VAWA Tests the Limits of Federal Power

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With President Clinton issuing a blizzard of overreaching executive orders and Congress federalizing hundreds of crimes that are properly in the jurisdiction of the states, we must depend on the Supreme Court to stand for the Constitutional principles of federalism. The chief reason Americans have retained their liberties through two centuries of governance by power-seeking politicians is the separation of power between the states and the federal government, and then among the three branches.

The case that puts this to the test is Brzonkala v. Morrison, which is before the Court in the current session. It tests the constitutionality of the Violence Against Women Act (VAWA) passed in 1994 under feminist pressure in the wake of the much-ballyhooed Tailhook incident.

Ordinarily the lack of actual and credible complaints, evidence or convictions would preclude million-dollar lawsuits over private conduct. But VAWA allows for attorneys' fees and punitive damages for alleged violence that was never reported to the police, let alone proven in criminal court.

VAWA's Section 13981 expressly states that "a prior criminal complaint, prosecution, or conviction" is not required in order to recover "compensatory and punitive damages." Plaintiffs can go into federal court seeking millions of dollars by alleging violence without ever alerting the police that a crime may have taken place.

Real violence should be reported to the police in order to enable credible investigation and prevention of recurrence of the violence. Federal law should not provide financial incentives to bypass police investigations.

Plaintiffs should not be allowed to sue in civil court on claims embellished by allegations of violence without independent and timely investigation by local law enforcement. VAWA's Section 13981 creates such incentives for new federal lawsuits alleging crimes long after the relevant state statute of limitations

has expired.

In attempting to create a new federal cause of action for monetary damages, VAWA relies on the Commerce Clause and Section 5 of the 14th Amendment. If upheld, VAWA would be an extraordinary and unprecedented extension of federal power into the areas of domestic violence and family law.

The Commerce Clause gives Congress the power to regulate interstate commerce in order to ensure the free flow of goods and services. Domestic violence has absolutely nothing to do with commerce or the flow of goods.

Section 5 of the 14th Amendment gives Congress the power to protect citizens against state violations of their rights. However, VAWA attempts to reach private conduct completely removed from any state action.

The federal government should not be undermining state criminal laws. No one is helped when violence against women is trivialized into allowing law firms to strategize over how to make the most money from an ugly situation.

The specific facts alleged in the Brzonkala case were, indeed, ugly. But this case is about trying to recover a large judgment in federal court by alleging a rape that was not promptly reported to the police.

When money, rather than criminal justice, is the name of the game, the courts and the public are unable to sift fact from fiction. Under VAWA's approach, real criminals will go free while the falsely accused will be subjected to financial and reputational ruin.

Congress has no constitutional basis for regulating marriage or domestic relations. It is neither constitutional nor prudent for Congress to impose its one-size-fits-all view of domestic relations on the states.

VAWA's attempt to federalize issues such as rape, spousal rape, spousal immunity, and other aspects of domestic relations would open the door for Congress to federalize marriage itself. If VAWA's Section 13981 is upheld, there would be no logical basis to prevent Congress from regulating marriage, alimony, child custody and other aspects of family law.

Just as Congress should not impose a uniform federal remedy for murder, Congress should not impose a uniform federal remedy for domestic violence. It is foolish to pretend, as VAWA implicitly does, that a perpetrator of a violent rape will be deterred by the threat of a future lawsuit to recover money.

Real violence is restrained by law enforcement, not by civil lawsuits. VAWA is an unconstitutional infringement on state jurisdiction over marriage and domestic relations. A "War on Domestic Violence," like the "War on Drugs," does not justify suspension of the Constitution in the process.