

Congressional Power in the Shadow of the Rehnquist Court: Strategies for the Future

Introduction

Over the last decade, a five-to-four majority of the U.S. Supreme Court has struck down an extraordinary array of congressional enactments in the name of federalism, judicial supremacy, and constitutional limits on legislative power. The Court has invalidated congressional efforts to criminalize possession of a gun in the vicinity of a school; to create a civil remedy for women who are the victims of sexual assault; and to subject states to damages liability under an array of civil rights and other statutes. The Symposium that led to the Articles included in this issue was designed to bring together leading academics, advocates, and former state and federal officials to evaluate strategies for policymakers in light of these decisions. In that, it succeeded admirably. The Articles explore how these decisions affect our understanding of separation of powers and federalism, and assess their impact on civil rights, civil liberties, the environment, and other affected interests, and the result of the conversations among the Symposium participants is evident in the results in this issue. Included below is a list of all the Symposium participants, as well as a schedule of the Symposium.

Participants:

Alfred Aman, Indiana University School of Law—Bloomington

Lynn Baker, University of Texas School of Law

Preeta Bansal, former Solicitor General of New York; former Counselor, Antitrust Division and Counsel, Office of Policy Development, U.S. Department of Justice; former Special Counsel, White House Counsel's Office.

Mitchell Berman, University of Texas School of Law

Evan Caminker, University of Michigan Law School; former Deputy Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice

Walter Dellinger, Duke University School of Law; former Acting U.S. Solicitor General and Assistant Attorney General for the Office of Legal Counsel, U.S. Department of Justice

Chai Feldblum, Georgetown University Law Center; Director Federal Legislation Clinic; President, Disability Rights Council; Legal Counsel, National Gay & Lesbian Task Force

Barry Friedman, New York University School of Law; Advisory Board, State and Local Legal Center

Charles Geyh, Indiana University School of Law—Bloomington; former Counsel, U.S. House of Representatives, Judiciary Committee

Marcia Greenberger, Co-President National Women's Law Center

Marci Hamilton, Yeshiva University, Benjamin N. Cardozo School of Law; Lead Counsel for the Petitioners before the U.S. Supreme Court in *City of Boerne v. Flores*

Anna Harvey, Department of Politics, New York University

Dawn Johnsen, Indiana University School of Law—Bloomington; former Assistant Attorney General for the Office of Legal Counsel, U.S. Department of Justice; former Legal Director, National Abortion Rights Action League

Sylvia Law, New York University School of Law; Board Member, Center for Reproductive Law and Policy; Board Member, Compassion in Dying

Sanford Levinson, University of Texas School of Law

Isabelle Pinzler, Director, Project on Federalism, NOW Legal Defense & Education Fund; former Acting Assistant Attorney General for the Civil Rights Division, U.S. Department of Justice; former Director, Women's Rights Project, American Civil Liberties Union

Robert Post, Boalt Hall School of Law—University of California, Berkeley

Judith Resnik, Yale Law School

Lauren Robel, Indiana University School of Law—Bloomington

Christopher Schroeder, Duke University School of Law; former Acting Assistant Attorney General for the Office of Legal Counsel, U.S. Department of Justice; former Chief Counsel, U.S. Senate Judiciary Committee

Reva Siegel, Yale Law School

Mark Tushnet, Georgetown University Law Center

David Strauss, University of Chicago Law School; former Assistant to Solicitor General and Attorney-Advisor, Office of Legal Counsel, U.S. Department of Justice

Elisabeth Zoller, Université Panthenon-Assas (Paris II); Director, Centre de Droit Americain (Center for American Law)

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Symposium Schedule

Friday, February 1, 2002

- 1:00-2:30 p.m. Introduction**
Moderator: Alfred Aman
Robert Post and Reva Siegel
Mark Tushnet
- 2:45-4:15 p.m. Implications for Congress, the Courts, and the President (I)**
Moderator: Christopher Schroeder
Evan Caminker
Barry Friedman and Anna Harvey
Charles Geyh
Judith Resnik
- 4:30-5:45 p.m. Implications for Congress, the Courts, and the President (II)**
Moderator: Sanford Levinson
Walter Dellinger
Marc Hamilton
Dawn Johnsen
David Strauss

Saturday, February 2, 2002

- 8:30-10:00 a.m. Implications for the Protection of Civil Rights, the Environment, and Other Affected Interests**
Moderator: Sylvia Law
Chai Feldblum
Marcia Greenberger
Isabelle Pinzler
Christopher Schroeder
- 10:15-11:45 a.m. Implications for Federalism and the States**
Moderator: Lauren Robel
Preeta Bansal
Mitchell Berman
Lauren Robel
Elisabeth Zoller