

Chief Justice Marshall's Court & Cases

Performance Based Assessment High School USH & AP GOV

Using their prior knowledge from completing either the CH4-HSUSH or CH4-HSAPGOV lessons prior to the PBA, students will connect three modern cases to Chief Justice John Marshall's three landmark cases, *Marbury v. Madison*, *McCulloch v. Maryland*, and *Gibbons v. Ogden*. Once students have connected the cases, they will then (i) explain the application of the judicial precedent established by the landmark cases, and (ii) formulate and explain their own opinion on the ruling in each of the modern cases.

Modern Cases:

| *United States v. Lopez* (1995) | <https://goo.gl/QAG3Fg>

| *Masterpiece Cakeshop, LTD. v. Colorado Civil Rights Commission* (2017) | <https://goo.gl/s3G3qd>

| *United States v. Comstock* (2010) | <https://goo.gl/BpPH6M>

SOL Skills Measured

- VUS.1** The student will demonstrate skills for historical thinking, geographical analysis, economic decision making, and responsible citizenship by
- a) synthesizing evidence from artifacts and primary and secondary sources to obtain information about events in Virginia and United States history;
 - c) constructing arguments, using evidence from multiple sources;
 - d) comparing and contrasting historical, cultural, economic, and political perspectives in Virginia and United States history;
 - e) analyzing multiple connections across time and place.

Chief Justice Marshall's Court & Cases

Name _____ Date _____

The Impact of John Marshall's Landmark Cases

Now that you have learned about three of Chief Justice John Marshall's landmark cases, you will discover how the precedent, or legal rule established in those cases, has been used to decide cases throughout the history of the United States, including in the past 25 years.

To demonstrate your understanding of the cases, you will create a presentation of your choice that shows the connection of the three landmark cases to the corresponding three modern cases. Your presentation must include facts from BOTH the landmark cases and the modern cases, as well as an explanation of the application of the precedent established by the landmark case. Lastly, you will formulate and explain your own opinion of the modern case, using specific information from what you have learned.

Chief Justice Marshall's Court & Cases

United States v. Lopez

Argued: November 8, 1994

Decided: April 26, 1995

Facts of the case

Alfonzo Lopez, a 12th grade high school student, carried a concealed weapon into his San Antonio, Texas high school. He was charged under Texas law with firearm possession on school premises. The next day, the state charges were dismissed after federal agents charged Lopez with violating a federal criminal statute, the Gun-Free School Zones Act of 1990. The act forbids "any individual knowingly to possess a firearm at a place that [he] knows...is a school zone." Lopez was found guilty following a bench trial and sentenced to six months' imprisonment and two years' supervised release.

Question

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?

Conclusion

Yes. The possession of a gun in a local school zone is not an economic activity that might, through repetition elsewhere, have a substantial effect on interstate commerce. The law is a criminal statute that has nothing to do with "commerce" or any sort of economic activity.

|"United States v. Lopez." Oyez, 17 Jul. 2018 | <https://goo.gl/qW5mTw>

After the Supreme Court's Lopez decision in April 1995, striking down the original Gun-Free School Zones Act of 1990 as not substantially related to commerce, Congress revised the original law and changed the language to address the Court's constitutional concerns by requiring that the prosecution prove that the gun moved in or affected interstate or foreign commerce. Cong. Rec. S7920-7921 (Statement of Sen. Kohl). The language was changed to provide:

Gun-Free School Zones Act of 1995 - Amends the Gun-Free School Zones Act of 1990 to prohibit possessing or, knowingly or with reckless disregard for the safety of another, discharging (or attempting to discharge) a firearm **that has moved in or that otherwise affects interstate or foreign commerce** (thus providing the jurisdictional basis for regulation under the interstate commerce clause of the Constitution) in a school zone. S.890 — 104th Congress (1995-1996).

Available online <https://goo.gl/eNCrgr>

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Masterpiece Cakeshop, LTD. v. Colorado Civil Rights Commission

Argued: December 5, 2017

Decided: June 4, 2018

Facts of the case

In July 2012, Charlie Craig and David Mullins went to Masterpiece Cakeshop in Lakewood, CO, and requested that its owner, Jack C. Phillips, design and create a cake for their wedding. Phillips declined to do so on the grounds that he does not create wedding cakes for same-sex weddings because of his religious beliefs. Phillips believes that decorating cakes is a form of art through which he can honor God and that it would displease God to create cakes for same-sex marriages.

Craig and Mullins filed charges of discrimination with the Colorado Civil Rights Division, alleging discrimination based on sexual orientation under the Colorado Anti-Discrimination Act (CADA), §§ 24-34-301 to -804, C.R.S. 2014. After the Division issued a notice of determination finding probable cause, Craig and Mullins filed a formal complaint with the Office of Administrative Courts alleging that Masterpiece discriminated against them in a place of public accommodation in violation of CADA.

The Administrative Law Judge issued a written order finding in favor of Craig and Mullins, which was affirmed by the Colorado Civil Rights Commission. On appeal, the Colorado Court of Appeals subsequently affirmed the Commission's ruling.

Question

Does the application of Colorado's public accommodations law to compel a cake maker to design and make a cake that violates his sincerely held religious beliefs about same-sex marriage violate the Free Speech or Free Exercise Clauses of the First Amendment?

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|"Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission." Oyez, 17 Jul. 2018 | <https://goo.gl/fue1vH>

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Masterpiece Cakeshop, LTD. v. Colorado Civil Rights Commission (Con't)

Conclusion

7-2 Decision for Masterpiece Cakeshop, LTD.

The Court reversed in a 7-2 decision, holding that the Colorado Civil Rights Commission's conduct in evaluating a cake shop owner's reasons for declining to make a wedding cake for a same-sex couple violated the Free Exercise Clause.

The Court explained that while gay persons and same-sex couples are afforded civil rights protections under the laws and the Constitution, religious and philosophical objections to same-sex marriage are protected views and can also be protected forms of expression. The Colorado law at issue in this case, which prohibited discrimination against gay people in purchasing products and services, had to be applied in a neutral manner with regard to religion. The majority acknowledged that from Phillips' perspective, creating cakes was a form of artistic expression and a component of his sincere religious beliefs.

The Court also explained that in 2012, the year that Phillips refused his services to Craig and Mullins, the law in Colorado and across the country with regard to same sex marriage was much more unsettled than it became after *United States v. Windsor*, 570 US 744 (2013) and *Obergefell v. Hodges*, 576 US ____ (2015). At the time, the State Civil Rights Division had also concluded in at least three other cases that bakers had acted lawfully in declining to serve same sex couples. Thus it was not unreasonable for Phillips to believe that he was acting lawfully at the time, and his claims before the Commission were entitled to neutral treatment.

However, the Court stated that Phillips did not receive this neutral treatment, with members of the Commission showing clear and impermissible hostility toward his religious beliefs. The Court explained that commissioners' comments disparaging Phillips' beliefs and characterizing them as rhetorical were inappropriate, though these comments were not mentioned or disavowed in subsequent legal proceedings. The Court concluded that these comments cast doubt on the fairness of the

Commission's consideration of Phillips' claims. The Court also pointed out that disparities between Phillips' case and those of other bakers with objections to making cakes with anti-gay messages, and who were victorious before the Commission, further reflected hostility toward the religious basis for Phillips' position.

The Court concluded that the Commission's actions violated the State's duty under the First Amendment not to use hostility toward religion or a religious viewpoint as a basis for laws or regulations. Under the facts of this case, the Court determined that Phillips' religious justification for his refusal to serve Craig and Mullins was not afforded the neutral treatment mandated by the Free Exercise Clause.

Justice Ginsburg authored a dissenting opinion, in which she was joined by Justice Sotomayor, stating that neither the Commission's comments regarding Phillips' religious views nor its alleged disparate treatment of bakers objecting to making cakes with anti-gay messages justified ruling in favor of Phillips.

Justice Kagan filed a concurring opinion, joined by Justice Breyer, in which she agreed with the majority that the Commission had not given neutral treatment to Phillips' religious views, but declined to assign any significance to the Commission's treatment of bakers who refused to create cakes with anti-gay messages because she believed that this did not violate the Colorado law at issue in Phillips' case.

Justice Gorsuch also filed a concurring opinion, joined by Justice Alito, in which he argued that the cases of Phillips and the bakers who objected to using anti-gay messages in their baking were quite similar, and the Commission acted inappropriately in treating them differently.

Justice Thomas filed an opinion concurring in part and concurring in the judgment, and was joined by Justice Gorsuch. Thomas argued that an order requiring Phillips to bake a wedding cake for a same-sex couple would violate his First Amendment rights.

|"Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission." Oyez, 17 Jul. 2018 | <https://goo.gl/fue1vH>

Chief Justice Marshall's Court & Cases

United States v. Comstock

Argued: January 12, 2010

Decided: May 17, 2010

Facts of the case

Convicted sex offenders moved to dismiss petitions requesting their indefinite civil commitment under the Adam Walsh Child Protection and Safety Act. A North Carolina federal district court dismissed the petitions. On appeal, the U.S. Court of Appeals for the Fourth Circuit affirmed. It held that the Protection and Safety Act exceeded the scope of Congress' authority when it enacted a law that could confine a person solely because of "sexual dangerousness," and the government need not even allege that this "dangerousness" violated any federal law.

Question

Did Congress have the constitutional authority to enact the Adam Walsh Protection and Safety Act?

Conclusion

7-2 Decision for the United States

Yes. The Supreme Court held that the Necessary and Proper Clause grants Congress authority sufficient to enact the Adam Walsh Protection and Safety Act. With Justice Stephen G. Breyer writing for the majority, the Court pointed to five considerations that compelled its holding. (1) the Necessary and Proper Clause grants broad authority. (2) The Court recognized that Congress has long delivered mental health care to federal prisoners. (3) Congress had good reason to pass the statute as it has the power to protect nearby communities from the danger prisoners may pose. (4) The Tenth Amendment does not reserve a zone of authority to the states in this context. (5) The Court recognized that the statute was narrow in scope and did not confer on Congress a general police power which is reserved to the states.

Justice Anthony M. Kennedy wrote separately, concurring in the judgment. He maintained that authority under the Necessary and Proper Clause is dependent upon the "strength of the chain" from Congressional action and its enumerated power, not on the number of "links in the chain." Justice Samuel A. Alito also wrote separately, concurring in the judgment. He cautioned that the majority opinion should not be construed as granting an unlimited ability by Congress to extend its power.

Justice Clarence Thomas, joined in part by Justice Antonin G. Scalia, dissented. Justice Thomas argued that the Necessary and Proper Clause empowers Congress only to enact laws that carry into execution one or more enumerated powers. Here, he argued that the Adam Walsh Protection and Safety Act did not carry into execution an enumerated power.

▶ **"United States v. Comstock." Oyez, 17 Jul. 2018** | <https://goo.gl/CPzkjD>

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Rubric for the Impact John Marshall's Landmark Cases Performance Assessment

Course Titles: Virginia & United States History and AP Government & Politics

	4	3	2	1	Not Observed
Comparing & Contrasting VUS.1e,g	Explained at least one meaningful and significant comparisons between all three landmark cases and modern cases	Explained at least one meaningful and significant comparisons between two landmark cases and modern cases	Explained at least one meaningful and significant comparison between one landmark case and a modern case	Attempted to explain a meaningful and significant comparison between a landmark case and a modern case	
Accuracy of Content	Integrated relevant and correct content and vocabulary with thorough explanations that demonstrate in-depth understanding	Included correct content and vocabulary relevant to the task that demonstrate understanding	Included content and vocabulary relevant to the task; shows inconsistent understanding; content may contain minor errors	Included content or vocabulary, but understanding is limited; content is irrelevant or inaccurate	
Argument or Claim (Opinion) VUS.1d	Argument or claim includes a conclusive and knowledgeable explanation.	Argument or claim includes a developed explanation.	Argument or claim includes a partially developed explanation.	Attempted to present a central argument or claim	
Explaining Evidence VUS.1a)	Used evidence to consistently develop, support and sharpen the claim, explanation, argument.	Explained evidence to develop and support the claim, explanation, argument.	Identified or listed information from multiple sources to support the claim, explanation, argument	Included information or quotes from one source to explain, argue or make a claim	