

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

## I. INTRODUCTION

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

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<sup>1</sup> See *Doe v. Mercer*, 37 F. Supp. 2d 64, 65 (D. Mass. 1999).

<sup>2</sup> See *id.*

<sup>3</sup> See *id.* n. 1

<sup>4</sup> See *id.* n. 2

<sup>5</sup> See *id.*

<sup>6</sup> See *id.* n. 3

<sup>7</sup> See *Mercer*, 37 F. Supp. 2d at n3.

<sup>8</sup> See *id.* at 68.

<sup>9</sup> See *id.*

<sup>10</sup> See *id.* at 69.

<sup>11</sup> See *id.*

<sup>12</sup> See *id.*

## II. BACKGROUND

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

## III. ANALYSIS

A. *Commerce Clause Jurisprudence*

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

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

B. *Key Precedents: Brzonkala and Lopez*

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

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

<sup>14</sup> See 42 U.S.C. § 13981(a).

<sup>15</sup> *Id.*

<sup>16</sup> See *Mercer*, 37 F. Supp. 2d at 65.

<sup>17</sup> See *id.*

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

<sup>19</sup> See *id.* at 66.

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

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

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

### C. Constitutionality of the VAWA

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

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

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

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<sup>20</sup> *See id.*

<sup>21</sup> *See id.* (citations omitted).

<sup>22</sup> *See Mercer*, 37 F. Supp. 2d at 66.

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

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

<sup>25</sup> *See id.* at 68 (citing *Lopez*, 514 U.S. at 564).

<sup>26</sup> *See id.*

<sup>27</sup> *See id.*

<sup>28</sup> *See Mercer*, 37 F. Supp. 2d at 68.

<sup>29</sup> *See id.* at 68-69.

<sup>30</sup> *See id.* at 69.

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

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

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

#### IV. CONCLUSION

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

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<sup>31</sup> *See id.*

<sup>32</sup> *See id.* n. 9

<sup>33</sup> *See id.* at 69.

<sup>34</sup> *See Mercer*, 37 F. Supp. 2d at 69.

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

<sup>36</sup> *See id.*

<sup>37</sup> *See id.* at 66.

<sup>38</sup> *See id.* at 69-70.

<sup>39</sup> *Id.* (citing *Mistretta v. United States*, 488 U.S. 361, 384 (1989)).

<sup>40</sup> *See Mercer*, 37 F. Supp. 2d at 68.

<sup>41</sup> *See id.* at 66.

<sup>42</sup> *See Lopez* 514 U.S. at 564.

<sup>43</sup> *See Mercer*, 37 F. Supp. 2d at 68.

<sup>44</sup> *See id.*

<sup>45</sup> *See id.* at 69.

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adequately supported by congressional findings of interstate commercial effect on the record.<sup>46</sup>

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

*Judith Feinberg*

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<sup>46</sup> *See id.*

<sup>47</sup> *See id.* at 68-69.

<sup>48</sup> *See generally Lopez*, 514 U.S. at 549.