

The Supreme Court and Modern Federalism

Earlier, we looked at the case *McCulloch v. Maryland* where the Supreme Court expanded the power of the national government. However, the Supreme Court has also protected states from the federal government intruding on their powers. The Tenth Amendment to the Constitution has now become a more prominent tool in asserting state authority.

United States v. Lopez (1995) – a Supreme Court Case from an incident that took place in Texas, 1992 which preserved States' authority.

What happened? Alfonso Lopez Junior was a senior at Edison High School in San Antonio, Texas. On March 10, 1992, he brought to school an unloaded .38 special revolver and five cartridges which he planned to sell to another student for \$44.

An anonymous tip alerted school authorities. Lopez was confronted and he admitted to carrying the gun and ammunition. Lopez was charged under Texas law prohibiting firearms in schools.

The state charges were dropped and Lopez was then charged with violating the federal Gun-Free School Zones Act of 1990.

In court, Lopez claimed the federal act was unconstitutional as Congress did not have the power to regulate bringing firearms into a local public school. The trial court denied his motion to dismiss and claimed that the Gun-Free School Zones Act was within the powers enumerated to Congress because activities within elementary, middle, and high schools are related to interstate commerce.

Lopez was tried and convicted (six months' imprisonment and two years' supervised release). Lopez appealed to the U.S. Court of Appeals for the Fifth Circuit. His lawyers stated that Congress had overstepped its powers when it passed the Gun-Free School Zones Act and the Appeals Court agreed and the conviction was overturned.

The U.S. Government then took the case to the Supreme Court and were required to prove that the act was constitutional under the commerce clause and that the law regulated an activity that was substantially related to interstate commerce.

The question presented was “ Is the 1990 Gun-Free School Zones Act, forbidding individuals from knowingly carrying a gun in a school zone, unconstitutional because it exceeds the power of Congress to legislate under the Commerce Clause?”

The federal government argued that guns in schools increase violent crime, which impacts the national economy. Furthermore, crime is expensive, and insurance spreads the cost of crime throughout the nation, They also argued that businesses would not want to be located in high crime areas, which in turn impacts interstate commerce.

Lopez won the Supreme Court case. Congress had exceeded its authority under the commerce clause in passing the Gun-Free School Zones Act in 1990. They claimed that having a gun in a local school zone was not an economic activity and therefore was not part of interstate commerce. According to the government's argument, everything would be commerce which meant that nothing would be left to the states.

Bringing a gun to school falls under traditional state police powers, not interstate commerce. This is within the Tenth Amendment as it created a federal system where state powers are protected.

The case of **United States v. Lopez** (1995) is found at this Oyez.org link:

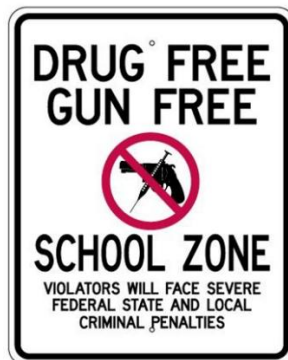
<https://www.oyez.org/cases/1994/93-1260>

The case of **United States v. Lopez** reverts national power and honors the Tenth Amendment by giving power to the state police.

In 1997, in the case of **Printz v. United States**, the Supreme Court again cited the Tenth Amendment when they ruled against federal law that required local enforcement officers to perform background checks on prospective handgun purchases.

Another case, **McDonald v. Chicago**, decided in 2010, saw the Supreme Court rule that a Chicago law banning individual gun ownership violated the Second Amendment.

The cases of Printz and McDonald reversed a trend of giving more power to the federal government and reasserted states' authority.



The issue of Same-Sex Marriage

A requirement for getting married is to have a marriage license issued by the state. However, marriage also involves civil rights. In the Supreme Court case of **Loving v. Virginia** in 1967, the court overturned a Virginia law prohibiting interracial marriage. Similarly, the more recent issue of same-sex marriage has highlighted the tensions between states' rights and the national protection of civil rights.

The Defense of Marriage Act (DOMA) was passed by Congress in 1996. Withing this act there were two important sections:-

1. For the purpose of federal law, marriage meant a legal union between a man and a woman. "Spouse" is only a person of the opposite sex who is a husband or wife.
2. The states had the power to decide about marriage.

"No State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such other State, territory, possession, or tribe, or a right or claim arising from such relationship."

<https://www.congress.gov/104/plaws/publ199/PLAW-104publ199.pdf>

This section of DOMA clearly indicates that same-sex marriage did not fall under the protection of the full faith and credit clause. [The **Full Faith and Credit Clause**, found in Article IV, Section 1 of the U.S. Constitution, mandates that each state must respect the "public acts, records, and judicial proceedings" of every other state. This means states are generally required to honor the laws, records, and court decisions of other states. Congress can also establish rules for how these are proven and what effect they have].

In 2013, the Supreme Court case of **United States v. Windsor** ruled that the section of DOMA that classified only opposite-sex marriage was unconstitutional. The Supreme Court validated state-recognized same-sex marriages for "federal" purposes but it still allowed states to reject same-sex marriage licenses from other states. Same-sex marriage was legal in some states and illegal in others. (<https://www.oyez.org/cases/2012/12-307>)

What is important to know is that the decision in the case of **Obergefell and Hodges** in 2015 guaranteed the right for **all** couples to marry. The Court cited constitutional protections of fundamental civil liberties and the right to privacy in its majority decision. Justice Kennedy affirmed that "the right to marry is a fundamental right inherent in the liberty of the person." The case legalized same-sex marriage nationwide.

(<https://www.oyez.org/cases/2014/14-556>)

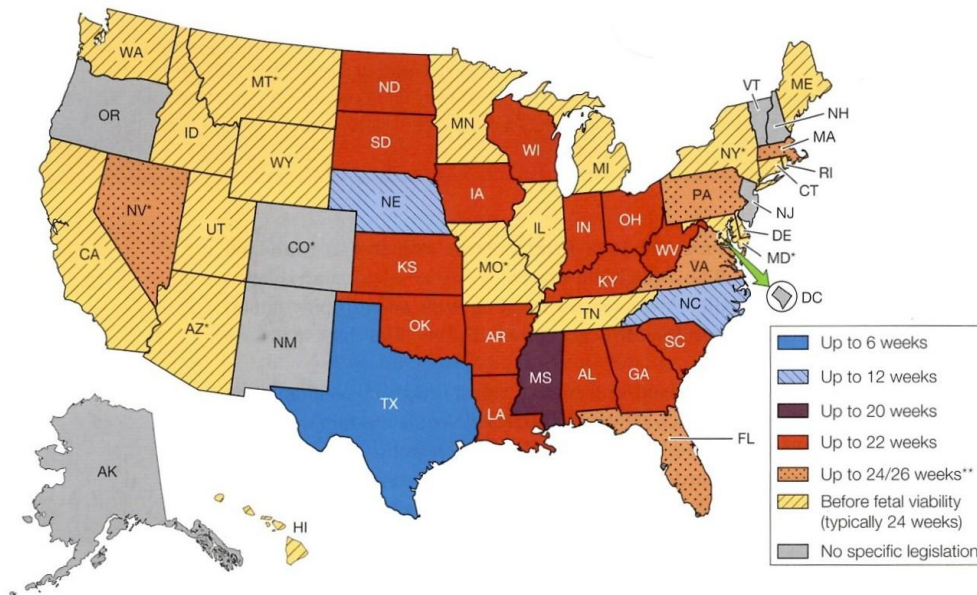
The issue of Abortion in America

Prior to 1973, abortion was a state issue where some states legalized it, while others prohibited it. In the Supreme Court case of **Roe v. Wade** (1973), the court ruled that women had a constitutionally protected right to have an abortion based on the Fourth and Ninth Amendments as well as the due process clause of the Fourteenth Amendment, limiting the power of the states to infringe on fundamental rights. The case was considered to be one of a civil liberty so states could restrict, but not prohibit, abortions during the first two trimesters of pregnancy. **Roe v. Wade** was a federal issue and made abortions legal nationwide. (<https://www.oyez.org/cases/1971/70-18>).

Roe v. Wade was overturned in 2022 with the case of **Dobbs v. Jackson Women’s Health Organization**. The court ruled that abortion was never intended to be a protected liberty under the Constitution and that the due process clause does not apply to abortions. The ruling meant that the issue of abortion was now in the hands of the states. Prior to the ruling, thirteen states had already passed “trigger laws” that banned abortion as soon as the ruling took effect. Some states believe it is a protected liberty while others have restricted the procedure. In the 2024 election, ten states had referendums on abortion policy; seven passed referendums strengthening abortion rights, similar measures failed in three states. (<https://www.oyez.org/cases/2021/19-1392>).

Abortion Laws by State

Laws on abortion vary by state, as shown in this map, which shows the gestational age threshold for legal abortion as of November 2024. Some states also allow abortions in cases where the life/health of the mother is endangered.



*On November 5, 2024, these states passed measures to amend their state constitutions to protect the right to abortion.

**26 weeks: Virginia

Later abortions allowed in all states in case of danger to mother’s life and/or health.

Data from Statista, 2021