No. 99-5

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

ANTONIO J. MORRISON, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether 42 U.S.C. 13981, the provision of the Violence Against Women Act of 1994 that creates a private right of action for victims of gender-motivated violence, is a valid exercise of Congress's power under the Commerce Clause of the Constitution.

2. Whether 42 U.S.C. 13981 is a valid exercise of Congress's power under the Enforcement Clause of the Fourteenth Amendment to the Constitution.

PARTIES TO THE PROCEEDING

Petitioner is the United States of America, which intervened in the district court to defend the constitutionality of 42 U.S.C. 13981. Christy Brzonkala was the plaintiff in the district court and an appellant in the court of appeals.

Respondents are Antonio J. Morrison and James Landale Crawford. The Virginia Polytechnic Institute and State University, Cornell D. Brown, and William E. Landsidle, in his capacity as Comptroller of the Commonwealth of Virginia, were defendants/appellees below.

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PETITION FOR A WRIT OF CERTIORARI

The Solicitor General, on behalf of the United States, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals sitting en banc (App. 1a-281a) is reported at 169 F.3d 820. The earlier opinion of a panel of that court (App. 282a-349a) is reported at 132 F.3d 949. The opinion of the district court (App. 350a-403a) is reported at 935 F. Supp. 779.

JURISDICTION

The judgment of the court of appeals was entered on March 5, 1999. On May 25, 1999, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including June 30, 1999. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Commerce Clause of the United States Constitution, Article I, Section 8, Clause 3, provides: "The Congress shall have Power * * * To regulate Commerce * * * among the several States."

2. The Equal Protection Clause of Section 1 of the Fourteenth Amendment provides that no State shall "deny to any person within its jurisdiction the equal protection of the laws." Section 5 of the Fourteenth Amendment provides that "[t]he Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

3. The civil rights provision of the Violence Against Women Act of 1994, 42 U.S.C. 13981, is reprinted in an appendix to this petition (App. 404a-406a).

STATEMENT

This case presents a constitutional challenge to 42 U.S.C. 13981, the provision of the Violence Against Women Act of 1994 (VAWA) that gives victims of gender-motivated violence a private right of action against its perpetrators. Congress, after extensive hearings, expressly found that gender-motivated violence substantially affects interstate commerce, such as by impeding the employment, travel, and other economic activity of the victims and potential victims of such violence. The United States Court of Appeals for the Fourth Circuit, however, interpreted this Court's decision in *United States* v. *Lopez*, 514 U.S. 549 (1995), to compel a holding that the commerce power extends to the regulation of only those intrastate activities that are themselves economic in nature, and not to other activities that substantially affect interstate commerce, such as gender-motivated violence. Congress also expressly found that the States had failed, as a result of pervasive bias in their civil and criminal justice systems, to guarantee the equal protection of the laws to victims of gender-motivated

violence. The Fourth Circuit, however, construed this Court's decisions in *United States* v. *Harris*, 106 U.S. 629 (1883), and the *Civil Rights Cases*, 109 U.S. 3 (1883), to compel a holding that, because the Equal Protection Clause of the Fourteenth Amendment itself regulates only state action, Congress cannot regulate private conduct as a means of remedying violations of the Equal Protection Clause by the States and by state actors.

1. Congress enacted VAWA in 1994 to address "the escalating problem of violence against women." S. Rep. No. 138, 103d Cong., 1st Sess. 37 (1993) (1993 S. Rep.). Congress chose to address that problem through "several different complementary strategies," S. Rep. No. 197, 102d Cong., 1st Sess. 34 (1991) (1991 S. Rep.), including new federal crimes, a new federal civil remedy, and new federal grant programs. The crimes created by VAWA punish certain types of interstate domestic violence. See 18 U.S.C. 2261, 2262 (1994 & Supp. III 1997).[1] The grant programs authorized $1.6 billion in federal spending over six years to support state, local, and tribal efforts to reduce violence against women, including rape prevention and education programs, law-enforcement efforts, victim services programs, battered women's shelters, and improved security in public transit. See 42 U.S.C. 300w-10, 3796gg, 10409(a), 13931.

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[1] The criminal provisions of VAWA, which are not at issue here, have been uniformly sustained against constitutional challenge by the courts of appeals as a permissible regulation of interstate commerce. See *United States* v. *Gluzman*, 154 F.3d 49 (2d Cir. 1998), cert. denied, 119 S. Ct. 1257 (1999); *United States* v. *Wright*, 128 F.3d 1274 (8th Cir. 1997), cert. denied, 523 U.S. 1053 (1998); *United States* v. *Bailey*, 112 F.3d 758 (4th Cir.), cert. denied, 522 U.S. 896 (1997); see also *United States* v. *Page*, 167 F.3d 325 (6th Cir. 1999) (affirming conviction under VAWA's criminal provisions by an equally divided en banc court, whose members disagreed as to whether the defendant's conduct satisfied the statutory elements, but agreed that VAWA's criminal provisions are a permissible exercise of the commerce power).

Congress considered one of VAWA's "[m]ost important[]" components to be its civil rights provision, Section 13981, which gives victims of gender-motivated violence a federal cause of action against its perpetrators. 1993 S. Rep. 38. Congress described Section 13981 as "mak[ing] a national commitment to condemn crimes motivated by gender in just the same way that we have made a national commitment to condemn crimes motivated by race or religion." S. Rep. No. 545, 101st Cong., 2d Sess. 41 (1990) (1990 S. Rep.).

Section 13981(b) declares that "[a]ll persons within the United States shall have the right to be free from crimes of violence motivated by gender." Section 13981(c), in turn, provides:

> A person * * * who commits a crime of violence motivated by gender and thus deprives another of the right declared in subsection (b) of this section [to be free from gender-motivated violence] shall be liable to the party injured, in an action for the recovery of compensatory and punitive damages, injunctive and declaratory relief, and such other relief as a court may deem appropriate.

Section 13981(d) then defines a "crime of violence motivated by gender" that could give rise to such a cause of action. A "crime of violence" is defined as "an act or series of acts that would constitute a felony against the person" (or a felony against property if the conduct poses "a serious risk of physical injury" to a person) and would satisfy the definition of a "crime of violence" in 18 U.S.C. 16, "whether or not those acts have actually resulted in criminal charges, prosecution, or conviction." 42 U.S.C. 13981(d)(2).[2] Such a

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[2] A "crime of violence" is defined in 18 U.S.C. 16 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" or "any other offense that is a felony and that, by its nature, involves a substantial risk that physical

crime is "motivated by gender" if it was committed "due, at least in part, to an animus based on the victim's gender." 42 U.S.C. 13981(d)(1).

Section 13981(a) identifies two sources of Congress's constitutional authority to create a federal cause of action for victims of gender-motivated violence: the Commerce Clause, which is found in Article I, Section 8 of the Constitution, and Section 5 of the Fourteenth Amendment.

2. In the Conference Report adopted in connection with VAWA, Congress explained why its commerce power extends to the regulation of gender-motivated violence:

> [C]rimes 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; crimes of violence motivated by gender have a substantial adverse effect on interstate commerce by diminishing national productivity, increasing medical and other costs, and decreasing the supply of and the demand for interstate products.

H.R. Conf. Rep. No. 711, 103d Cong., 2d Sess. 385 (1994) (Conf. Rep.); see also 1993 S. Rep. 54 ("Gender-based crimes and the fear of gender-based crimes restrict[] movement, reduce[] employment opportunities, increase[] health expenditures, and reduce[] consumer spending, all of which affect interstate commerce and the national economy.").

Congress reached that conclusion after four years of extensive investigation and consideration of the problem of gender-motivated violence. At a series of committee hearings conducted between 1990 and 1993, Congress heard testimony from a variety of experts: state attorneys general,

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force against the person or property of another may be used in the course of committing the offense."

federal and state law-enforcement officials, physicians, mental health professionals, legal scholars, representatives of women's organizations, and victims of gender-motivated violence. The voluminous evidence amassed during those hearings demonstrated to Congress that gender-motivated violence is pervasive, has a substantial effect on interstate commerce, and often goes unremedied due to widespread bias in state justice systems.[3]

a. Congress's extensive fact-finding revealed that violence against women is a problem of the first magnitude and of national scope. For example, the evidence showed:

- "Violent attacks by men now top[] the list of dangers to an American woman's health. Every 15 seconds, a woman is battered and, every 6 minutes, a woman is raped in the United States." 1991 S. Rep. 36.

- "Every week, during 1991, more than 2,000 women were raped and more than 90 women were murdered—9 out of 10 by men." 1993 S. Rep. 38.

- "An estimated 4 million American women are battered each year by their husbands or partners. Approximately 95% of all domestic violence victims

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[3] See *Domestic Violence—Terrorism in the Home: Hearing Before the Subcomm. on Children, Family, Drugs and Alcoholism of the Senate Comm. on Labor and Human Resources*, 101st Cong., 2d Sess. (1990); *Women and Violence: Hearings Before the Senate Comm. on the Judiciary*, 101st Cong., 2d Sess. (1990) (1990 S. Judiciary Hearings); *Violence Against Women—Victims of the System: Hearing on S. 15 Before the Senate Comm. on the Judiciary*, 102d Cong., 1st Sess. (1991) (1991 S. Judiciary Hearing); *Violence Against Women: Hearing Before the Subcomm. on Crime and Criminal Justice of the House Comm. on the Judiciary*, 102d Cong., 2d Sess. (1992); *Crimes of Violence Motivated by Gender: Hearing Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 103d Cong., 1st Sess. (1993).

are women." H.R. Rep. No. 395, 103d Cong., 2d Sess. 26 (1993) (1993 House Rep.).

- "Three out of four American women will be victims of violent crimes sometime during their life." *Id.* at 25.

The evidence before Congress further demonstrates that violence against women has a substantial impact on interstate commerce. As the 1993 Senate Report explained, "[g]ender-based violence bars its most likely targets—women—from full [participation] in the national economy," because violence and the fear of violence prevent women from obtaining and retaining employment, traveling, and engaging in other economic activity. 1993 S. Rep. 54.

Of those women who are victims of rape, for example, "almost 50 percent * * * lose their jobs or are forced to quit in the aftermath of the crime." 1993 S. Rep. 54. Even those women who remain employed after a rape or other crime of violence may experience a prolonged period of decreased productivity. 1990 S. Rep. 33. And "as many as 50 percent of homeless women and children are fleeing domestic violence." *Id.* at 37. It has thus been estimated that "violent crime against women costs this country at least 3 billion * * * dollars a year." *Id.* at 33; see also 1993 S. Rep. 41 (noting estimates that costs of domestic violence alone, including costs of victims' medical treatment, may amount to $5 billion to $10 billion a year).

Moreover, Congress found that "[e]ven the fear of gender-based violence affects the economy because it deters women from taking jobs in certain areas or at certain hours that pose a significant risk of such violence." 1993 S. Rep. 54. For example, Congress found that "women often refuse higher-paying night jobs in the service/retail industries

because of the fear of attack." *Id.* at 54 n.70.[4] Unfortunately, as Congress recognized, "[t]hose fears are justified." *Ibid.* (citing statistics indicating that homicide is the leading cause of death of women on the job). In addition, Congress found that many women are reluctant, for similar reasons, to use public transportation, particularly after dark. 1991 S. Rep. 38.[5]

b. Congress found that the problem of gender-motivated violence was exacerbated by pervasive bias in the state justice systems, including bias among police officers, prosecutors, judges, juries, and court employees. The Conference Report concluded that "bias and discrimination in the [state] criminal justice system often deprive[] victims of crimes of violence motivated by gender of equal protection of the laws and the redress to which they are entitled." Conf. Rep. 385.

In reaching that conclusion, Congress relied, in part, on the reports compiled by numerous state task forces on gender bias. Congress found that "[s]tudy after study commissioned by the highest 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." 1991 S. Rep. 43; see also *id.* at 43 n.40 and 1993 S. Rep. 45 n.29, 49 n.52 (citing 20 such studies conducted between 1984 and 1991). Congress noted that "[c]ollectively these reports provide overwhelming evi-

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[4] See also, *e.g.*, 1991 S. Judiciary Hearing 86 (testimony of Professor Burt Neuborne) (Women "tend to choose their jobs with one eye looking over their shoulder about their safety. They can't work late like men can work; they can't work overtime; they can't take jobs in localities that are considered to be dangerous.").

[5] See, *e.g.*, 1990 S. Judiciary Hearings, Pt. 2, at 80 (letter from International Union, United Automobile, Aerospace & Agricultural Implement Workers of America) ("The threat of violence has made many women understandably afraid to walk our streets or use public transportation.").

dence that gender bias permeates the court system and that women are most often its victims." 1991 S. Rep. 43-44 (quoting Lynn H. Shafran, *Overwhelming Evidence: Reports on Gender Bias In the Courts*, Trial, Feb. 1990, at 28).

For example, the Illinois task force found that there was "a continuing suspicion of the credibility of sexual assault victims on the part of police, prosecutors, judges, and juries." Illinois Task Force on Gender Bias in the Courts, *Gender Bias in the Courts* 16 (1990). Accordingly, "[a]lthough rape is rarely committed before eyewitnesses and is often not reported immediately, prosecutors and investigators seek corroboration, including evidence of a 'prompt complaint.'" *Ibid.* (noting that sexual assault victims, unlike victims of other crimes, had been required by police and prosecutors to take polygraph tests). The Texas task force similarly found that "[w]omen sexual-assault victims are accorded less credibility by the judicial system than victims of other types of assaults." Texas Gender Bias Task Force, *Final Report* 5 (1994). Women frequently confront the assumption that they invited or precipitated a sexual assault. See, *e.g.*, 1991 S. Rep. 34 (describing how a Vermont probation officer questioned whether a 9-year-old girl was a "true victim" of sexual assault, since he had heard that she was a "tramp") (quoting Vermont Supreme Court & Vermont Bar Ass'n, *Report of the Vermont Task Force on Gender Bias in the Legal System* 140 (1991)). Such assumptions are particularly prevalent in cases of acquaintance rape, which prosecutors regularly refuse to prosecute. *Id.* at 47-48.

As a result of the task force reports on the treatment of sexual assault, together with testimony presented at congressional hearings, Congress found:

> From the initial report to the police through prosecution, trial, and sentencing, crimes against women are often treated differently and less seriously than other crimes. Police may refuse to take reports; prosecutors

> may encourage defendants to plead to minor offenses; judges may rule against victims on evidentiary matters; and juries too often focus on the behavior of the survivors—laying blame on the victims instead of on the attackers.

1993 S. Rep. 42. As a result, "a rape survivor may have as little as a 5-percent chance of having her rapist convicted." 1991 S. Rep. 44; see also *Crimes of Violence Motivated by Gender: Hearing Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 103d Cong., 1st Sess. 94 (1993) (1993 House Judiciary Hearings) (statement of Rep. Schroeder that "[l]ess than 40 percent of reported rapes result in arrest * * * [and] [t]he conviction rate for rape is only 3 percent").

The state task force reports also demonstrated to Congress that "[g]ender bias contributes to the judicial system's failure to afford the protection of the law to victims of domestic violence." 1993 S. Rep. 46. In California, the state task force found that "police officers, district and city attorneys, court personnel, mediators, and judges—the justice system—treated the victims of domestic violence as though their complaints were trivial, exaggerated or somehow their own fault." *Ibid.* (quoting Administrative Office of Judicial Council of California Courts, *Achieving Equal Justice for Women and Men in the Courts* 5 (1993)); see also 1991 S. Rep. 34 (quoting a California judge as stating that a domestic violence victim in his court "probably should have been hit"). In Georgia, a state judge was reported to have "mocked," "humiliated," and "ridiculed" a domestic violence victim who, in fact, was later killed by her estranged husband. 1991 S. Rep. 34 (quoting Supreme Court of Georgia, *Report on Gender and Justice in the Judicial System* 235 (1991)). And, in Maryland, a state judge refused to believe a woman's complaint that her husband had threatened to kill her with his gun "because I don't believe that anything like this could

happen to me." *Ibid.* (quoting Maryland Special Joint Committee, *Gender Bias in the Courts* 2-3 (1989)). Congress found that such attitudes cause police, prosecutors, and judges to treat domestic violence more leniently than other sorts of violence. See 1993 S. Rep. 41 ("In cases where a comparable assault by a stranger on the street would lead to a lengthy jail [term], a similar assault by a spouse will result neither in arrest nor in prosecution.").

Congress also found that state civil remedies for victims of sexual assault and domestic violence are often significantly flawed. Congress noted, for example, that "in many States rape survivors * * * may be forced to expose their private lives and intimate conduct to win a damage award; and * * * in some cases, they may be barred from suit altogether by tort immunity doctrines or marital exemptions." 1993 S. Rep. 55. Accordingly, while sexual assault victims may, "[i]n theory," have certain civil remedies at their disposal, "[i]n practice, few are able to use those remedies." 1991 S. Rep. 44. Indeed, Congress noted that "[l]ess than 1 percent of all victims have collected damages" against their assailants—a statistic that Congress believed "belie[s] claims that State laws provide 'adequate' remedies for the victims of these crimes." *Ibid.*

Congress therefore concluded, based on its evaluation of the massive legislative record, that gender-motivated violence poses a national problem demanding a national response. The state attorneys general concurred: "Our experience as Attorneys General strengthens our belief that the problem of violence against women is a national one, requiring federal attention, federal leadership, and federal funds." 1993 House Judiciary Hearings 34-36 (letter from 38 state attorneys general).

Congress viewed the private right of action provided by Section 13981, together with the other provisions of VAWA, as an appropriate response to that national problem. Congress explained that Section 13981's declaration that "[a]ll

persons within the United States shall have the right to be free from crimes of violence motivated by gender" would make clear to all Americans—including participants in the justice system—that "attacks motivated by gender [bias] [are] to be considered as serious as crimes motivated by religious, racial, or political bias." 1993 S. Rep. 38. Congress further explained that the private right of action in Section 13981 was particularly important because it would "allow survivors an opportunity for legal vindication that the survivor, not the State, controls." 1990 S. Rep. 42.

3. In September 1994, at the time of the events at issue in this case, plaintiff Christy Brzonkala was an incoming freshman at Virginia Polytechnic Institute (Virginia Tech). Defendants Antonio Morrison and James Crawford were students at Virginia Tech and members of its football team. App. 8a.

Brzonkala alleges that 30 minutes after she met Morrison and Crawford, they pinned her down on a bed in her dormitory and took turns forcibly raping her. Afterwards, Morrison allegedly told Brzonkala, "You better not have any f***ing diseases." Subsequently, Morrison allegedly announced publicly in the dormitory's dining hall that "I like to get girls drunk and f*** the s*** out of them." App. 8a, 212a.

According to Brzonkala, she became depressed and withdrawn after the assault. She ceased attending classes, attempted suicide, and required psychiatric treatment. She ultimately withdrew from school. App. 212a-213a.

4. In December 1995, Brzonkala brought this action against Morrison and Crawford, invoking Section 13981, VAWA's civil rights provision. Morrison and Crawford moved to dismiss, arguing that Congress lacked constitutional authority to enact Section 13981 and that Brzonkala failed to state a claim under Section 13981. The United

States intervened to defend the constitutionality of the statute. App. 8a-9a, 217a.[6]

In July 1996, the district court granted the motion to dismiss. The court initially recognized that, because Brzonkala had stated a claim under Section 13981 at least against Morrison, the constitutional question would have to be decided. App. 361a-362a. The court then concluded that Congress lacked the constitutional authority to enact Section 13981.

The court held that Section 13981 was not a proper exercise of Congress's power under the Commerce Clause. App. 369a-382a. The court acknowledged the existence of "congressional findings which support that violence against women affects interstate commerce." *Id.* at 371a. However, notwithstanding the absence of such congressional findings in *United States* v. *Lopez*, 514 U.S. 549 (1995), the court concluded that Section 13981 was not meaningfully distinguishable from the statute struck down in *Lopez*.

The court also held that Section 13981 was not a proper exercise of Congress's power to enforce the Fourteenth Amendment. The court recognized that "[s]ome possibility exists that at least part of the states' differential treatment of gender-based violent crimes against women is due to gender discrimination, and so correcting the differential treatment arising out of gender discrimination is a legitimate Fourteenth Amendment concern." App. 399a. But the court concluded that "no reasonable possibility exists that VAWA will help remedy this legitimate Fourteenth Amendment

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[6] Brzonkala also filed suit under Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*, against Virginia Tech, alleging that the school had subjected her to sex discrimination in its response to the assault. The district court held that Brzonkala had failed to state a claim under Title IX. A panel of the Fourth Circuit reversed. The en banc court of appeals deferred resolution of the Title IX issue pending this Court's decision in *Davis* v. *Monroe County Board of Education*, No. 97-843 (May 24, 1999). See App. 8a n.2.

concern," because "VAWA is tailored to remedy conduct other than the conduct giving rise to the equal protection concern," *i.e.*, the conduct of individual perpetrators of gender-motivated violence. *Id.* at 400a.

5. A divided panel of the Fourth Circuit reversed. App. 282a-349a. The court held that Section 13981 was a valid exercise of Congress's power under the Commerce Clause, *id.* at 340a, and consequently did not reach the Fourteenth Amendment question. Judge Luttig dissented, urging that the case was controlled by *Lopez*. *Id.* at 349a.

6. On rehearing en banc, a divided court of appeals affirmed the judgment of the district court, holding that Congress did not have the power to enact Section 13981 under either the Commerce Clause or Section 5 of the Fourteenth Amendment. App. 1a- 281a.

a. On the Commerce Clause question, the en banc court acknowledged that "[t]he legislative record in this case, considered as a whole, shows that violence against women is a sobering problem and also that such violence ultimately does take a toll on the national economy." App. 68a. The court likewise recognized that "Congress' specific findings regarding the relationship between gender-motivated violence and interstate commerce * * * depict the manner in which such violence affects interstate commerce." *Id.* at 68a-69a.

The court nonetheless concluded that Section 13981 could not be sustained under Congress's power to regulate activities substantially affecting interstate commerce. The court understood *Lopez* to hold that Congress cannot regulate an activity as substantially affecting interstate commerce unless (1) the regulated activity is itself an economic one or (2) the statute includes a jurisdictional element requiring a case-by-case inquiry into the nexus to interstate commerce. App. 15a-31a. Because Section 13981 "neither regulates an economic activity nor includes a jurisdictional element," the court concluded that "it cannot be upheld on the authority of

Lopez or any other Supreme Court holding demarcating the outer limits of Congress' power under the substantially affects test." *Id.* at 31a.

Alternatively, the court of appeals held that Section 13981 could not be sustained under the commerce power "[e]ven if these two categories of permissible congressional regulations demarcate not the absolute, but only the presumptive outer limits of congressional power under the substantially affects test." App. 31a-32a. Noting *Lopez*'s admonition that the commerce power cannot be construed in a manner that would "effectually obliterate the distinction between what is national and what is local and create a completely centralized government," *id.* at 33a (quoting *Lopez*, 514 U.S. at 557), the court concluded that Section 13981 presents the same federalism concerns as did the statute at issue in *Lopez*. App. 31a-51a. In the court's view, Section 13981 could not be upheld without endorsing an unlimited view of the commerce power that would permit Congress to "assume control over the entire field of violent crime, or, for that matter, all crime within all of the States." *Id.* at 89a.

b. The court of appeals also held that Section 13981 could not be sustained as legislation enforcing the Fourteenth Amendment, *i.e.*, legislation remedying bias in state civil and criminal justice systems against victims of gender-motivated violence. The court reasoned that Section 13981 "is invalid, regardless of whether its end is to remedy unconstitutional state action, for the simple reason that it regulates purely private conduct and is not limited to individual cases in which the state has violated the plaintiff's Fourteenth Amendment rights." App. 126a. The court stated that its conclusion was compelled by *United States* v. *Harris*, 106 U.S. 629 (1883), and the *Civil Rights Cases*, 109 U.S. 3 (1883). App. 104a-126a.

The court of appeals also held that Section 13981 did not satisfy the requirement articulated in *City of Boerne* v. *Flores*, 521 U.S. 507, 520 (1997), of "congruence and pro-

portionality between the [constitutional] injury to be prevented or remedied and the means adopted to that end." First, the court expressed doubt that the legislative record revealed constitutional violations to be remedied. App. 153a-160a. Although acknowledging that the record "does establish that the States enforce and apply certain laws in a manner that may ultimately prevent the victims of gender-motivated violence from obtaining vindication through the criminal or civil systems," the court questioned whether such conduct amounted to "*purposeful* discrimination against women in the enforcement of facially neutral laws that could give rise to an equal protection violation." *Id.* at 153a. Second, the court concluded that Section 13981 was not sufficiently narrowly tailored to remedy the asserted constitutional wrongs. *Id.* at 160a-163a. For example, said the court, Section 13981 applies in "all States and jurisdictions without regard to the adequacy of their enforcement efforts, substantive laws, or evidentiary rules and procedures, and does so without any time limit or termination mechanism." *Id.* at 162a.[7]

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[7] Chief Judge Wilkinson, in a concurring opinion, addressed whether the court of appeals' decision striking down Section 13981 constituted unjustifiable judicial activism. App. 168a-189a. He reasoned that federalism-based activism is more legitimate than the judicial activism of earlier eras, because its outcome does "not consistently favor[] a particular constituency," *id.* at 177a, and "removes no substantive decision from the stage of political debate" but merely directs where the decision is to be made, *id.* at 182a.

Judge Niemeyer, in a second concurring opinion, proposed a test for determining when Congress may regulate intrastate activity as substantially affecting interstate commerce. App. 189a-210a. Under that test, "(1) the target of [the regulation] must be interstate commerce, even though it may not be the purpose of the regulation, and (2) the effect that the activity has on interstate commerce must be proximate and not incidental." *Id.* at 198a. He concluded that Section 13981 did not satisfy that test. *Id.* at 200a-209a.

c. Judge Motz, writing for the four dissenting judges, concluded that Section 13981 was a valid exercise of Congress's power under the Commerce Clause. App. 210a-281a. The dissent concluded that Congress had the requisite rational basis, as reflected in the "detailed and extensive" legislative findings and testimony, *id.* at 229a, to determine that "gender-based violence substantially affects interstate commerce," *id.* at 237a. The dissent found no support in *Lopez* for limiting Congress's commerce power to statutes that regulate economic activities or contain a jurisdictional element. *Id.* at 240a-247a.

The dissent also rejected the majority's conclusion that federalism concerns undermined Section 13981, noting that Congress had "explicitly found that the states refused or were unable to deal effectively with the problems created by gender-based violence." App. 232a. Thus, the dissent explained, Section 13981 "provides a necessary national remedy for a severe problem that the states have, by their own admission, been unable to address effectively." *Id.* at 278a. The dissent concluded that Section 13981, in contrast to the statute in *Lopez*, did not "add[] a redundant layer of federal regulation in an area where most states had already acted," but instead "responded to the states' self-described needs." *Id.* at 276a.

REASONS FOR GRANTING THE PETITION

The court of appeals struck down 42 U.S.C. 13981, the civil rights provision of the Violence Against Women Act of 1994, as exceeding Congress's constitutional power to regulate interstate commerce or to enforce the Fourteenth Amendment. That decision misconstrues this Court's precedents and places unwarranted limits on Congress's authority to address a national problem of the first magnitude. Certiorari is warranted to review the court of appeals' "exercise of the grave power of annulling an Act of Congress," *United States* v. *Gainey*, 380 U.S. 63, 65 (1965), and to consider a

question of exceptional importance concerning the scope of Congress's constitutional powers, see *United States* v. *Lopez*, 514 U.S. 549, 552 (1995).

Although no other court of appeals has had occasion to address the constitutionality of Section 13981, and therefore no conflict yet exists in the circuits, the en banc Fourth Circuit itself was sharply divided, with seven judges concluding that Congress lacked constitutional authority to enact Section 13981 and four judges concluding otherwise. Moreover, the majority's decision conflicts with 14 district court rulings that have rejected constitutional challenges to Section 13981.[8] Three of those district courts, as well as one state court, did so after the Fourth Circuit's en banc decision in this case.[9]

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[8] See *Wright* v. *Wright*, No. Civ. 98-572-A (W.D. Okla. Apr. 27, 1999); *Ericson* v. *Syracuse Univ.*, No. 98 Civ. 3435 JSR, 1999 WL 212684 (S.D.N.Y. Apr. 13, 1999); *Culberson* v. *Doan*, No. C-1-97-965 (S.D. Ohio Apr. 8, 1999); *Doe* v. *Mercer*, 37 F. Supp. 2d 64 (D. Mass. 1999); *Liu* v. *Striuli*, 36 F. Supp. 2d 452 (D.R.I. 1999); *Ziegler* v. *Ziegler*, 28 F. Supp. 2d 601 (E.D. Wash. 1998); *C.R.K.* v. *Martin*, No. 96-1431 (D. Kan. July 10, 1998); *Timm* v. *DeLong*, No. 8:98-CV-43 (D. Neb. June 22, 1998); *Mattison* v. *Click Corp.*, No. 97-CV-2736, 1998 WL 32597 (E.D. Pa. Jan. 27, 1998); *Crisonino* v. *New York City Housing Auth.*, 985 F. Supp. 385 (S.D.N.Y. 1997); *Anisimov* v. *Lake*, 982 F. Supp. 531 (N.D. Ill. 1997); *Seaton* v. *Seaton*, 971 F. Supp. 1188 (E.D. Tenn. 1997); *Doe* v. *Hartz*, 970 F. Supp. 1375 (N.D. Iowa 1997), rev'd on other grounds, 134 F.3d 1339 (8th Cir. 1998); *Doe* v. *Doe*, 929 F. Supp. 608 (D. Conn. 1996). All of the courts relied on Congress's power under the Commerce Clause. The *Wright* and *Timm* decisions also held that Section 13981 was a permissible exercise of Congress's power to enforce the Fourteenth Amendment; the other courts did not reach that question. We are not aware of any challenges to Section 13981 pending in the courts of appeals.

[9] See *Wright*, *supra*; *Ericson*, *supra*; *Culberson*, *supra*; see also *Young* v. *Johnson*, No. CV-97-90014 (Ariz. Super. Ct. May 13, 1999). But see *Bergeron* v. *Bergeron*, No. Civ.A. 96-3445-A, 1999 WL 355954 (M.D. La. May 28, 1999) (holding that Congress lacked constitutional authority to enact Section 13981).

The court of appeals' decision also warrants review because it adopts an unduly restrictive view of the reach of Congress's powers under both the Commerce Clause and the Fourteenth Amendment, reading into *Lopez* and *City of Boerne* v. *Flores*, 521 U.S. 507 (1997), limits on those powers that are more stringent than any expressly imposed by this Court. The Court should therefore grant review both to consider the constitutionality of Section 13981 and to clarify the extent of congressional power under the Commerce Clause and Section 5 of the Fourteenth Amendment.

A. The court of appeals held that Congress lacked authority under the Commerce Clause to address a problem with a substantial impact on the national economy that was extensively documented in four years of congressional hearings. The court concluded that Congress, in the exercise of its Commerce Clause powers, may adopt only statutes that directly regulate economic activity or that contain an express jurisdictional element. App. 15a-31a. The court further concluded that Section 13981 improperly intruded into a regulatory sphere reserved to the States. *Id.* at 31a-51a.

The court of appeals' decision reflects a misunderstanding of *Lopez*. The Court in *Lopez* did, of course, decline to undertake a series of inferential leaps to supply a connection between non-economic activity and interstate commerce that had not been identified by Congress itself. The Court never suggested, however, that Congress's commerce power does not extend to the regulation of non-economic activity when a significant impact on interstate commerce is made plain by the sort of congressional findings and extensive legislative record assembled in support of VAWA.

Moreover, while *Lopez* counsels that the judiciary should inquire into whether an exercise of the commerce power to regulate non-economic activity intrudes on state spheres of authority, that inquiry confirms the validity of Section 13981. Congress enacted VAWA, including its civil rights provision,

in response to the States' systemic failure, recognized by the States themselves, to address adequately the problem of gender-motivated violence. Congress violated no principle of federalism in seeking to vindicate the rights of victims of gender-motivated violence in the face of such systemic discrimination. When the States fail to resolve a problem that has a substantial impact on the national economy, the Constitution does not leave Congress powerless to act.

1. In *Lopez*, this Court invalidated the Gun-Free School Zones Act of 1990, Pub. L. No. 101-647, Title XVII, § 1702, 104 Stat. 4844, which made it a crime to possess any firearm near a school. The Court observed that the statute neither regulated an economic activity nor contained a jurisdictional element. *Lopez*, 514 U.S. at 551, 561-562. The Court did not treat those features as dispositive, however. To the contrary, the Court reaffirmed that "[e]ven if [an] activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce." *Id.* at 556 (quoting *Wickard* v. *Filburn*, 317 U.S. 111, 125 (1942)). Accordingly, the *Lopez* Court proceeded to evaluate what effect, if any, the regulated activity in that case had on interstate commerce.

The Court observed that "[n]either the statute nor its legislative history contain[ed] express congressional findings regarding the effects upon interstate commerce of gun possession in a school zone." 514 U.S. at 562 (citation omitted). Although "Congress normally is not required to make formal findings as to the substantial burdens that an activity has on interstate commerce," the Court explained, such findings "would enable us to evaluate the legislative judgment that the activity in question substantially affected

interstate commerce, even though no such substantial effect was visible to the naked eye." *Id.* at 562, 563.[10]

Without the benefit of a legislative record, the Court noted that it could not sustain the Gun-Free School Zones Act as a valid regulation of interstate commerce without "pil[ing] inference upon inference." 514 U.S. at 567. It would have had to conclude that possession of a gun in a school zone (1) might lead to violent crime, (2) which might threaten the learning process, (3) which might ultimately produce less productive citizens, (4) which might, cumulatively, impair the national economy. See *id.* at 563-564 (describing the government's argument); *id.* at 565 (describing the dissent's argument). The Court declined to find the requisite "substantial effect" on commerce based on such an unsubstantiated chain of inferences.

The Court observed that it had been offered no rationale to uphold the Gun-Free School Zones Act that was not capable of infinite expansion. 514 U.S. at 564 (finding it "difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement or education where States historically have been sovereign"). The Court therefore concluded that federalism principles prevented it from reaching a result that would "obliterate the distinction between what is national and what is local." *Id.* at 567 (quoting *United States* v. *A.L.A. Schechter Poultry Corp.*, 295 U.S. 495, 554 (1935) (Cardozo, J., concurring)).

Justice Kennedy's concurrence, which Justice O'Connor joined, likewise emphasized federalism concerns. However,

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[10] After the Fifth Circuit invalidated the Gun-Free School Zones Act for want of findings, Congress amended the statute to add findings about the effect on commerce of gun possession near schools. See 514 U.S. at 563 n.4. Those findings were not based upon a legislative record, however; the government did not rely upon them in defending the statute, and this Court did not address or even describe them. *Ibid.*; see *id.* at 612 n.2 (Souter, J., dissenting) (dismissing "these particular afterthoughts" as "conclusory").

like the opinion of the Court, the concurrence did not propose to enforce federalism-based limits by restricting Congress's commerce power to the regulation of economic activity. Instead, the concurrence explicitly presumed that Congress may, in some circumstances, regulate non-commercial activity. The concurrence urged that if "neither the [regulated] actors nor their conduct has a commercial character, and neither the purposes nor the design of the statute has an evident commercial nexus," then a court should "inquire whether the exercise of national power seeks to intrude upon an area of traditional state concern." 514 U.S. at 580. In other words, a court should ask whether principles of federalism call such a statute into question.

2. a. While the connection between gun possession near schools and interstate commerce was viewed by the *Lopez* court as attenuated, the connection between gender-motivated violence and interstate commerce is direct and expressly established in VAWA's extensive legislative record. See pp. 7-8, *supra*.

Congress found, among other things, that violence against women "deter[s] potential victims from traveling interstate, from engaging in employment in interstate business, and from transacting with business, and in places involved, in interstate commerce." Conf. Rep. 385; see also 1993 S. Rep. 54 (finding that actual and feared gender-based violence "restricts movement, reduces employment opportunities, increases health expenditures, and reduces consumer spending"). The legislative record establishes that violence against women affects interstate commerce in ways that are direct and immediate. For example, "almost 50 percent of rape victims lose their jobs or are forced to quit because of the crime's severity." 1991 S. Rep. 53. The cost of employee absenteeism resulting from domestic violence is estimated at between $3 billion and $5 billion annually, 1990 S. Judiciary Hearings, Pt. 1, at 58, and the total cost of domestic violence, including "health care, criminal justice, and other social

costs," is estimated at between $5 billion and $10 billion annually, 1993 S. Rep. 41. See also 1990 S. Rep. 37 (noting toll of domestic violence in employee absenteeism, medical costs, and homelessness).

As the Court explained in *Lopez*, such findings are particularly significant where, as here, the connection between an activity and interstate commerce may not be "visible to the naked eye." 514 U.S. at 563. Indeed, the problem of gender-motivated violence itself has long been overlooked. See 1991 S. Rep. 38 ("We have underestimated the problem not only because of faulty statistical measures, but also because the sheer volume of these crimes dulls our sensitivity to the victims."). Women have often been shamed into silence about rape, domestic abuse, and other violent crimes—and the impact of such crimes upon their lives—because of the attitudes of society generally and even of the police, prosecutors, and court personnel assigned to deal with such crimes. See, *e.g.*, 1990 S. Rep. 33-34. The extensive findings reveal both the extent of the underlying problem and its substantial effect on interstate commerce.

Unlike in *Lopez*, then, the Court has no need to "pile inference on inference" to sustain Section 13981. To the contrary, in order to invalidate the statute, the Court would have to set aside Congress's findings of a direct nexus between gender-motivated violence and interstate commerce.

b. Nor does an inquiry into "whether the exercise of national power [to regulate local non-economic activity] seeks to intrude upon an area of traditional state concern," *Lopez*, 514 U.S. at 580 (Kennedy, J., concurring), require the invalidation of Section 13981. Again, the difference between this case and *Lopez* is stark.

In the *Lopez* Court's view, the Gun-Free School Zones Act "inappropriately overr[ode] legitimate State firearms laws with a new and unnecessary Federal law." 514 U.S. at 561 n.3 (quoting Statement of President George Bush on Signing the Crime Control Act of 1990, 26 Weekly Comp. Pres. Doc.

1944, 1945 (Nov. 29, 1990)). The Court found no indication that the Act addressed a problem that could not adequately be addressed by the States. See *id.* at 581 (Kennedy, J., concurring) (noting that "over 40 States already have criminal laws outlawing the possession of firearms on or near school grounds").

In sharp contrast, Congress enacted Section 13981 to redress a problem that was caused, in part, by pervasive failures in the States' justice systems. See pp. 8-11, *supra*. If a regulated activity poses a substantial threat to interstate commerce, and the States cannot or will not adequately address that threat, federalism principles should not require the problem to go unresolved. Cf. *Hodel* v. *Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 281-282 (1981) (in upholding Congress's authority under the Commerce Clause to impose national environmental standards for intrastate coal mining, the Court noted the congressional finding that States might fail to impose similarly rigorous standards out of concern for protecting local economic interests).

A statute premised on systemic state failure of this kind does not presage an open-ended expansion of federal power into domains properly reserved to the States. As the dissent below explained, "nothing more clearly illustrates the basic difference" between the statutes in this case and *Lopez* than that Section 13981 "responded to the states' self-described needs, while the [Gun-Free School Zones Act] added a redundant layer of federal regulation in an area where most states had already acted." App. 276a.

Moreover, Section 13981 is particularly respectful of federalism concerns and does not intrude into the operation of state government. Section 13981 displaces no state law. To the contrary, the statute incorporates by reference existing definitions of prohibited activity, see 42 U.S.C. 13981(d)(2), and simply provides a new civil remedy for vic-

tims of gender-motivated crime.[11] The federalism concerns that animated the Court's decision in *Lopez* thus do not require the invalidation of Section 13981.

B. 1. Section 13981 is also a valid exercise of Congress's power to enforce the Fourteenth Amendment. As this Court recently reaffirmed, "[i]t 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." *Flores*, 521 U.S. at 536 (quoting *Katzenbach* v. *Morgan*, 384 U.S. 641, 651 (1966)). The Court also reaffirmed that Section 5 of the Fourteenth Amendment gives Congress broad discretion in choosing the means to enforce those guarantees. See *id.* at 517-518; see also *Morgan*, 384 U.S. at 650 (Section 5 gives Congress "the same broad powers expressed in the Necessary and Proper Clause").

This Court has made clear that the question whether legislation falls within the scope of Congress's authority under Section 5 of the Fourteenth Amendment is distinct from the question whether particular conduct violates Section 1. Thus, "[l]egislation 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.'" *Flores*, 521 U.S. at 518 (quoting *Fitzpatrick* v. *Bitzer*, 427 U.S. 445, 455 (1976)). However, "as broad as the congressional enforcement power is, it is not unlimited." *Ibid.* (quoting *Oregon* v. *Mitchell*, 400 U.S. 112, 128 (1970) (opinion of Black, J.)). As this Court has explained, the Section 5 power is "remedial," not "substantive." *Id.* at 519.

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[11] Section 13981 also expressly precludes efforts to assert pendent federal jurisdiction over state-law disputes concerning divorce, alimony, equitable distribution of property, and child custody. See 42 U.S.C. 13981(e)(4).

Congress may not enact legislation that "alters the meaning" of the Constitution, *ibid.*, because its Section 5 power is "corrective or preventive, not definitional," *id.* at 525.

The *Flores* Court thus held that Congress had exceeded its Section 5 power in enacting the Religious Freedom Restoration Act of 1993 (RFRA), 42 U.S.C. 2000bb *et seq.*, which the Court viewed as an apparent attempt to redefine the substantive scope of the Fourteenth Amendment. See 521 U.S. at 532. RFRA was adopted in direct response to this Court's decision in *Employment Division* v. *Smith*, 494 U.S. 872 (1990), which held that the States did not need a compelling justification to apply neutral, generally applicable laws that substantially burdened religious practices. The express purpose of RFRA was to reimpose the compelling interest test. *Flores*, 521 U.S. at 515-516. Because Section 5 gives Congress the power only to "enforce"—not to "attempt a substantive change in" (*id.* at 532)—constitutional rights, the Court held that Congress had exceeded its Section 5 power in enacting RFRA (see *id.* at 529-536).

2. Section 13981, unlike RFRA, cannot be viewed as an attempt to effect "a substantive change in constitutional protections." *Flores*, 521 U.S. 532. To the contrary, Section 13981 provides a remedy for recognized constitutional violations by state officials and other state actors, including police, prosecutors and judges. Based in part on the States' own studies, Congress found that "bias and discrimination in the [state] criminal justice system often deprive[] victims of crimes of violence motivated by gender of equal protection of the laws and the redress to which they are entitled." Conf. Rep. 385; see pp. 8-11, *supra* (discussing supporting materials).

Nevertheless, relying on *United States* v. *Harris*, 106 U.S. 629 (1883), and the *Civil Rights Cases*, 109 U.S. 3 (1883), the court of appeals ruled that Section 13981 "is invalid, regardless of whether its end is to remedy unconstitutional state action, for the simple reason that it regulates purely private

conduct and is not limited to individual cases in which the state has violated the plaintiff's Fourteenth Amendment rights." App. 126a. The court misread this Court's Reconstruction-era decisions, which do not bar Congress from reaching the conduct of private persons, provided that Congress does so in order to remedy discrimination by the State or its agents.

In *Harris*, the Court struck down a statute that was premised on the explicit assumption that purely private conduct could violate the Fourteenth Amendment. The statute at issue, Section 2 of the Civil Rights Act of 1871, ch. 22, 17 Stat. 13, outlawed conspiracies among private persons to deprive any person of the equal protection of the law. The explicit predicate for the application of the statute was a finding that private persons had committed an equal protection violation.

The statute at issue in the *Civil Rights Cases* similarly purported to extend the affirmative requirements of the Fourteenth Amendment directly to private parties. The Civil Rights Act of 1875, ch. 114, 18 Stat. 335, established a right to be free of private discrimination in public accommodations. See 109 U.S. at 9. The Court explained that the critical flaw in the statute was that it did "not profess to be corrective of any constitutional wrong committed by the States"; instead, the statute "step[ped] into the domain of local jurisprudence, and [laid] down rules for the conduct of individuals in society towards each other, and impose[d] sanctions for the enforcement of those rules, without referring in any manner to any supposed action of the State or its authorities." *Id.* at 14.

Although Congress may not determine that private conduct itself violates the Fourteenth Amendment, nothing in this Court's precedents bars Congress from regulating private conduct in order to provide a remedy for unconstitutional state action. To the contrary, as Congress declared in enacting VAWA: "While the 14th amendment

itself only covers actions by the States, Congress's power to enforce the amendment includes the power to create a private remedy as the most effective means to fight public discrimination." 1993 S. Rep. 55 n.72 (citing *Morgan*, 384 U.S. 641; *District of Columbia* v. *Carter*, 409 U.S. 418, 423, 424 n.8 (1973) (that "[t]he Fourteenth Amendment itself 'erects no shield against merely private conduct' * * * is not to say * * * that Congress may not proscribe purely private conduct under § 5 of the Fourteenth Amendment")).

Unlike the statutes invalidated by the Reconstruction-era Court, Section 13981 is not premised on the assumption that private conduct can violate the Fourteenth Amendment. Instead, Section 13981 compensates for discrimination in the state justice systems. It affords victims of gender-motivated violence a measure of the vindication and compensation that are often denied them by biased state actors. Section 13981 is thus "corrective legislation; that is, such as may be necessary and proper for counteracting such laws as the States may adopt or enforce, and which, by the [Fourteenth] amendment, they are prohibiting from making or enforcing, or such acts or proceedings as the states may commit or take, and which by the amendment they are prohibited from committing or taking." *Civil Rights Cases*, 109 U.S. at 13-14 (quoted in part in *Flores*, 521 U.S. at 525).

3. The court of appeals alternatively ruled that Section 13981, like the statute at issue in *Flores*, "is so out of proportion to any possible unconstitutional state action at which it might conceivably be aimed as to exceed congressional power to 'enforce' the Fourteenth Amendment." App. 160a. Again, the court misconstrued a decision of this Court.

The government in *Flores* advanced one legitimate constitutional end for RFRA: to prevent the enforcement of state laws that, although neutral on their face, were enacted with the unconstitutional object of targeting religious practices. See *Flores*, 521 U.S. at 529. The Court concluded,

however, that there was insufficient evidence in RFRA's legislative record of generally applicable laws passed because of religious bigotry. See *id.* at 530 ("The history of [religious] persecution in this country detailed in the hearings mention[ed] no episodes occurring in the past 40 years."). The Court also stressed RFRA's "[s]weeping coverage [that] ensures its intrusion at every level of government, displacing laws and prohibiting official actions of almost every description and regardless of subject matter." *Id.* at 532. The Court found that such "congressional intrusion into the States' traditional prerogatives and general authority to regulate for the health and welfare of theirs citizens," *id.* at 534, was "so out of proportion" to the proffered constitutional end that RFRA could not "be understood as responsive to, or designed to prevent, unconstitutional behavior," *id.* at 532.

Section 13981 suffers from neither of the defects identified by this Court in *Flores*. The legislative record leaves no doubt that Section 13981 was enacted for a purpose within the purview of the Fourteenth Amendment: to remedy conscious bias against victims of sexual assault, domestic abuse, and other violent crimes that has been found to exist currently in state civil and criminal justice systems throughout the nation. It affords such victims "an opportunity for legal vindication that [the victim], not the State, controls"—an opportunity that may be exercised in federal court "with judges insulated from local political pressures and the power to screen out jurors who harbor irrational prejudices against, for example, rape victims." 1990 S. Rep. 42. That remedy provided by Sections 13981 is, moreover, entirely unintrusive as to the States. Unlike RFRA, Section 13981 displaces no state law and prohibits no state action. Instead, Section 13981 simply provides a federal remedy to those whose injuries could otherwise go unvindicated in state court.

* * *

In sum, Congress correctly concluded that its power to enact Section 13981, VAWA's civil rights remedy, "is firmly based on the Commerce Clause and on section 5 of the 14th Amendment." 1993 S. Rep. 54. Because the court of appeals invalidated a federal statute and imposed new limits on the scope of congressional power, this Court's review is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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