US Supreme Court rules rape victims cannot sue in federal court

By John Andrews and Barry Grey
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The Supreme Court on May 15 struck down a key provision of the 1994 Violence Against Women Act which gave victims of gender-related crimes such as rape and domestic violence the right to sue their attackers in federal court. The ruling was the latest in a series of Supreme Court decisions over the past five years limiting the ability of Congress and the federal government to enact legislation against various forms of discrimination and shifting the balance of power toward the states.

As in the previous “states' rights” decisions, the vote was five to four, with the court split between an extreme right-wing majority headed by Chief Justice William Rehnquist and a more moderate minority. Joining Rehnquist were Justices Antonin Scalia, Sandra Day O'Connor, Anthony Kennedy and Clarence Thomas. Thomas wrote a brief concurring opinion arguing that the court should have imposed even tighter restrictions on Congress. The dissenting opinion was written by Justice David Souter and joined by Stephen Breyer, John Paul Stevens and Ruth Bader Ginsburg. Breyer also penned his own dissent.

The case in question was brought by Christy Brzonkala, a former student at Virginia Polytechnic Institute, who contends that in 1994 two members of the college football team raped her. Although she promptly reported the crime, neither of her alleged assailants was disciplined by the school or prosecuted by local authorities. Accordingly, she filed suit in federal court under the newly enacted Violence Against Women Act.

The Virginia trial court dismissed the case, ruling that the Act exceeded congressional power under the interstate commerce clause of the Constitution. The Justice Department intervened in support of the Act, but the Fourth Circuit Court of Appeals, which has emerged as a bastion of reaction in the federal judiciary, affirmed the initial ruling. In Monday's decision, the Supreme Court upheld the key ruling of the lower courts striking down the provision of the Act that allowed claimants to seek redress in the federal courts.

The significance of the Supreme Court's decision extends far beyond the immediate—and very real—concerns of women victimized by people protected, for various reasons, by local authorities. Commentators agree that new federal legislation to curtail discrimination, such as laws protecting gays and lesbians, is no longer feasible. More significantly, the continued vitality of Title VII of the Civil Rights Act, which protects workers against on-the-job discrimination, is certain to come under legal challenge.

Already the Supreme Court has ruled that states are immune from suit by their employees for federal labor law violations and for age discrimination. In its next term, the court will decide whether states can be sued under the Americans With Disabilities Act.

Monday's ruling follows a pattern that began with a 1995 ruling overturning a law against carrying a gun near a school. That decision marked the first time since the New Deal in the 1930s that the Supreme Court invalidated a federal law on the grounds that it exceeded the power of Congress to regulate interstate commerce. More recent rulings have invoked the doctrine of “state sovereignty” to eviscerate federal laws protecting individual rights.

In seeking to defend the Violence Against Women Act, lawyers for Brzonkala and the Justice Department cited two provisions of the Constitution: the equal protection clause of the Fourteenth Amendment (the post-Civil War amendment granting former slaves full citizenship rights and prohibiting the states from denying due process or equal protection of the law to any person) and the commerce clause, giving the federal government the power to regulate interstate commerce.

In his majority opinion, Rehnquist rejected both claims. He said the Fourteenth Amendment did not apply because

it applied only to violations carried out by states or state "actors," not private individuals. In a May 17 commentary in the *New York Times*, Jack M. Balkin, a law professor at Yale University, pointed out that Rehnquist's legal precedents for this judgment were overtly racist civil rights rulings handed down by the Supreme Court in the 1880s, which greatly narrowed the power of Congress under the Fourteenth Amendment to enforce equality rights.

Perhaps even more damaging were Rehnquist's arguments restricting the scope of congressional action under the commerce clause. Until the late 1930s, after Franklin Roosevelt sought to overcome the Supreme Court's obstruction of New Deal reforms by "packing" the court, a right-wing majority blocked federal child labor laws and legislation on wages and hours aimed at providing a measure of protection for workers. These rulings, defending the right of big business to the unlimited exploitation of the working class, were justified with legal arguments that such reform measures exceeded Congress's powers to regulate interstate commerce.

From the late 1930s on Congress used the commerce clause of the Constitution to enact a variety of reform measures, and the courts gave Congress, as the elected body, a wide berth in basing an array of laws on its powers to regulate interstate commerce. The 1964 civil rights law, for example, outlawing discrimination in employment and access to public facilities, was grounded on the commerce clause of the Constitution.

But in the ruling handed down Monday, Rehnquist, citing the 1995 decision overturning the federal ban on guns on school grounds, asserted a radically more restrictive doctrine of the commerce clause, one that harks back to the pre-New Deal period. He dismissed out of hand evidence compiled by Congress over several years of hearings documenting the national economic impact of crimes against women, and declared, "Gender-motivated crimes of violence are not, in any sense of the phrase, economic activity."

In his dissenting opinion, Souter pointed out that Congress presented more evidence of the economic impact of gender-related crimes to justify the Violence Against Women Act than it presented in 1964 to justify the Civil Rights Act of that year. Comparing the majority's recent rulings favoring states' rights and limiting federal powers to the anti-New Deal rulings of the 1930s, he argued that Rehnquist and his allies were usurping the traditional powers of Congress.

Here Souter alluded to the deeply anti-democratic character of the court's action. The Supreme Court is an unelected body of life-time appointees, entrusted by the ruling class with the job of defending its basic interests. The very fact that such a body can play a central role in determining national policy and the law, handing down decisions that affect the lives of millions, is evidence of the extremely narrow scope of American democracy.

The real democratic content of the electoral process and those bodies, such as Congress and the White House, which ostensibly consist of the "people's representatives" is itself extremely limited in a society whose wealth and resources are monopolized by an economic elite. Nevertheless, the aggressive assertion by the Supreme Court of its powers at the expense of elected bodies represents an intensification of the attack on democratic rights.

In another reactionary ruling earlier this month, the court ruled that a Texas county can force its deputy sheriffs to take extra time off (compensatory time) instead of letting them determine their extra time off, or choose instead to be paid overtime wages. The Fair Labor Standards Act of 1938 requires private employers to make overtime payments to employees who work more than 40 hours in a week. In 1985 a provision was added permitting state and local employers to give public safety workers up to 480 hours of compensatory time off before they have to pay overtime wages. The May 1 decision in *Christensen v. Harris County* means that the employer, not the workers, determines which days can be taken off.

Typically, the most far reaching court decisions are released near the end of the court term, which expires in late June. Still to come are widely anticipated decisions on the continued vitality of *Miranda* warnings and the power of the states to regulate second trimester abortions.