federal government (and not a state), the District of Columbia is treated as subject to the restrictions that the Constitution places on the federal government. As a result, the *Heller* decision left open the question whether the Second Amendment applies to state and local governments. In this case, which is about a ban on guns in Chicago, the Court was presented with that question.

When the Constitution was written, the Bill of Rights applied only to the federal government—not to the state or local governments. After the Civil War, however, the Constitution was amended to include the 14th Amendment, which guarantees that the states shall not deprive anyone of life, liberty, or property without due process of law. In the decades after the 14th Amendment, the Supreme Court began to rule that different parts of the Bill of Rights did apply to state and local governments—the process of selective incorporation. The Court said that some of the liberties protected in the Bill of Rights are *fundamental* to our concept of liberty and that it would violate the 14th Amendment’s guarantee of due process if states interfered with those liberties. Over time, the Court has ruled that almost all of the Bill of Rights do apply to the states. Before 2010, the Supreme Court had never ruled on whether the Second Amendment’s right to bear arms was one of those fundamental rights that states could not infringe.

Facts

In 1982, the city of Chicago adopted a handgun ban to combat crime and minimize handgun related deaths and injuries. Chicago’s law required anyone who wanted to own a handgun to register it. The registration process was complex, and possession of an unregistered firearm was a crime. In practice, most Chicago residents were banned from possessing handguns.

In 2008, after the Court decided *Heller* (see the summary below) and said that the Second Amendment includes an individual right to keep and bear arms, Otis McDonald and other Chicago residents sued the city for violating the Constitution. They claimed that Chicago’s handgun regulations violate their 14th Amendment rights. Specifically, the residents argued that the 14th Amendment makes the Second Amendment right to keep and bear arms applicable to state and local governments.

The federal district court ruled for Chicago. McDonald appealed. The Seventh Circuit Court of Appeals decided for Chicago, as well. That court ruled that the Second Amendment right to keep and bear arms protects individuals only from regulation by the federal government. McDonald asked the U.S. Supreme Court to hear the case, and it agreed to do so.

Issue

Does the Second Amendment right to keep and bear arms apply to state and local governments through the 14th Amendment and thus limit Chicago's ability to regulate guns?

Relevant Constitutional Clauses

- **Second Amendment to the U.S. Constitution**

“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

- **14th Amendment to the U.S. Constitution**

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law....”

Decision

Writing for a majority of the Court, Justice Alito concluded that the Second Amendment right to keep and bear arms for the purpose of self-defense is fully applicable to the states under the 14th Amendment. The Court considered whether the right to keep guns “is fundamental to our scheme of ordered liberty and system of justice.” Relying on a variety of historical records, the Court determined that both the Framers of and those who ratified the 14th Amendment considered the right to keep and bear arms among the fundamental rights “necessary to our system of ordered liberty.” They said that self-defense is a basic right, and that, under *Heller*, individual self-defense is the central component of the Second Amendment right to bear arms.

Four of the five justices in the majority also said that applying the Second Amendment against state and local governments “does not imperil every law regulating firearms.” Echoing the *Heller* decision, the plurality suggested that reasonable gun restrictions—such as a ban on felons owning guns or on carrying guns on school property—would still be allowed. Since there was not a *majority* for that part of the opinion, however, it is not the law.

New York Times Co. vs. U.S. (1971)

Argued: June 26, 1971

Decided: June 30, 1971

Background

The United States' involvement in the Vietnam War became increasingly controversial and unpopular among Americans as the conflict persisted over a decade.

Since security and secrecy were important to the U.S.'s aims in the war, the government enforced laws to punish spying or breaches of national security. The Espionage Act, which was enacted at the beginning of World War I, made it a crime for anyone to obtain information relating to America's national defense with the intent to use it (or reason to believe it will be used) to the injury of the U.S. or to the advantage of a foreign nation. Additionally, anyone who willfully received such information without reporting it to the appropriate government agent was also at risk for criminal prosecution. The law was used to punish traditional spying and sabotage, but it was also used sometimes to prosecute people for speaking out against wars or other government actions.

This case is about when laws intended to protect American security interests come into conflict with the First Amendment's freedom of the press. How much power does the government have to prevent the media from publishing sensitive information?

Facts

Daniel Ellsberg, a former military analyst, was disillusioned with the U.S.'s continued role in the Vietnam War. He felt so strongly that the U.S. should not be in Vietnam that in 1971, he illegally copied over 7,000 pages of classified reports kept at the RAND Corporation, a research institution where he worked. These pages would come to be known as the "Pentagon Papers." Some of these documents were leaked to major publications, such as The New York Times and The Washington Post. These documents contained intimate details about the decision-making plans behind the U.S.'s intervention in the Vietnam conflict, as well as details that revealed contradictions between President Lyndon Johnson's motivations in Southeast Asia and his public remarks.

Neil Sheehan, the New York Times reporter who received the lead from Ellsberg, knew he had the story of the year, but the paper ran the risk of violating the Espionage Act if they published the papers. After printing two stories about the Pentagon Papers, President Nixon directed his attorney general to order the Times to stop, claiming the publications would cause "irreparable injury to the defense interests of the United States." The Times refused and the U.S. government sued the newspaper for violating the Espionage Act.

A federal judge issued a restraining order to stop further publication until trial. However, during that time, the Washington Post also printed portions of Ellsberg's papers. The government asked a federal court to stop the Post from publishing future stories about the papers, citing again the

Espionage Act. Both newspapers argued that the First Amendment protected their right to publish. Two different federal courts heard the Times and Post cases. Both newspapers won at the trial court, and the government appealed. The Court of Appeals for the D.C. Circuit ruled for the Washington Post, while the Court of Appeals for the Second Circuit ruled for the government (against the New York Times). The U.S. Supreme Court agreed to hear both cases, combining them and holding oral argument just one day after the justices agreed to take the cases.

Issue

Did the government's efforts to prevent two newspapers from publishing classified information given to them by a government leaker violate the First Amendment protection of freedom of the press?

Relevant Constitutional Clauses

- **First Amendment to the U.S. Constitution**

“Congress shall make no law...abridging the freedom of speech, or of the press”

Decision

Only four days after hearing oral arguments, the Supreme Court ruled, 6–3, for the newspapers. The Court issued a short majority opinion not publicly attributed to any particular justice—called a *per curiam* (or “by the Court”) opinion—and each of the six justices in the majority (Justices Black, Douglas, Stewart, White, Brennan, and Marshall) wrote a separate concurring opinion. Chief Justice Burger and Justices Harlan and Blackmun each filed a dissenting opinion. It is one of the few modern cases in which each of the nine Justices wrote an opinion.

Per Curiam

The Court reaffirmed its longstanding rule that “[a]ny system of prior restraints of expression comes to this Court bearing a heavy presumption against its constitutional validity.” “The Government thus carries a heavy burden of showing justification for the imposition of such a restraint.” The *per curiam* opinion concluded, without analysis, that that “the Government had not met that burden” in these cases.

Roe v. Wade (1973)

Argued: December 13, 1971

Reargued: October 11, 1972

Decided: January 22, 1973

Background

The Constitution does not explicitly guarantee a right to privacy. The word privacy does not appear in the Constitution. However, the Bill of Rights includes protections for specific aspects of privacy, such as the Fourth Amendment's "right of the people to be secure in their persons, houses, papers and effects" from unreasonable government searches and seizures and the Fifth Amendment's right to be free of compelled self-incrimination in criminal cases. In early rulings about privacy, the Supreme Court connected the right to privacy to particular locations, with emphasis on a person's home as a private space where the government could not intrude without a warrant. During the 21st century, the Court began interpreting the Constitution, including the Due Process Clause of the 14th Amendment, as providing a broader right to privacy protecting people as well as places. Over the decades the Court interpreted this right to privacy to include decisions about child rearing, marriage, and birth control. This is a case about whether that constitutionally-protected right to privacy includes the right to obtain an abortion.

In the 19th and early 20th centuries, most states adopted laws banning or strictly regulating abortion. Many people felt that abortion was morally or religiously wrong, and so many states outlawed abortion except in cases where the mother's life was in jeopardy. But illegal abortions were widespread and often dangerous for women who underwent them because they were performed in unsanitary conditions. Wealthier women could travel to states or other countries with looser laws to obtain abortions, while poorer women often did not have that option. In the 1960s, a movement to make abortion legal gained ground. The movement advocated for changes in state laws (and four states did repeal their bans) and brought cases in courts challenging the abortion bans as unconstitutional.

Facts

In 1969, an unmarried and pregnant resident of Texas known as Jane Roe (a pseudonym used to protect her identity) wanted to terminate her pregnancy. Texas law made it a felony to abort a fetus unless "on medical advice for the purpose of saving the life of the mother." Roe and her attorneys filed a lawsuit on behalf of her and all other women who were or might become pregnant and seek abortions. The lawsuit was filed against Henry Wade, the district attorney of Dallas County, Texas, and claimed that the state law violated the U.S. Constitution.

A three-judge federal district court ruled the Texas abortion law unconstitutional under the Ninth Amendment, which states that "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." In particular, the district court

concluded that “[t]he fundamental right of single women and married persons to choose whether to have children is protected by the Ninth Amendment,” which applies to the states through the 14th Amendment. The case was then appealed directly to the U.S. Supreme Court, which agreed to hear it.

Issue

Does the U.S. Constitution protect the right of a woman to obtain an abortion?

Relevant Constitutional Clauses

– Ninth Amendment to the U.S. Constitution

“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

– 14th Amendment to the U.S. Constitution

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state 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.”

Decision

In a 7–2 decision, the U.S. Supreme Court decided in Roe’s favor. The majority rooted a woman’s right to decide whether to have an abortion in the Due Process Clause of the 14th Amendment, which prohibits states from “depriv[ing] any person of ... liberty ... without due process of law.” According to the majority, the “liberty” protected by the 14th Amendment includes a fundamental right to privacy. The majority began by surveying the history of abortion laws, and concluded that “the restrictive criminal abortion laws in effect in a majority of States today are of relatively recent vintage,” and “are not of ancient or even of common-law origin.” The Court then held that “[t]his right of privacy, whether it be founded in the Fourteenth Amendment’s concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment’s reservation of rights to the people, is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.” Further, after considerable discussion of the law’s historical lack of recognition of rights of a fetus, the majority concluded “the word ‘person,’ as used in the Fourteenth Amendment, does not include the unborn.” A woman’s right to choose to have an abortion falls within this fundamental right to privacy and is protected by the Constitution.

While holding that “the right of personal privacy includes the abortion decision,” however, the Court also emphasized that “this right is not unqualified and must be considered against important state interests in regulation.” In particular, the Court noted, “[w]here certain ‘fundamental rights’ are involved, the Court has held that regulation limiting these rights may be justified only by a ‘compelling state interest,’ and that legislative enactments must be narrowly drawn to protect only

the legitimate state interests at stake.” The Court recognized that “the State does have an important and legitimate interest in preserving and protecting the health of a pregnant woman” and “still another important and legitimate interest in protecting the potentiality of human life.” Striking a balance between a woman’s fundamental right to privacy and these state interests, the Court set up a framework laying out when states could regulate and even prohibit abortions.

Under that framework, in the first trimester (the first three months of the pregnancy), a woman’s right to privacy surrounding the choice to have an abortion outweighs a state’s interests in regulating this decision. During this stage, having an abortion does not pose a grave danger to the mother’s life and health, and the fetus is still undeveloped. The state’s interests are not yet compelling, so it cannot regulate or prohibit her from having an abortion. During the second trimester, the state’s interests become more compelling as the danger of complications increases and the fetus becomes more developed. During this stage, the state may regulate, but not prohibit, abortions, as long as the regulations are aimed at protecting the health of the mother. During the third trimester, the danger to the woman’s health becomes the greatest and fetal development nears completion. In the final trimester, the state’s interests in protecting the health of the mother and in protecting the life of the fetus become their most compelling. The state may regulate or even prohibit abortions during this stage, as long as there is an exception for abortions necessary to preserve the life and health of the mother.

Schenck v. U.S. (1919)

Argued: January 9, 10, 1919

Decided: March 3, 1919

Background

The First Amendment to the U.S. Constitution protects the freedom of speech. This right, however, like all rights protected by the Constitution, is not absolute. The government can place reasonable limits on protected rights in many instances. The extent to which the government can limit free speech depends on the context, and, generally, the government cannot exert much control over the content of someone's speech. At various points in history, the government has argued that national security concerns, or times of war, permit the government to place additional restrictions on speech.

Two months after the United States formally entered World War I, Congress passed the Espionage Act of 1917. Many elected officials were worried about foreign spies or American sympathizers with our opponents in the war. The Espionage Act made it a crime to "cause insubordination, disloyalty, mutiny, refusal of duty, in the military" or to obstruct military recruiting. A number of Americans were arrested and convicted under this law during World War I. In this case the Supreme Court had to decide whether the speech that was punished was protected by the First Amendment.

Facts

Charles T. Schenck was the general secretary for the Socialist Party chapter in Philadelphia. Along with fellow executive committee member, Elizabeth Baer, Schenck was convicted of violating the Espionage Act. He had printed and mailed 15,000 fliers to draft-age men arguing that conscription (the draft) was unconstitutional and urging them to resist.

On the side of the flier entitled "Long Live the Constitution of the United States," the Socialist Party argued that conscription was a form of "involuntary servitude" and thereby outlawed by the 13th Amendment. Schenck's flier also implored its recipients "to write to your Congressman and tell him you want the [conscription] law repealed. Do not submit to intimidation. You have the right to demand the repeal of any law. Exercise your rights of free speech, peaceful assemblage, and petitioning the government for a redress of grievances."

On the reverse side entitled "Assert Your Rights!", Schenck adopted more fiery language. He implored his audience to "do your share to maintain, support and uphold the rights of the people of this country" or else "you are helping condone a most infamous and insidious conspiracy" fueled by "cunning politicians and a mercenary capitalist press."

After Schenck's conviction for violating the Espionage Act in 1917, he asked the trial court for a new trial. This request was denied. He then appealed to the Supreme Court, which agreed to review his case in 1919.

Issue

Did Schenck's conviction under the Espionage Act for criticizing the draft violate his First Amendment free speech rights?

Relevant Constitutional Clauses

– **First Amendment to the U.S. Constitution**

Congress shall make no law... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Decision

Justice Oliver Wendell Holmes delivered the unanimous opinion for the Court in favor of the United States. Justice Holmes accepted the possibility that the First Amendment did not only prevent Congress from exercising prior restraint (preemptively stopping speech). He said that the First Amendment could also be interpreted to prevent the punishment of speech after its expression.

Yet, according to Holmes, "the character of every act depends upon the circumstances in which it is done." In the context of the U.S. effort to mobilize for entry into World War I, the Espionage Act's criminalization of speech that caused or attempted to cause a disruption of the operation of the military was not a violation of the First Amendment. According to Holmes, "when a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right."

Holmes held that some speech does not merit constitutional protection. He said that statements that "create a clear and present danger" of producing a harm that Congress is authorized to prevent, fall in that category of unprotected speech. Just as "free speech would not protect a man in falsely shouting fire in a theatre and causing a panic," the Constitution does not protect efforts to induce the criminal act of resisting the draft during a time of war.

Schenck was the first case decided by the Court that created a test for punishing a speaker solely because of the content of her or his speech, as opposed to punishing speech that had already caused harm. The "clear and present danger" test provided the framework for many later cases brought against unpopular speakers under both the Espionage Act and similar state laws. Under the "clear and present danger" test, the government typically won and the speakers usually lost. The Court later abandoned this test in favor of rulings more protective of free speech rights.

Shaw v. Reno (1993)

Argued: April 20, 1993

Decided: June 28, 1993

Background

After the Civil War, the 13th, 14th, and 15th Amendments ended slavery, granted citizenship to formerly enslaved persons, and gave African-American men the right to vote. Soon thereafter, state governments, primarily in the south, institutionalized black codes and Jim Crow laws to prevent former slaves from voting. Poll taxes, literacy tests, and felon disenfranchisement were among the practices commonly used to suppress black voting.

In order to prevent states from suppressing the right of African-Americans and other minorities to vote, Congress passed the Voting Rights Act in 1965. This law prohibited voting rules that discriminated on the basis of race. The law also placed cities, counties, and states with a history of discriminatory practices in a special category. These jurisdictions had to request pre-clearance from the federal government before changing their voting rules and were required to prove that the proposed change did not limit a person's right to vote because of their race. The courts concluded that the Voting Rights Act, including this "pre-clearance" requirement, applied to the drawing of legislative district boundaries, which each state must do every 10 years to account for changing populations. While states generally can adopt their own criteria for districting—which typically include making districts that are reasonably compact and contiguous (where all parts of the district are connected to one another) and that align with existing geographical boundaries like cities or counties—they may not draw districts in a way that discriminates on the basis of race.

In *Thornburg v. Gingles* (1986), the Supreme Court ruled that if voting is racially polarized, and if a minority group is both large enough and geographically compact enough to make up a majority of the voters in a new district, then the Voting Rights Act requires the district to be drawn to comprise a majority of minority voters—i.e., to be drawn as a "majority-minority" district. The Court concluded that drawing majority-minority districts in such circumstances is necessary to give minority groups "the opportunity to elect their candidate of choice."

Facts

Between 1865 and 1993, the state of North Carolina elected only seven African-Americans to the U.S. House of Representatives. In 1990, none of the state's 11 members of Congress were black, while 20% of the state's population was. After the 1990 census, the state gained a 12th Congressional seat, and the state legislature tried to ensure the election of an African-American representative through the creation of a legislative district that would be majority African-American. Forty of North Carolina's counties were covered by the Voting Rights Act requirement that redistricting plans be pre-cleared by the federal government, so the state submitted its plans to the U.S. Department of Justice. The attorney general rejected the North Carolina state legislature's first

redistricting plan because it created only one majority-minority district. The Department of Justice said that a second majority-minority district could also be created.

The General Assembly (North Carolina's legislature) redrew the district lines to create a second majority-minority district, District 12. District 12 ran along Interstate 85 in snake-like fashion for 160 miles, breaking up several counties, towns, and districts to connect geographically separate areas densely populated by minority voters into a single district that, in some places, was only as wide as the highway. The attorney general did not object to this new districting plan. In 1992, Melvin Watt won the 12th district, becoming one of North Carolina's first two black members of Congress in the 20th century.

Five white voters filed a lawsuit against both state and federal officials in the U.S. District Court for the Eastern District of North Carolina. They argued that District 12 violated the 14th Amendment's Equal Protection Clause because it was motivated by racial discrimination and resulted in a district drawn almost entirely on racial lines, with the sole purpose of electing black Congressional representatives. The District Court dismissed the case, concluding that using race-based districting to benefit minority voters does not violate the Constitution. The voters appealed to the Supreme Court, which is required by law to hear most redistricting cases.

Issue

Did the North Carolina residents' claim that the 1990 redistricting plan discriminated on the basis of race raise a valid constitutional issue under the 14th Amendment's Equal Protection Clause?

Relevant Constitutional Clauses

- **14th Amendment to the U.S. Constitution**

"Nor shall any state...deny to any person within its jurisdiction the equal protection of the laws."

- **15th Amendment to the U.S. Constitution**

"The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

Decision

In a 5–4 decision, the U.S. Supreme Court decided in favor of Shaw, and sent the case back to the lower court to be reheard. Writing for the majority, Justice O'Connor detailed the troublesome history of racial gerrymandering and explained how North Carolina District 12 was similar in many ways to past districts that had been held unconstitutional, like the bizarrely shaped district in *Gomillion*. The justices said that classifications of citizens predominantly on the basis of race are undesirable in a free society and conflict with the American political value of equality.

The majority said that any redistricting plan that includes people in one district who are geographically disparate and share little in common with one another but their skin color, bears a

strong resemblance to racial segregation. They wrote that racial classifications of any sort promotes the belief that individuals should be judged by the color of their skin. They also said that drawing districts to advance the perceived interests of one racial group may lead elected officials to see their obligation as representing only members of that group, rather than their constituency as a whole. The justices concluded that racial gerrymandering, even for remedial purposes, may “balkanize us into competing racial factions; it threatens to carry us further from the goal of a political system in which race no longer matters.”

The Court was tasked with deciding the grounds on which voters could challenge voting districts as racial gerrymanders. They decided that if a redistricting plan cannot rationally be understood as anything other than an effort to divide voters based on their race, voters may challenge such a district under the Equal Protection Clause. Therefore, the case was sent back to the lower court to determine if the North Carolina plan could be justified in terms other than race.

Tinker v. Des Moines Independent Community School District (1969)

Argued: November 12, 1968

Decided: February 24, 1969

Facts

In 1966, in Des Moines, Iowa, five students, ages 13–16, decided to show opposition to the Vietnam War. The students planned to wear two-inch-wide black armbands to school for two weeks. The school district found out about the students' plan and preemptively announced a policy that any student who wore a black armband, or refused to take it off, would be suspended from school after the student's parents were called.

Mary Beth Tinker, an eighth-grader, and John Tinker and Christopher Eckardt, both high school students, wore black armbands to their respective schools. All three teens were sent home for violating the announced ban and told not to return until they agreed not to wear the armbands. Their parents filed suit against the school district for violating the students' First Amendment right to free speech. The federal district court dismissed the case and ruled that the school district's actions were reasonable to uphold school discipline. The U.S. Court of Appeals for the Eighth Circuit agreed with the district court. The Tinkers asked the U.S. Supreme Court to review that decision, and the Court agreed to hear the case.

Issue

Does a prohibition against the wearing of armbands in public school, as a form of symbolic speech, violate the students' freedom of speech protections guaranteed by the First Amendment?

Relevant Constitutional Clauses

– U.S. Constitution, Amendment I

Congress shall make no law ... abridging the freedom of speech....

Decision

The Supreme Court ruled in favor of the Tinkers, 7–2. The justices said that students retain their constitutional right to freedom of speech while in public schools. They said that wearing the armbands was a form of speech, because they were intended to express the wearer's views about the Vietnam War. The Court said, "First Amendment rights, applied in light of the special characteristics of the school environment, are available to teachers and students. It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate...."

The Court stressed that this does not mean that schools can never limit students' speech. If schools could make a reasonable prediction that the speech would cause a "material and substantial disruption" to the discipline and educational function of the school, then schools may limit the speech. In this case, though, there was not evidence that the armbands would substantially interfere with the educational process or with other students' rights.

United States v. Lopez (1995)

Argued: November 8, 1994

Decided: April 26, 1995

Background

The U.S. Constitution sets up a system of government in which the federal government and the states share power. The powers of the federal government are limited and are described in the Constitution. Other powers, not delegated to the federal government, are reserved for the states. Article 1, Section 8, of the Constitution lists many of Congress's powers, including the power to create post offices, raise an army, coin money, and declare war. One of Congress's broadest powers is the power to regulate commerce among the states. Many of the laws Congress passes depend on this power to regulate interstate commerce. In this case, however, it is argued that Congress passed a law that exceeded this constitutional power.

Facts

In 1990, Congress passed the Gun Free School Zones Act (GFSZA). In an effort to reduce gun violence in and around schools, the GFSZA prohibited people from knowingly carrying a gun in a school zone. A school zone was defined as any area within 1,000 feet of a school. A 12th grade student, Alfonso Lopez Jr., was convicted of possessing a gun at a Texas school. Lopez appealed his conviction, arguing that Congress never had the authority to pass the GFSZA in the first place. The U.S. Court of Appeals for the Fifth Circuit agreed with Lopez and reversed his conviction. The United States government asked the Supreme Court to hear the case. The Court agreed to do so.

Issue

Did Congress have the power to pass the Gun Free School Zones Act?

Relevant Constitutional Clauses

- **Article 1, Section 8, Clause 3 of the U.S. Constitution**

“The Congress shall have the power ...to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes...”

- **Article 1, Section 8, Clause 18 of the U.S. Constitution**

“The Congress shall have the power ...to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”

Decision

The Supreme Court ruled in favor of Lopez, 5–4. The Supreme Court ruled that the law exceeded Congress’s authority under the Commerce Clause because carrying a gun in a school zone is not an *economic* activity. It said that Congress may regulate only:

- Channels of interstate commerce, including highways, waterways, and air traffic.
- People, machines, and things moving in, or used in carrying out, interstate commerce.
- Economic activities that have a substantial effect on interstate commerce.

The Court rejected the government’s argument that merely because crime negatively affected education, Congress could conclude that crime in schools affects commerce in a substantial way. Finally, the opinion stated that the Constitution created a national government with only limited, delegated powers. To claim that any kind of activity is commerce means that the power of Congress would be unlimited, which directly contradicts the principle of limited government and explicit powers. As the Court explained, “Thus, if we were to accept the Government’s arguments, we are hard pressed to posit any activity by an individual that Congress is without power to regulate.”

Wisconsin v. Yoder (1972)

Argued: December 8, 1971

Decided: May 15, 1972

Background

The First Amendment protects the right of people to exercise their religion freely. This means that the government cannot outlaw any religious beliefs. Sometimes, however, conduct related to those beliefs conflicts with government laws and regulations. In these cases, courts are asked to rule on whether the government is allowed to forbid some conduct required by someone's religious belief or compel conduct that is forbidden by that belief. This is a case about the free exercise of the religious beliefs of Amish and Mennonite communities.

The Amish and Mennonite sects of Christianity view individualism, competition, and self-promotion as vices that separate members from God, one another, and their own salvation. In order to preserve these values, each rural community seeks to become largely self-sufficient, providing for its members' needs with minimal support from those outside the community. These beliefs led many communities to stop formal education, in the form of public, private, or home schooling, for their children after the age of 14. For generations that approach aligned with state and local laws related to the number of years children were required to be in school. In the mid-20th century, however, many U.S. states raised the age to which children must attend school, and that created conflict with Old Order Amish and Mennonite practices.

Facts

The state of Wisconsin convicted three members of Old Order Amish and Mennonite communities for violating the state's compulsory education law, which requires attendance at school until the age of 16. Frieda Yoder and two other students had stopped attending school at the end of eighth grade. The Amish claimed that their religious faith and their mode of life are inseparable and interdependent. They sincerely believe that exposure to competitive pressures of formal schooling, the content of higher learning, and removal from their religiously-infused practices of daily life will endanger children's salvation, the parents' own salvation, and the continuation of the Amish community itself. The Amish community provides an alternative education that adequately prepares children for their adult roles within their community. This alternative education also prepares them to be law abiding and self-sufficient.

Mr. Yoder and the other parents were convicted in Wisconsin Circuit Court for their students' truancy (failure to attend compulsory schooling). They were required to pay a five dollar fine, which they refused to do as a matter of conscience. The Yoders appealed to the Wisconsin Supreme Court on the grounds that their families' First Amendment free exercise rights were violated. The state Supreme Court agreed and reversed the Circuit Court's decision, ruling in favor of Yoder. The state of Wisconsin sought review by the U.S. Supreme Court, which agreed to hear the case.

Issue

Under what conditions does the state's interest in promoting compulsory education override parents' First Amendment right to free exercise of religion?

Relevant Constitutional Clauses

– **First Amendment to the U.S. Constitution**

“Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...”

– **14th Amendment to the U.S. Constitution**

“...nor shall any State deprive any person of life, liberty, or property, without due process of law...”

Decision

The Court decided the case unanimously, 7–0, in favor of Yoder. The Supreme Court held that the Free Exercise Clause of the First Amendment, as incorporated by the 14th Amendment, prevented the state of Wisconsin from compelling the respondents to send their children to formal secondary school beyond the age of 14.

The Court ruled that the families' religious beliefs and practices outweighed the state's interests in making the children attend school beyond the eighth grade. The Court first satisfied itself that, according to expert testimony in the record, the requirement to send their children to school beyond the eighth grade would actually interfere with well-established and deeply held religious convictions:

“In sum, the unchallenged testimony of acknowledged experts in education and religious history, almost 300 years of consistent practice, and strong evidence of a sustained faith pervading and regulating respondents' entire mode of life support the claim that enforcement of the State's requirement of compulsory formal education after the eighth grade would gravely endanger, if not destroy, the free exercise of respondents' religious beliefs.”

The Court then rejected the state's arguments for overriding the parents' religious beliefs. The Court commented that an additional one or two years of high school (until the required age of 16) would not produce enough educational benefits for the Amish to constitute a “compelling government interest.” The Court cited the endurance of their law-abiding community for centuries as evidence that the Amish meet the responsibilities of citizenship without the required additional years of secondary education.

The justices also noted that nothing in their decision undermined general state compulsory school attendance laws for non-Amish people and emphasized that states may still set reasonable standards for church-sponsored schools, including for Amish agricultural vocational education, as long as those rules do not impair the free exercise of religion.