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The Supreme Court's Overruling of Constitutional Precedent

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SUMMARY

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Brandon J. Murrill
Legislative Attorney

The Supreme Court's Overruling of Constitutional Precedent

By exercising its power to determine the constitutionality of federal and state government actions, the Supreme Court has developed a large body of judicial decisions, or "precedents," interpreting the Constitution. How the Court uses precedent to decide controversial issues has prompted debate over whether the Court should follow rules identified in prior decisions or overrule them. The Court's treatment of precedent implicates longstanding questions about how the Court can maintain stability in the law by adhering to precedent under the doctrine of *stare decisis* while correcting decisions that rest on faulty reasoning, unworkable standards, abandoned legal doctrines, or outdated factual assumptions.

Although the Supreme Court has shown less reluctance to overrule its decisions on constitutional questions than its decisions on statutory questions, the Court has nevertheless stated that there must be some special justification—or, at least "strong grounds"—that goes beyond disagreeing with a prior decision's reasoning to overrule constitutional precedent. Consequently, when deciding whether to overrule a precedent interpreting the Constitution, the Court has historically considered several "prudential and pragmatic" factors that seek to foster the rule of law while balancing the costs and benefits to society of reaffirming or overruling a prior holding:

Quality of Reasoning. When determining whether to reaffirm or overrule a prior decision, the Supreme Court may consider the quality of the decision's reasoning.

Workability. Another factor that the Supreme Court may consider when determining whether to overrule a precedent is whether the precedent's rules or standards are too difficult for lower federal courts or other interpreters to apply and are thus "unworkable."

Inconsistency with Related Decisions. A third factor the Supreme Court may consider is whether the precedent departs from the Court's other decisions on similar constitutional questions, either because the precedent's reasoning has been eroded by later decisions or because the precedent is a recent outlier when compared to other decisions.

Changed Understanding of Relevant Facts. The Supreme Court has also indicated that changes in how the Justices and society understand a decision's underlying facts may undermine a precedent's authoritativeness, leading the Court to overrule it.

Reliance. Finally, the Supreme Court may consider whether it should *retain* a precedent, even if flawed, because overruling the decision would injure individuals, companies, or organizations; society as a whole; or legislative, executive, or judicial branch officers, who had relied on the decision.

A survey of Supreme Court decisions applying these factors suggests that predicting when the Court will overrule a prior decision is difficult. This uncertainty arises, in part, because the Court has not provided an exhaustive list of the factors it uses to determine whether a decision should be overruled or how it weighs them.

The **Appendix** to this report lists Supreme Court decisions on constitutional law questions that the Court has overruled during its more than 225-year history.

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Introduction

By exercising its power to determine whether federal and state government actions are constitutional,[1] the Supreme Court has developed a large body of judicial decisions, or "precedents," interpreting the Constitution.[2] Rules and principles established in prior cases inform the Court's future decisions.[3] The role that precedent plays in the Court's decisions on highly controversial issues has prompted debate over whether the Court should follow or overrule rules it established in prior decisions.[4] Such questions underscore the challenges the Court faces in maintaining stability in the law by adhering to precedent under the doctrine of *stare decisis* so that parties may rely upon its decisions,[5] while at the same time correcting prior decisions that rest on faulty reasoning, unworkable standards, abandoned legal doctrines, or outdated factual assumptions.[6]

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[1] For early cases in which the Supreme Court established its power of judicial review, see Marbury v. Madison, 5 U.S. (1 Cranch) 137, 180 (1803); Fletcher v. Peck, 10 U.S. (6 Cranch) 87, 139 (1810); and Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, 430 (1821).

[2] BLACK'S LAW DICTIONARY 1366 (10th ed. 2014) (defining "precedent" as "a decided case that furnishes a basis for determining later cases involving similar facts or issues").

[3] MICHAEL J. GERHARDT, THE POWER OF PRECEDENT 147–48 (2008) [hereinafter Gerhardt, POWER OF PRECEDENT] ("[I]t is practically impossible to find any modern Court decision that fails to cite at least some precedents in support."). However, although the Supreme Court routinely purports to rely upon precedent, it is difficult to determine precisely how often precedent has actually constrained the Court's decisions because the Justices have latitude in how broadly or narrowly they construe their prior decisions. *See* Michael J. Gerhardt, *The Role of Precedent in Constitutional Decisionmaking and Theory*, 60 GEO. WASH. L. REV. 68, 76 (1991) [hereinafter Gerhardt, *The Role of Precedent*] ("Precedents commonly are regarded as a traditional source of constitutional decisionmaking, despite the absence of any clear evidence that they ever have forced the Court into making a decision contrary to what it would rather have decided."); *id.* at 98 ("The Supreme Court can overturn or otherwise weaken precedents through explicit overrulings, overrulings sub silentio, or subsequent decisionmaking that narrows or distinguishes precedents to the point of practical nullification."). For more on the use of judicial precedent as a method of constitutional interpretation, see CRS Report R45129, *Modes of Constitutional Interpretation*, by Brandon J. Murrill.

[4] For arguments for, and against, adhering to precedent generally, see "Reasons for the Supreme Court's Adherence to Principles of Stare Decisis" and "Reasons for the Supreme Court's Overruling of Precedent" below.

[5] Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 378 (2010) (Roberts, J., concurring) ("[Stare decisis'] greatest purpose is to serve a constitutional ideal—the rule of law. It follows that in the unusual circumstance when fidelity to any particular precedent does more damage to this constitutional ideal than to advance it, we must be more willing to depart from that precedent."); Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 854 (1992) (plurality opinion) ("[T]he very concept of the rule of law underlying our own Constitution requires such continuity over time that a respect for precedent is, by definition, indispensable.") (citations omitted).

[6] *See, e.g.*, Payne v. Tennessee, 501 U.S. 808, 834 (1991) (Scalia, J., concurring) ("What would enshrine power as the governing principle of this Court is the notion that an important constitutional decision with plainly inadequate rational support must be left in place for the sole reason that it once attracted a [majority of the Court]."); Patterson v. McLean Credit Union, 491 U.S. 164, 172 (1989) ("Our precedents are not sacrosanct, for we have overruled prior decisions where the necessity and propriety of doing so has been established."); Smith v. Allwright, 321 U.S. 649, 665 (1944) ("[W]hen convinced of former error, this Court has never felt constrained to follow precedents. In constitutional questions, where correction depends upon amendment and not upon legislative action this Court throughout its history has freely exercised its power to reexamine the basis of its constitutional decisions."). *See also* William S. Consovoy, *The Rehnquist Court and the End of Constitutional Stare Decisis:* Casey, Dickerson, *and the Consequences of Pragmatic Adjudication*, 2002 UTAH L. REV. 53, 54 (2002) (discussing the argument that "strict adherence to precedent" may "fail to take into consideration developing social and political factors that make the prior decision either outdated or ineffective."). For more on how the Supreme Court determines whether to overrule precedent, see "Factors the Supreme Court Considers When Deciding Whether to Overrule Constitutional Precedent" below.

One notable example of a precedent that has prompted significant debate is the Supreme Court's 1992 decision in *Planned Parenthood v. Casey*.[7] In *Casey,* a plurality of Justices reaffirmed the core aspects of the Court's earlier holding in *Roe v. Wade* that a woman has a protected constitutional liberty interest in terminating her pregnancy prior to fetal viability, stating that the essential holding of *Roe* "should be retained."[8] But the plurality's opinion in *Casey* suggests that several Justices who voted to reaffirm *Roe* had significant doubts about the quality of its reasoning.[9] Despite these doubts, the *Casey* plurality decided that other considerations required reaffirming *Roe*'s central holding, including societal reliance on a fundamental constitutional right; concern for the Court's legitimacy as an institution; and the principle that the Court should adhere to rules in its prior decisions (i.e., stare decisis), particularly when a case implicates a highly divisive issue like abortion.[10]

Although the Supreme Court's decision to retain a precedent may prompt significant debate, the Court's *overruling* of precedent can also be controversial, as the Court's 2010 decision in the campaign finance regulation case *Citizens United v. FEC* illustrated.[11] That case established that the First Amendment prohibits governments from restricting independent expenditures on political speech related to an election campaign by corporations, labor unions, and other organizations.[12] In reaching this result, the Court overturned its decision in *Austin v. Michigan State Chamber of Commerce*, which had held that the government could prohibit political speech funded from a corporation's general treasury fund based on the fact that the speaker was a corporation.[13] The Court's overruling of *Austin* in *Citizens United* sparked debate about whether the Court should have adhered more strictly to the principle of stare decisis.[14]

Debate over the role that stare decisis plays in the Supreme Court's decision making continued during the 2017-2018 term as the Justices overruled four longstanding precedents. For example, in *Janus v. American Federation of State, County, and Municipal Employees,* the Court overturned its 1977 holding in *Abood v. Detroit Board of Education*[15] and determined that laws that require public employees to pay "fair share" fees to the union designated to represent their bargaining unit, even if the employees are not members of the union, violated the First Amendment by compelling speech on matters of public concern.[16] And in *South Dakota v.*

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[7] 505 U.S. 833 (1992).

[8] *Id.* at 845–46 (plurality opinion) ("After considering the fundamental constitutional questions resolved by *Roe*, principles of institutional integrity, and the rule of *stare decisis*, we are led to conclude this: the essential holding of *Roe v. Wade* should be retained and once again reaffirmed."). Although the plurality in *Casey* declined to overrule the core aspects of *Roe*, it discarded *Roe*'s "trimester approach" to evaluating the constitutionality of a state's restrictions on abortion in favor of a balancing test that considers whether such restrictions impose an "undue burden" on a woman's privacy interests under the Fourteenth Amendment. *Id.* at 872–77.

[9] *See id.* at 861 ("Within the bounds of normal *stare decisis* analysis, then, and subject to the considerations on which it customarily turns, the stronger argument is for affirming *Roe*'s central holding, with whatever degree of personal reluctance any of us may have, not for overruling it.").

[10] *See supra* notes 8-9. In *Casey*, the joint opinion of Justices O'Connor, Kennedy, and Souter expressed concerns that the Court's legitimacy would suffer if the Court were to overturn a prior decision on a fundamental question of constitutional law. *Casey,* 505 U.S. at 865 ("The Court's power lies ... in its legitimacy, a product of substance and perception that shows itself in the people's acceptance of the Judiciary as fit to determine what the Nation's law means and to declare what it demands.").

[11] 558 U.S. 310 (2010).

[12] *Id.* at 372.

[13] 494 U.S. 652, 654 (1990).

[14] *See, e.g., Citizens United*, 558 U.S. at 408-14 (Stevens, J., dissenting).

[15] 431 U.S. 209 (1977).

[16] 585 U.S. ___, No. 16-1466, slip op. at 1 (2018) ("We conclude that this arrangement violates the free speech rights

Wayfair, the Court overturned holdings in two earlier cases,[17] concluding that the Commerce Clause does not restrict states from requiring retailers that lack a physical presence in the state to collect and remit taxes on sales made to state residents.[18]

In light of these developments, this report examines how the Supreme Court determines whether to overrule its prior decisions on questions of constitutional law. It provides an overview of the doctrine of stare decisis, under which a court generally follows rules adopted in prior decisions in future cases with arguably similar facts.[19] It discusses how Justices who have adopted textualism and originalism as philosophies for interpreting the Constitution handle conflicts between precedent and their judicial philosophies. Finally, the report examines various factors that the Court weighs when determining whether to overrule or limit its precedents interpreting the Constitution, providing examples from the Court's recent jurisprudence.[20]

Understanding stare decisis may assist the Senate in evaluating the judicial philosophy of nominees to the federal courts. For example, in July 2018, President Donald J. Trump announced the nomination of Judge Brett M. Kavanaugh of the U.S. Court of Appeals for the District of Columbia Circuit to fill retiring Justice Anthony M. Kennedy's seat on the Supreme Court of the United States.[21] Members of Congress, the public, and legal scholars expressed interest in Judge Kavanaugh's views on stare decisis, as they could potentially provide insight into his future decisions in important areas of constitutional law, including abortion, affirmative action, labor law, and separation of powers, among others.[22]

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of nonmembers by compelling them to subsidize private speech on matters of substantial public concern.").

[17] The Court overruled *Nat'l Bellas Hess, Inc.* v. *Dep't of Revenue of the State of Illinois*, 386 U.S. 753 (1967), and *Quill Corp.* v. *North Dakota*, 504 U.S. 298 (1992).

[18] 585 U.S. ___, No. 17-494, slip op. at 23-24 (2018). In a third case decided during the 2017-2018 term, the Supreme Court explicitly overruled its holding in *Korematsu v. United States*, 323 U.S. 214 (1944), which upheld the constitutionality of World War II-era military and executive orders that excluded Japanese Americans from living in certain areas. Trump v. Hawaii, 585 U.S. ___, No. 17-965, slip op. at 38 (2018) ("*Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—'has no place in law under the Constitution.'") (citation omitted). Criticism of the decision had long indicated that the Court would overrule it. *See, e.g.*, Dean Masaru Hashimoto, *The Legacy of* Korematsu v. United States: *A Dangerous Narrative Retold*, 4 UCLA ASIAN PAC. AM. L.J. 72, 77 (1996) ("The popular wisdom is that *Korematsu* has been, in fact, overruled as evidenced by the criticism it has received.").

[19] BLACK'S LAW DICTIONARY 1626 (10th ed. 2014) (defining "stare decisis" as "the doctrine of precedent, under which a court must follow earlier judicial decisions when the same points arise again in litigation").

[20] Legal scholars continue to debate other questions surrounding the doctrine of stare decisis, such as whether the Constitution requires (or even allows) the Supreme Court to follow precedent and whether Congress could abolish stare decisis in constitutional cases. *See, e.g.*, Richard H. Fallon, Jr., *Stare Decisis and the Constitution: An Essay on Constitutional Methodology*, 76 N.Y.U. L. REV. 570, 571 (2001) ("If stare decisis were a mere policy, not constitutionally mandated or at least constitutionally authorized as a constitutive element of constitutional adjudication, then by what right could the Court follow the dictates of that policy in contravention of what the Constitution (as correctly interpreted) requires?"); *id.* at 577 (arguing that Article III's grant of the "judicial power" permits "the Supreme Court to elaborate and rely on a principle of stare decisis and, more generally, to treat precedent as a constituent element of constitutional adjudication"); Michael Stokes Paulsen *Abrogating Stare Decisis by Statute: May Congress Remove the Precedential Effect of* Roe *and* Casey?, 109 YALE L.J. 1535, 1548 (2000). These issues are beyond the scope of this report.

[21] For initial observations on the Kavanaugh nomination, see CRS Legal Sidebar LSB10168, *President Trump Nominates Judge Brett Kavanaugh: Initial Observations*, by Andrew Nolan.

[22] For a CRS report analyzing Judge Kavanaugh's views on several key issues of law, see CRS Report R45293, *Judge Brett M. Kavanaugh: His Jurisprudence and Potential Impact on the Supreme Court*, coordinated by Andrew Nolan and Caitlain Devereaux Lewis.

The **Appendix** to this report lists Supreme Court decisions on constitutional law questions that the Court has overruled specifically during its more than 225-year history.

The Doctrine of Stare Decisis

Stare decisis, which is Latin for "to stand by things decided,"[23] is a judicial doctrine under which a court follows the principles, rules, or standards of its prior decisions or decisions of higher tribunals when deciding a case with arguably similar facts.[24] The doctrine of stare decisis has "horizontal" and "vertical" aspects. A court adhering to the principle of *horizontal* stare decisis will follow its prior decisions absent exceptional circumstances (e.g., the Supreme Court following its decisions unless they have become too difficult for lower courts to apply).[25] By contrast, *vertical* stare decisis binds lower courts to follow strictly the decisions of higher courts within the same jurisdiction (e.g., a federal court of appeals must follow the decisions of the U.S. Supreme Court, the federal court of last resort).[26] This report addresses how the U.S. Supreme Court determines whether to overrule its prior decisions. Thus, this report discusses only horizontal stare decisis.

The Supreme Court applies the doctrine of stare decisis by following the rules of its prior decisions unless there is a "special justification"—or, at least, "strong grounds"—to overrule precedent.[27] In adopting this approach, the Court has rejected a more formalistic view of stare decisis that would require it to adhere to its prior decisions regardless of the merits of those decisions or the practical implications of retaining or discarding precedent.[28] Instead, while the

[23] The full Latin phrase is "*stare decisis et non quieta movere*—stand by the thing decided and do not disturb the calm." *See* James C. Rehnquist, *The Power That Shall Be Vested in a Precedent: Stare Decisis, The Constitution, and the Supreme Court*, 66 B.U. L. REV. 345, 347 (1986).

[24] BLACK'S LAW DICTIONARY 1626 (10th ed. 2014) (defining "stare decisis" as "the doctrine of precedent, under which a court must follow earlier judicial decisions when the same points arise again in litigation"); *id.* at 1366 (defining "precedent" as "a decided case that furnishes a basis for determining later cases involving similar facts or issues"). This report does not examine the Supreme Court's reliance on state court or foreign tribunal precedents. Nor does it examine how the Court determines whether a particular sentence in an opinion is a binding holding necessary to the decision for purposes of stare decisis or, rather, non-binding obiter dictum. *See generally* BLACK'S LAW DICTIONARY 1177 (9th ed. 2009) (defining "obiter dictum" as a "judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive).").

[25] *See id.* at 1537 (defining "horizontal stare decisis" as "the doctrine that a court ... must adhere to its own prior decisions, unless it finds compelling reasons to overrule itself").

[26] *See id.* (defining "vertical stare decisis" as "the doctrine that a court must strictly follow the decisions handed down by higher courts within the same jurisdiction"). *But see* Mark Alan Thurmon, *When the Court Divides: Reconsidering the Precedential Value of Supreme Court Plurality Decisions*, 42 DUKE L.J. 419, 422 n.17 (1992) (arguing that lower courts must follow precedent of higher courts not because of stare decisis, but rather because Article III of the Constitution establishes a hierarchy of judicial decision makers).

[27] *See* Janus v. Am. Fed. of State, County, & Mun. Employees, 585 U.S. ___, No. 16-1466, slip op. at 34 (2018) ("We will not overturn a past decision unless there are strong grounds for doing so."); Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 864 (1992) (plurality opinion) ("[A] decision to overrule should rest on some special reason over and above the belief that a prior case was wrongly decided."); *id.* (stating that reexamining precedent requires more than "a present doctrinal disposition to come out differently"); Arizona v. Rumsey, 467 U.S. 203, 212 (1984) ("Although adherence to precedent is not rigidly required in constitutional cases, any departure from the doctrine of *stare decisis* demands special justification."). *See also* Gerhardt, *The Role of Precedent*, *supra* note 3, at 71 ("The inevitable consequence of [overruling precedent solely because of disagreement with its underlying reasoning] would be chaos, lack of certainty regarding the durability of a number of individual freedoms, and/or proof positive that constitutional law is nothing more than politics carried on in a different forum.").

[28] *Cf.* BLACK'S LAW DICTIONARY 1537 (9th ed. 2009) (defining "super stare decisis" as "the theory that courts must follow earlier court decisions without considering whether those decisions were correct"). *See also* Paulsen, *supra* note

Court has stated that its precedents are entitled to respect and deference,[29] the Court considers the principle of stare decisis to be a discretionary "principle of policy" to be weighed and balanced along with its views about the merits of the prior decision and several pragmatic considerations when determining whether to retain precedent in interpreting the Constitution[30] or deciding whether to hear a case.[31] The Court may avoid having to decide whether to overrule precedent if it can distinguish the law or facts of a prior decision from the case before it or, rather, limit the prior decision's holding so that it is inapplicable to the instant case.[32]

Brief History of the Doctrine

The doctrine of stare decisis in American jurisprudence has its roots in 18th century English common law. In 1765, the English jurist William Blackstone described the doctrine of English common law precedent as establishing a strong presumption that judges would "abide by former precedents, where the same points come again in litigation" unless such precedents were "flatly absurd or unjust" in order to promote stability in the law.[33] And the Framers of the U.S. Constitution, who conferred the "judicial power" of the United States on the Supreme Court and lower federal courts, echoed Blackstone in their writings during the late 18th century, favoring judges' adherence to judicial precedent because it limited judges' discretion to interpret ambiguously worded provisions of written law. For example, writing in the *Federalist* during the debates over adoption of the Constitution at the end of the 18th century in an essay addressing concerns about judicial power, Alexander Hamilton argued that courts should apply precedent to

20, at 1538 n.8 ("The essence of the doctrine ... is adherence to earlier decisions, in subsequent cases ... even though the court in the subsequent case otherwise would be prepared to say, based on other interpretive criteria, that the precedent decision's interpretation of law is *wrong*."). A court following a prior decision because it was correctly decided is not adhering to stare decisis; it is merely reaffirming precedent. Fallon, *supra* note 20, at 570 ("If a court believes a prior decision to be correct, it can reaffirm that decision on the merits without reference to stare decisis.").

[29] *See, e.g.*, Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 362 (2010) ("Our precedent is to be respected unless the most convincing of reasons demonstrates that adherence to it puts us on a course that is sure error.").

[30] Gerhardt, *The Role of Precedent, supra* note 3, at 73 (describing the Court's review of its precedents as a "process in which the Justices individually try to balance their respective views on how the Constitution should be interpreted *and* certain social or institutional values such as the need for stability and consistency in constitutional law").

[31] *See Citizens United,* 558 U.S. at 378 (Roberts, C.J., concurring) ("*Stare decisis* is ... a 'principle of policy.' When considering whether to reexamine a prior erroneous holding, we must balance the importance of having constitutional questions *decided* against the importance of having them *decided right*.") (citing Helvering v. Hallock, 309 U.S. 106, 119 (1940)); Arizona v. Gant, 556 U.S. 332, 351 (2009) ("The doctrine of *stare decisis* does not require us to approve routine constitutional violations."); Payne v. Tennessee, 501 U.S. 808, 828 (1991) ("*Stare decisis* is not an inexorable command; rather, it 'is a principle of policy and not a mechanical formula of adherence to the latest decision.'") (citation omitted); Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 405-06 (1932) (Brandeis, J., dissenting) ("The rule of *stare decisis,* though one tending to consistency and uniformity of decision, is not inflexible. Whether it shall be followed or departed from is a question entirely within the discretion of the court, which is again called upon to consider a question once decided. *Stare decisis* is usually the wise policy, because, in most matters it is more important that the applicable rule of law be settled than that it be settled right.") (citations and internal quotation marks omitted). *See also* Gerhardt, *The Role of Precedent, supra* note 3, at 78 ("[I]n the certiorari process, the Justices often demonstrate most clearly their desire to adhere to the precedents they might not have decided the same way in the first place."). For more on factors that the Court considers when determining whether to overrule precedent, see "Factors the Supreme Court Considers When Deciding Whether to Overrule Constitutional Precedent" below.

[32] Gerhardt, *The Role of Precedent, supra* note 3, at 98 ("The Supreme Court can overturn or otherwise weaken precedents through explicit overrulings, overrulings sub silentio, or subsequent decisionmaking that narrows or distinguishes precedents to the point of practical nullification.").

[33] 1 BLACKSTONE'S COMMENTARIES ON THE LAWS OF ENGLAND 69-70 (describing precedent as "a permanent rule, which it is not in the breast of any subsequent judge to alter or vary from, according to his private sentiments ... ").

prevent judges from having unbounded discretion to interpret ambiguous legal texts.[34] However, historical sources provide only limited insight into the Founders' views on stare decisis, and it is unclear whether Hamilton was referring to the presumption that a court should adhere to its own prior decisions or, rather, those of higher tribunals.[35]

Despite the Founders' general approval of judges following precedent, at least one Framer, James Madison, acknowledged that courts should occasionally make exceptions to the doctrine of stare decisis for certain policy reasons.[36] During the tenure of Chief Justice John Marshall in the early 1800s, the Supreme Court combined a strong preference for adhering to precedent with a "limited notion of error correction" when precedents had been eroded by subsequent decisions,[37] were "premised on an incomplete factual record,"[38] or were clearly in error.[39] Another characteristic of these early decisions is that the Court was reluctant to overrule prior decisions when doing so would upset commercial reliance interests (e.g., precedents concerning matters of property or contract law).[40] Although the Court has only recently sought to enumerate the factors it considers when determining whether to overrule precedent,[41] the Court has long sought to strike a balance between maintaining a stable body of consistent jurisprudence while at the same time preserving some "mechanism for error correction."[42]

Reasons for the Supreme Court's Adherence to Principles of Stare Decisis

The Supreme Court has often stated that following its prior decisions supports the legitimacy of the judicial process and fosters the rule of law[43] by encouraging stability, certainty, predictability,

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[34] FEDERALIST NO. 78, at 439 (Clinton Rossiter ed., 1999) ("To avoid an arbitrary discretion in the courts, it is indispensable that [judges] should be bound down by strict rules and precedents, which serve to define and point out their duty in every particular case that comes before them ... "). Other Founders shared similar concerns. *See, e.g.*, 1 DIARY AND AUTOBIOGRAPHY OF JOHN ADAMS 167-68 (L.H. Butterfield, ed., 1961) (draft of Nov. 5, 1760) ("[E]very possible Case being thus preserved in Writing, and settled in a Precedent, leaves nothing, or but little to the arbitrary Will or uninformed Reason of Prince or Judge."). *See also* Caleb Nelson, Stare Decisis *and Demonstrably Erroneous Precedents*, 87 VA. L. REV. 1, 9 (2001) ("[C]oncern about such discretion was a common theme throughout the antebellum period; in one form or another, it shaped most antebellum explanations of the need for *stare decisis*.").

[35] Thomas R. Lee, *Stare Decisis in Historical Perspective: From the Founding Era to the Rehnquist Court*, 52 VAND. L. REV. 647, 664 (1999) ("[It is unclear whether] Hamilton was discussing the question of whether the Supreme Court would have the power to overrule its own decisions; *Federalist No. 78* may simply have been addressing a rule of vertical stare decisis requiring lower federal courts to follow case law from a superior tribunal.").

[36] Letter from James Madison to C.E. Haynes (Feb. 25, 1831) *reprinted in* 9 THE WRITINGS OF JAMES MADISON 443 (Gaillard Hunt ed., 1910) ("That cases may occur which transcend all authority of precedents must be admitted, but they form exceptions which will speak for themselves and must justify themselves.").

[37] *See, e.g.*, Gordon v. Ogden, 28 U.S. (3 Pet.) 33, 34 (1830) (involving statutory construction).

[38] Lee, *supra* note 35, at 684, 687. *See, e.g.*, United States v. Percheman, 32 U.S. (7 Pet.) 51, 88 (1833).

[39] Lee, *supra* note 35, at 681-87, 734 (discussing cases).

[40] *See, e.g.*, McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 401 (1819) ("[A]n exposition of the constitution, deliberately established by legislative acts, on the faith of which an immense property has been advanced, ought not to be lightly disregarded."). *See also* Lee, *supra* note 35, at 691.

[41] *See* "Factors the Supreme Court Considers When Deciding Whether to Overrule Constitutional Precedent."

[42] Lee, *supra* note 35, at 686 ("Considerations of stability and institutional integrity place a high premium on consistency with past decisions, while a countervailing concern for accuracy calls for some mechanism for error correction.").

[43] Citizens United v. FEC, 558 U.S. 310, 378 (2010) (Roberts, J., concurring) ("[Stare decisis'] greatest purpose is to serve a constitutional ideal—the rule of law. It follows that in the unusual circumstance when fidelity to any particular precedent does more damage to this constitutional ideal than to advance it, we must be more willing to depart from that

consistency and uniformity in the application of the law to cases and litigants.[44] As Justice Lewis Powell once remarked, "the elimination of constitutional stare decisis would represent an explicit endorsement of the idea that the Constitution is nothing more than what five Justices say it is."[45] Thus, one view is that following the carefully considered decisions of past Justices by adhering to principles of stare decisis supports the Court's role as a careful, unbiased, and predictable decisionmaker that decides cases according to the law rather than the Justices' individual policy preferences.

Another reason for adhering to stare decisis is to save judges and litigants time by reducing the number and scope of legal questions that the court must resolve in litigation (e.g., whether the Court may declare a federal law unconstitutional—a question settled in the 1803 decision of *Marbury v. Madison*).[46] In a similar vein, the Court has suggested that having a precedent established on a particular question of law allows for the quick and efficient dismissal of lawsuits that can be resolved through recourse to rules in prior decisions, which may encourage parties to settle cases out of court and thereby enhance judicial efficiency.[47]

Reasons for the Supreme Court's Overruling of Precedent

Arguing against a strict adherence to the principle of stare decisis, some Justices and legal commentators have noted that overruling incorrect precedents may occasionally be necessary to rectify egregiously wrong or unworkable decisions or to account for changes in the Court's or society's understandings of the facts underlying a legal issue (e.g., the changed understanding of the stigmatic effect of racial segregation in public schools).[48] Critics of strict adherence to stare

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precedent."); Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 854 (1992) ("[T]he very concept of the rule of law underlying our own Constitution requires such continuity over time that a respect for precedent is, by definition, indispensable.") (citations omitted).

[44] Alleyne v. United States, 570 U.S. 99, 118 (2013) (Sotomayor, J., concurring) ("We generally adhere to our prior decisions, even if we questions their soundness, because doing so 'promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.'"); Hilton v. S.C. Pub. Rys. Comm'n, 502 U.S. 197, 202 (1991) ("Adherence to precedent promotes stability, predictability, and respect for judicial authority."); Payne v. Tennessee, 501 U.S. 808, 827 (1991) ("Stare decisis is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process."); Vasquez v. Hillery, 474 U.S. 254, 265-66 (1986) ("[T]he important doctrine of stare decisis [is] the means by which we ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion. That doctrine permits society to presume that bedrock principles are founded in the law, rather than in the proclivities of individuals, and thereby contributes to the integrity of our constitutional system of government, both in appearance and in fact.").

[45] Lewis F. Powell, Jr., *Stare Decisis and Judicial Restraint*, 47 WASH. & LEE L. REV. 281, 288 (1990). *Accord Vasquez*, 474 U.S. at 265-66 (stating that stare decisis "contributes to the integrity of our constitutional system of government, both in appearance and in fact" by maintaining the notion "that bedrock principles are founded in the law, rather than in the proclivities of individuals").

[46] BENJAMIN N. CARDOZO, THE NATURE OF THE JUDICIAL PROCESS 149 (1921) ("[T]he labor of judges would be increased almost to the breaking point if every past decision could be reopened in every case ... ").

[47] *See* Taylor v. Sturgell, 553 U.S. 880, 903 (2008) ("*[S]tare decisis* will allow courts swiftly to dispose of repetitive suits ... "); Lee, *supra* note 35, at 653 ("[A] doctrine of reliance on precedent furthers the goal of stability by enabling parties to settle their disputes without resorting to the courts.").

[48] *Payne*, 501 U.S. at 834 (Scalia, J., concurring) ("What would enshrine power as the governing principle of this Court is the notion that an important constitutional decision with plainly inadequate rational support *must* be left in place for the sole reason that it once attracted a [majority of the Court]."); Patterson v. McLean Credit Union, 491 U.S. 164, 172 (1989) ("Our precedents are not sacrosanct, for we have overruled prior decisions where the necessity and propriety of doing so has been established."); Smith v. Allwright, 321 U.S. 649, 665 (1944) ("[W]hen convinced of former error, this Court has never felt constrained to follow precedents. In constitutional questions, where correction depends upon

decisis have also argued that the Court's application of the doctrine in constitutional cases has been unpredictable, has been based on ideology, has lacked a basis in the Constitution, and has often been used to shield the Court's errors from correction, hurting the Court's legitimacy.[49] Consequently, some Justices and scholars have argued that when a precedent conflicts with the proper understanding of the Constitution, Justices should follow the Constitution and overrule incorrect precedents instead of adhering to mistaken interpretations by past Justices.[50]

Applying the Doctrine in Constitutional Adjudication

The Supreme Court has established special rules for applying stare decisis in constitutional cases. During the twentieth century,[51] the Court adopted a weaker form of stare decisis when deciding cases that implicated a prior interpretation of the Constitution rather than a previous interpretation of a federal statute.[52] The Court has sought to justify this approach on the grounds that Congress

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amendment and not upon legislative action this Court throughout its history has freely exercised its power to reexamine the basis of its constitutional decisions."). *See also* Consovoy, *supra* note, 6 at 54 (discussing the argument that "strict adherence to precedent" may "fail to take into consideration developing social and political factors that make the prior decision either outdated or ineffective.").

[49] Michael Stokes Paulsen, *Does the Supreme Court's Current Doctrine of Stare Decisis Require Adherence to the Supreme Court's Current Doctrine of Stare Decisis?,* 86 N.C. L. REV. 1165, 1202 (2008) ("The application of the Court's doctrine of stare decisis shows results that are inconsistent, unpredictable, and unprincipled. The rule ... is that Courts follow precedent, except when they don't. And that is no rule at all."); Charles J. Cooper, *Stare Decisis: Precedent and Principle in Constitutional Adjudication*, 73 CORNELL L. REV. 401, 402-04 (1988) (stating that the doctrine "is inherently subjective" and that "more fundamentally, its avowed office is to shelter error from correction."). *See also* Randy J. Kozel, Stare Decisis *as Judicial Doctrine*, 67 WASH. & LEE L. REV. 411, 414 (2010) ("[T]he modern doctrine of *stare decisis* is essentially indeterminate. The various factors that drive the doctrine are largely devoid of independent meaning or predictive force.").

[50] *See, e.g.*, William O. Douglas, *Stare Decisis*, 49 COLUM L. REV. 735, 736 (1949) ("A judge looking at a constitutional decision may have compulsions to revere past history and accept what was once written. But he remembers above all else that it is the Constitution which he swore to support and defend, not the gloss which his predecessors may have put on it.").

[51] One study determined that the "notion that the constitutional or statutory nature of a precedent affects its susceptibility to reversal was largely rejected in the founding era and did not gain majority support until well into the twentieth century."). Lee, *supra* note 35, at 735.

[52] John R. Sand & Gravel Co. v. United States, 552 U.S. 130, 139 (2008) ("*[S]tare decisis* in respect to statutory interpretation has special force, for Congress remains free to alter what we have done.") (citations and internal quotation marks omitted); Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 954-55 (1992) (Rehnquist, J., concurring in the judgment in part and dissenting in part) ("Erroneous decisions in such constitutional cases are uniquely durable, because correction through legislative action, save for constitutional amendment, is impossible. It is therefore our duty to reconsider constitutional interpretations that 'depart from a proper understanding' of the Constitution.") (citations omitted); Patterson v. McLean Credit Union, 491 U.S. 164, 175 n.1 (1989) ("[C]onsiderations of *stare decisis* have added force in statutory cases because Congress may alter what we have done by amending the statute. In constitutional cases, by contrast, Congress lacks this option, and an incorrect or outdated precedent may be overturned only by our own reconsideration or by constitutional amendment."); Smith v. Allwright, 321 U.S. 649, 665 (1944) ("In constitutional questions, where correction depends upon amendment and not upon legislative action this Court throughout its history has freely exercised its power to reexamine the basis of its constitutional decisions."); Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 406-07 (1932) (Brandeis, J., dissenting) ("[I]n cases involving the Federal Constitution, where correction through legislative action is practically impossible, this Court has often overruled its earlier decisions."). The Supreme Court's belief in Congress' ability to correct the Court's errors through legislation has sometimes motivated the Court to retain precedent in cases in which Congress could enact corrective legislation, such as those raising questions of tribal sovereign immunity or judicially created causes of action, as well as some cases involving constraints on state action under the Commerce Clause. *See* South Dakota v. Wayfair, 585 U.S. ___, No. 17-494, slip op. at 2 (2018) (Roberts, C.J., dissenting) ("The bar [for departing from stare decisis and overturning precedent] is even higher in fields in which Congress 'exercises primary authority' and can, if it wishes, override this Court's decisions with contrary legislation.") (citations omitted).

may amend federal laws to address what it deems to be erroneous judicial interpretations of statutes, whereas amending the Constitution to overturn a Supreme Court precedent is much more difficult.[53] In fact, in the history of the United States, only five Supreme Court precedents have been overturned through constitutional amendment.[54] Despite the Court's assertion that it applies a weaker form of stare decisis in constitutional cases, the Court has in the last couple of decades still specifically required a "special justification" or at least "strong grounds" for overruling constitutional precedents.[55]

Originalism, Textualism, and Stare Decisis

Another notable issue surrounding stare decisis is the difficulty that a judge may face in adhering to the principle of stare decisis when application of his or her philosophy for interpreting the Constitution (e.g., originalism or pragmatism) in a particular case would produce a result contrary to existing precedent.[56] Although any method for interpreting the Constitution may conflict with

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[53] *See* sources cited *supra* note 51. Professor Michael Gerhardt notes that the political branches have other options for reversing or constraining constitutional precedents outside of amending the Constitution, such as "congressional modification of the Court's jurisdiction, the President's power to nominate Justices who might agree with her criticisms of certain precedents, the Senate's power to advise and consent to judicial nominations, and impeachment." Gerhardt, *The Role of Precedent, supra* note 3, at 72 n.16.

[54] These former precedents are: Oregon v. Mitchell, 400 U.S. 112, 117-18 (1970) (holding that Congress could not establish a voting age of eighteen for state and local elections but could do so for national elections), *superseded by constitutional amendment,* U.S. CONST. amend. XXVI ("The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age."); Pollock v. Farmers' Loan & Trust Co., 158 U.S. 601, 637 (1895) (holding that a federal income tax violated the Constitution because it was not apportioned among the states based on congressional representation), *superseded by constitutional amendment,* U.S. CONST. amend. XVI ("The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."); Minor v. Happersett, 88 U.S. (21 Wall.) 162, 178 (1874) (upholding as constitutional a state law that limited the right of suffrage to men), *superseded by constitutional amendment,* U.S. CONST. amend. XIX ("The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."); Dred Scott v. Sandford, 60 U.S. (19 How.) 393, 452-54 (1856) (holding that former slaves lacked standing to sue in federal court because they were not citizens, and that the federal government lacked the authority to regulate slavery in the territories), *superseded by constitutional amendment,* U.S. CONST. amends. XIII ("Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.") and XIV ("All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."); Chisholm v. Georgia, 2 U.S. (2 Dall.) 419, 452 (1793) (holding that federal courts had jurisdiction over civil suits by private citizens against states), *superseded by constitutional amendment,* U.S. CONST. amend. XI ("The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another state, or by Citizens or Subjects of any Foreign state.").

[55] *See* Janus v. Am. Fed. of State, County, & Mun. Employees, 585 U.S. ___, No. 16-1466, slip op. at 34 (2018) ("We will not overturn a past decision unless there are strong grounds for doing so."); *Casey*, 505 U.S. at 864 ("[A] decision to overrule should rest on some special reason over and above the belief that a prior case was wrongly decided."); *id.* (stating that reexamining precedent requires more than "a present doctrinal disposition to come out differently"); Arizona v. Rumsey, 467 U.S. 203, 212 (1984) ("Although adherence to precedent is not rigidly required in constitutional cases, any departure from the doctrine of *stare decisis* demands special justification").

[56] *See* Gerhardt, *The Role of Precedent, supra* note 3, at 75 ("[B]ecause so many precedents are based on, or, at least can only be explained as the result of the rejection of any one view of theory, this tension frequently presents a proponent of a rejected unitary theory with the dilemma of choosing to overrule the bulk of constitutional doctrine, or to abandon or modify the unifying principle dominating her theory in numerous substantive areas to provide constitutional law with stability and continuity.")

precedent,[57] debate has often focused on conflicts between judicial precedent and interpretation of the Constitution based on its text or its original meaning—that is, the meaning of its words as understood by some segment of the populace alive at the time of the Founding.[58] Some proponents of textualism and original meaning as methods of constitutional interpretation object to the use of judicial precedent that conflicts with the text of the Constitution and its original meaning, because it favors the views of the Supreme Court over the views of those who ratified the Constitution, thereby allowing mistaken interpretations of the Constitution to persist.[59]

Nevertheless, textualists and originalists may adhere to precedent for pragmatic reasons, such as when doing so would promote stability in the law.[60] For example, Justice Scalia, a solid textualist and originalist, followed longstanding precedent allowing for the Supreme Court to incorporate rights specifically enumerated in the Bill of Rights against state governments even though he harbored significant doubts that such incorporation comported with the original meaning of the Constitution.[61] One example of this approach is Justice Scalia's concurrence in *McDonald v. City of Chicago*,[62] a case in which the Supreme Court considered whether the city of Chicago could, consistent with guarantees in the Second and Fourteenth Amendments, ban the possession of handguns in the home.[63] Two years earlier, the Court in *District of Columbia v. Heller,* had

[57] *See* Edwin Meese III, *The Law of the Constitution*, 61 TUL. L. REV. 979, 983 (1987) ("[H]owever the Court may interpret the provisions of the Constitution, it is still the Constitution which is the law and not the decision of the Court." (quoting 3 CHARLES WARREN, THE SUPREME COURT IN UNITED STATES HISTORY 470-71 (1923)) (internal quotation marks omitted).

[58] For more on the use of textualism and originalism as methods for interpreting the Constitution, see CRS Report R45129, *Modes of Constitutional Interpretation*, by Brandon J. Murrill.

[59] *See* Henry P. Monaghan, *Stare Decisis and Constitutional Adjudication*, 88 Colum. L. Rev. 723, 769-70 (1988) ("In the interpretation of this written Constitution, we may assume that the founding generation was much attached to the original, publicly shared understanding of the document. Thus, one can make a good case that, as historically understood, the written Constitution was intended to trump not only statutes but case law. This argument is reinforced if one recalls that to the founding generation it was not clear that judicial opinions would need to play such a dominant role in establishing the meaning of the Constitution.").

[60] Gerhardt, *The Role of Precedent*, *supra* note 3, at 134-35 ("[O]riginalists' approaches to nonconforming precedents do not derive from original understanding but rather from their consideration of certain social values such as the need for stability and continuity in constitutional law; however, for some originalists, taking the perceived social impact of a decision into account is more akin to legislating from the bench than interpreting the law."); ANTONIN SCALIA, A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 139-40 (1997) ("The demand that originalists alone 'be true to their lights' and forswear *stare decisis* is essentially a demand that they alone render their methodology so disruptive of the established state of things that it will be useful only as an academic exercise and not as a workable prescription for judicial governance.... *[S]tare decisis* is not *part of* my originalist philosophy; it is a pragmatic *exception* to it."). Of course, there are some decisions, such as *Brown v. Board of Education*—which held that a state, in segregating its public school systems by race, violated the Fourteenth Amendment—that are widely accepted as precedent despite some debate over whether they comport with the original meaning of the Constitution. *See generally* Michael J. Gerhardt, *Super Precedent*, 90 MINN. L. REV. 1204, 1215 (2006).

[61] *See* McDonald v. City of Chi., 561 U.S. 742, 791 (2010) (Scalia, J., concurring) ("Despite my misgivings about substantive due process as an original matter, I have acquiesced in the Court's incorporation of certain guarantees in the Bill of Rights 'because it is both long established and narrowly limited.'"); Albright v. Oliver, 510 U.S. 266, 275 (1994) (Scalia, J., concurring) ("Except insofar as our decisions have included within the Fourteenth Amendment certain explicit substantive protections of the Bill of Rights—an extension I accept because it is both long established and narrowly limited—I reject the proposition that the Due Process Clause guarantees certain (unspecified) liberties, rather than merely guarantees certain procedures as a prerequisite to deprivation of liberty."). *See also* Chicago v. Morales, 527 U.S. 41, 85 (1999) (Scalia, J., dissenting) ("The entire practice of using the Due Process Clause to add judicially favored rights to the limitations upon democracy set forth in the Bill of Rights (usually under the rubric of so-called 'substantive due process') is in my view judicial usurpation.").

[62] 561 U.S. 742 (2010).

[63] *Id.* at 749-52.

determined that the Second Amendment's protection of the "right of the people to keep and bear arms" extended to all citizens and was not merely related to, or conditioned on, service in a militia, striking down a similar D.C. law.[64] But the City of Chicago was not directly subject to the Second Amendment because it was part of a state rather than a federal enclave like the District.[65] Nevertheless, a 5-4 majority of the Court held, in line with the Court's precedents, that the Second Amendment applied to the state and its subdivisions through the Fourteenth Amendment's Due Process Clause because the Second Amendment protected a fundamental right that was necessary to the American scheme of "ordered liberty" and was rooted in American traditions, and, therefore, its incorporation against state governments was constitutional.[66] Justice Scalia concurred with this result, stating, "Despite my misgivings about substantive due process as an original matter, I have acquiesced in the Court's incorporation of certain guarantees in the Bill of Rights because it is both long established and narrowly limited."[67] Thus, Scalia demonstrated a willingness to make a pragmatic exception to his philosophy for interpreting the Constitution by adhering to a longstanding line of precedents that had become "woven in the fabric of the law" when it would serve the practical objective of maintaining stability in the Court's jurisprudence.[68]

Factors the Supreme Court Considers When Deciding Whether to Overrule Constitutional Precedent

As noted, in recent decades, the Supreme Court has often stated that a decision to overrule precedent must be based on some special justification—or, at least "strong grounds"—that extends beyond the Court's mere disagreement with the merits of the prior decision's reasoning.[69] In this vein, the Justices have expressed some concern that the Court's legitimacy might suffer if it constantly overruled its prior decisions based on such disagreements.[70] Consequently, when

[64] 554 U.S. 570, 635-36 (2008).

[65] *See McDonald*, 561 U.S. at 749-50.

[66] *Id.* ("We have previously held that most of the provisions of the Bill of Rights apply with full force to both the Federal Government and the States. Applying the standard that is well established in our case law, we hold that the Second Amendment right is fully applicable to the States.") (citing in the opinion, among other decisions, Duncan v. Louisiana, 391 U.S. 145, 149 & n.14 (1968)).

[67] *McDonald*, 561 U.S. at 791 (Scalia, J., concurring) (citations and internal quotation marks and omitted).

[68] *See Nomination of Judge Antonin Scalia To Be Associate Justice of the Supreme Court of the United States: Hearing Before the S. Comm. on the Judiciary*, 99th Cong. 38 (1986) ("To some extent, Government even at the Supreme Court level is a practical exercise. There are some things that are done, and when they are done, they are done and you move on. Now, which of those you think are so woven in the fabric of law that mistakes made are too late to correct, and which are not, that is a difficult question to answer.").

[69] *See* Janus v. Am. Fed. of State, County, & Mun. Employees, 585 U.S. ___, No. 16-1466, slip op. at 34 (2018) ("We will not overturn a past decision unless there are strong grounds for doing so."); Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 864 (1992) (plurality opinion) ("[A] decision to overrule should rest on some special reason over and above the belief that a prior case was wrongly decided."); *id.* (stating that reexamining precedent requires more than "a present doctrinal disposition to come out differently"); Arizona v. Rumsey, 467 U.S. 203, 212 (1984) ("Although adherence to precedent is not rigidly required in constitutional cases, any departure from the doctrine of *stare decisis* demands special justification").

[70] *Casey*, 505 U.S. at 865-68 ("The Court's power lies ... in its legitimacy.... [T]he Court's legitimacy depends on making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be accepted by the Nation.... [T]o overrule under fire ... would subvert the Court's legitimacy beyond any serious question."); Smith v. Allwright, 321 U.S. 649, 669 (1944) (Robert, J., dissenting) ("[T]he instant decision ... tends to bring adjudications of this tribunal into the same class as a restricted railroad ticket, good for this day and train only.").

deciding whether to overrule a past decision in a constitutional case, the Court has historically considered several "prudential and pragmatic" factors that seek to foster the rule of law while balancing the costs and benefits to society of reaffirming or overruling a prior holding.[71] The Court's 2018 decision in *Janus v. American Federation of State, County, and Municipal Employees* sets forth a nonexhaustive list of these factors:

> the quality of [the precedent's] reasoning, the workability of the rule it establishes, its consistency with other related decisions, developments since the decision was handed down, and reliance on the decision.[72]

This section briefly discusses examples from the Supreme Court's jurisprudence that illustrate the Court's use of each of these factors in its analysis: (1) the quality of the precedent's reasoning; (2) the workability of the precedent's rule or standard; (3) the precedent's consistency with other related decisions; (4) factual developments since the case was decided; and (5) reliance by private parties, government officials, courts, or society on the prior decision.

Quality of the Precedent's Reasoning

The first factor that the Supreme Court may consider when determining whether to reaffirm or overrule a prior decision is the quality of the Court's reasoning in the prior case. However, it does not appear that the Court's disagreement with a prior case's reasoning is enough by itself to overrule that case.[73]

An example of the Supreme Court overruling precedent because it had significant disagreements with its reasoning is *West Virginia State Board of Education v. Barnette.*[74] In that case, the Court held that the First Amendment prohibited a state from enacting a law compelling students to salute the American flag.[75] In doing so, the Court overruled its three-year-old decision in *Minersville School District v. Gobitis*, which had upheld a state's flag-salute requirement.[76] In *Barnette,* Justice Robert Jackson, writing for the majority, offered a point-by-point refutation of *Gobitis*' reasoning.[77] For example, in addressing the *Gobitis* Court's argument that legislatures

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But see Casey, 505 U.S. at 963 (Rehnquist, C.J., dissenting) ("The Judicial Branch derives its legitimacy, not from following public opinion, but from deciding by its best lights whether legislative enactments of the popular branches of Government comport with the Constitution. The doctrine of *stare decisis* is an adjunct of this duty, and should be no more subject to the vagaries of public opinion than is the basic judicial task."). *See also* Gerhardt, *The Role of Precedent, supra* note 3, at 71 ("The inevitable consequence of [overruling precedent based solely on disagreement with its underlying reasoning] would be chaos, lack of certainty regarding the durability of a number of individual freedoms, and/or proof positive that constitutional law is nothing more than politics carried on in a different forum.").

[71] *Casey*, 505 U.S. at 854-55 (plurality opinion) (citations omitted).

[72] 585 U.S. ___, No. 16-1466, slip op. at 34-35 (2018). In a 2009 decision, Justice Scalia, writing for the Supreme Court, also mentioned a precedent's "antiquity" (i.e., the amount of time since it had been decided) as a factor that should be considered. *See* Montejo v. Louisiana, 556 U.S. 778, 791-97 (2009) (overruling *Michigan v. Jackson*, 475 U.S. 625 (1986)). But when the Court in *Janus* set forth a list of factors for overturning precedent, it did not discuss this factor, which is premised on the notion that "the respect accorded prior decisions increases, rather than decreases, with their antiquity, as the society adjusts itself to their existence, and the surrounding law becomes premised upon their validity"). South Carolina v. Gathers, 490 U.S. 805, 824 (1989) (Scalia, J., dissenting).

[73] *See* Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 864 (1992) (plurality opinion) ("[A] decision to overrule should rest on some special reason over and above the belief that a prior case was wrongly decided."); *id.* (stating that reexamining precedent requires more than "a present doctrinal disposition to come out differently").

[74] 319 U.S. 624 (1943).

[75] *Id.* at 642.

[76] 310 U.S. 586, 600 (1940).

[77] *Barnette*, 319 U.S. at 636-42.

rather than courts were the best forum to hear disputes over the imposition of the flag-salute requirement, the *Barnette* majority noted that the Bill of Rights had removed certain subjects, such as freedom of speech, from the political arena and committed resolution of disputes concerning these issues to the judiciary.[78] And in rejecting the core argument of *Gobitis* that compelled flag salutes were necessary to achieve national unity, Jackson invoked the unique character of American constitutional government, which in contrast to authoritarian regimes, eschewed the use of government coercion as a means of achieving national unity.[79] The Court's belief that *Gobitis* rested on flawed reasoning thus played a key role in its overturning of that precedent.

A case from the 2017-2018 term in which the Court overturned precedent partly because of the purportedly poor quality of its reasoning is *Janus v. American Federation of State, County, and Municipal Employees*.[80] In that case the Court overturned its 1977 holding in *Abood v. Detroit Board of Education*[81] by determining that a government, by requiring public employees, who were not members of a union designated to represent their bargaining unit, to pay "fair share" fees to the union, violated the First Amendment by compelling speech on matters of public concern.[82] The Court in *Janus* rested its decision to overrule *Abood* on several grounds, including the unworkability of *Abood*'s standard for distinguishing union expenditures that could be legally charged to employees from those that could not and a lack of reliance on the decision.[83] However, it began its analysis with a discussion of the merits of *Abood*.[84]

Characterizing *Abood* as "poorly reasoned," the Supreme Court explained that the *Abood* decision permitting "fair share" fee arrangements improperly rested upon Court precedents involving government *authorization* of *private sector* collective bargaining agreements instead of government *compulsion* of *public sector* employees' payment of "fair share" fees.[85] Moreover, the *Janus* Court stated, *Abood* accorded too much deference to the government's asserted interest in achieving "labor peace" by requiring employees to pay public sector fees and gave too little consideration to fundamental free speech rights.[86] These merits-based reasons, among others, motivated the Court's decision to discard *Abood*.

Workability of the Precedent's Rule or Standard

Another factor that the Supreme Court has considered when determining whether to overrule a precedent is whether a rule or standard that the prior case establishes for determining the constitutionality of a government action is too difficult for lower federal courts or other interpreters to apply and is thus "unworkable."[87]

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[78] *Id.* at 638-39.

[79] *Id.* at 640-42.

[80] 585 U.S. ___, No. 16-1466 (2018).

[81] 431 U.S. 209 (1977).

[82] *Janus*, slip op. at 1 ("We conclude that this arrangement violates the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern.").

[83] *Id.* at 33-47.

[84] *Id.*

[85] *Id.* at 1, 33-47

[86] *Id.*

[87] Montejo v. Louisiana, 556 U.S. 778, 792 (2009) ("[T]he fact that a decision has proved 'unworkable' is a traditional ground for overruling it."); Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 854 (1992) (plurality opinion)

An example of a case in which the Court overturned a precedent because its rule was unworkable is *Garcia v. San Antonio Metropolitan Transit Authority*.[88] In *Garcia*, the Court considered a key question implicating the relationship between the federal and state governments: whether Congress could impose the minimum wage and overtime requirements of the Fair Labor Standards Act (FLSA) on employees of the San Antonio Metropolitan Transit Authority, a municipally owned and operated mass-transit system.[89] *Garcia* raised the question of whether Congress's exercise of its Commerce Clause power in FLSA unconstitutionally impinged on state sovereignty—a question the Court had attempted to answer nine years earlier in *National League of Cities v. Usery*.[90] In *Usery,* the Court had developed a test for when state activities qualified for immunity from congressional regulation under the Commerce Clause, determining that Congress lacked authority to regulate state employees' working conditions when the state employees performed activities in "areas of traditional government functions."[91]

But a 5-4 majority of the court in *Garcia* determined that *Usery*'s test was unworkable because it was difficult for lower courts to apply consistently.[92] The Court stated that *Usery* "did not offer a general explanation of how a 'traditional' function is to be distinguished from a 'nontraditional' one. Since then, federal and state courts had struggled with the task, thus imposed by the Court, of identifying a traditional function for purposes of state immunity under the Commerce Clause."[93] The Court thus discarded *Usery*'s test and further held that Congress could, consistent with the Constitution, impose wage and hour requirements on state employees.[94]

As noted, more recently, in *Janus,* the Court overruled *Abood*'s holding that the government could constitutionally require public employees to pay fees to a union, even if the employees were not members of the union, so long as those fees qualified as "chargeable" union expenses under a three-part test intended to balance governments' interests in "labor peace" with the First Amendment free speech rights of employees.[95] The *Abood* test examined whether: (1) the expenses were "germane to collective bargaining"; (2) were "justified by the government's labor-peace and free-rider interests"; and (3) did "not add significantly to the burden on free speech."[96] Noting that "*Abood*'s line between chargeable and nonchargeable union expenditures has proved to be impossible to draw with precision," the Court characterized the *Abood* test as unworkable because the unclear standard left judges with too much discretion and resulted in unpredictable outcomes concerning the permissibility of compelled payment of union fees.[97] The *Abood* test's unworkability was one reason that the Court chose to overrule that precedent.

(stating that rules in a prior decision may ultimately "prove[] to be intolerable simply in defying practical workability").

[88] 469 U.S. 528 (1985) (overruling Nat'l League of Cities v. Usery, 426 U.S. 833 (1976)).

[89] *Garcia*, 469 U.S. at 530-31.

[90] *See* 426 U.S. 833 (1976).

[91] *See Garcia*, 469 U.S. at 530-31.

[92] *Id.*

[93] *Id.*

[94] *Id.* at 557. A decade later in *United States v. Lopez,* the supreme Court issued a decision that took a narrower view of Congress' Commerce Clause power, determining that Congress lacked power to ban handgun possession near schools. 514 U.S. 549, 567-68 (1995).

[95] *See Janus* v. AFSCME, 585 U.S. ___, No. 16-1466, slip op. at 38-39 (2018).

[96] *See id.* (internal quotation marks omitted).

[97] *Id.*

Whether the Precedent Is Inconsistent with Related Decisions

Another factor the Supreme Court may consider is whether the precedent is inconsistent with other Court decisions on similar matters of constitutional law. One manner in which a precedent may become inconsistent with related decisions is when its legal foundation, including its reasoning, principles, or rules, has been subsequently eroded by later decisions.[98] In addition, the Court has occasionally considered whether a precedent should be overruled because it is a recent outlier among the Court's decisions by examining the precedent's consistency with *past* decisions and determining whether overruling the case would "restore" coherency in the law.[99]

An example of the Court overruling a prior decision because it had been eroded by subsequent case law is *Janus*'s overruling of *Abood*.[100] In overruling *Abood*'s determination that the government could require public employees to pay certain fees to a union, the *Janus* Court noted that *Abood* had become inconsistent with the Court's First Amendment cases.[101] In particular, subsequent decisions of the Court had criticized the *Abood* Court for failing to scrutinize a significant restriction on employees' First Amendment rights sufficiently, as required by more recent Court jurisprudence examining various laws compelling speech or association.[102] In addition, the Court determined that *Abood* was inconsistent with a related line of subsequent cases "holding that public employees generally may not be required to support a political party."[103] Consequently, the Court deemed *Abood*'s First Amendment analysis to have been eroded by several of its subsequent decisions.[104]

In other cases, the Supreme Court may overrule a recent decision that it deems an outlier in order to *restore* an older line of precedents.[105] An example is *Adarand Constructors, Inc. v. Peña.*[106] In *Adarand,* the Court considered whether the federal government violated a subcontractor's equal protection rights under the Fifth Amendment's Due Process Clause[107] when the government provided financial incentives for prime federal contractors to award subcontracts to businesses owned by minorities, such as racial minorities.[108] The Court held, contrary to its earlier decision in *Metro Broadcasting, Inc. v. FCC*, that the Fifth Amendment does not impose a lesser duty on the federal government than the Equal Protection Clause of the Fourteenth Amendment[109] does on

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[98] United States v. Gaudin, 515 U.S. 506, 521 (1995) ("And we think *stare decisis* cannot possibly be controlling when ... the decision in question has been proved manifestly erroneous, and its underpinnings eroded, by subsequent decisions of this Court.").

[99] *See, e.g.,* Adarand Constructors, Inc. v. Peña, 515 U.S. 200, 233-34 (1995).

[100] 585 U.S. ___, No. 16-1466, slip op. at 1 (2018).

[101] *Id.* at 42-44.

[102] *Id.*

[103] *Id.*

[104] *Id.*

[105] *See* Paulsen, *supra* note 49, at 1189 ("[A]ny fair discussion of the remnant-of-abandoned-doctrine factor of the Court's current stare decisis analysis must reckon with the seemingly equal but opposite restoration-of-departed-from doctrine counter-factor.").

[106] 515 U.S. 200 (1995).

[107] The Fifth Amendment provides that "No person shall ... be deprived of life, liberty, or property, without due process of law ... " The Supreme Court has held that the Fifth Amendment Due Process Clause also includes equal protection guarantees. Buckley v. Valeo, 424 U.S. 1, 93 (1976) ("Equal protection analysis in the Fifth Amendment area is the same as that under the Fourteenth Amendment.").

[108] *Adarand,* 515 U.S. at 204-05.

[109] The Fourteenth Amendment provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws."

state governments, which meant that the federal government's racial classifications are subject to the most stringent form of review (i.e., strict scrutiny).[110] The Court characterized the overruled *Metro Broadcasting* case as a recent departure from the equal protection principles of a long line of prior cases that stood for the principle that the same equal protection obligations apply to federal, state, and local governments.[111] The majority wrote, "By refusing to follow *Metro Broadcasting,* then, we do not depart from the fabric of the law; we restore it."[112]

Sometimes, the Justices may disagree over which line of precedents the Court should retain, and which line of precedents it should overrule or ignore. For instance, in *Lawrence v. Texas*, the Court struck down a Texas law that banned private, consensual same-sex sexual activity as violating the Due Process Clause of the Fourteenth Amendment.[113] In doing so, the Court held that the concept of liberty in that clause "presumes an autonomy of self that includes freedom of thought, belief, expression, and certain intimate conduct."[114]

Justice Kennedy's opinion for the majority overruled a prior decision, *Bowers v. Hardwick*, which had upheld a Georgia law banning similar sexual conduct.[115] Kennedy's opinion characterized *Bowers* as inconsistent with the Court's subsequent 1992 decision in *Casey* reaffirming abortion rights and its 1996 decision in *Romer v. Evans*,[116] which struck down Colorado legislation removing protections for homosexuals from state antidiscrimination laws as violating the Fourteenth Amendment's Equal Protection Clause.[117] Kennedy's opinion stated that the *Casey* and *Romer* decisions stood for the notion that the Fourteenth Amendment's Due Process Clause protects personal autonomy to make decisions related to "marriage, procreation, contraception, family relationships, child rearing, and education."[118] The Court thus viewed *Bowers* as wrongly decided in part because it was inconsistent with the Court's subsequent jurisprudence. A dissenting Justice Scalia strongly disagreed, characterizing *Casey* and *Romer* as outliers whose legal foundations had been eroded by a 1997 case holding that only "fundamental rights" that are "deeply rooted in [the] Nation's history and tradition" qualified for enhanced protection under the Due Process Clause.[119] The majority and dissent in *Lawrence* thus disagreed over whether the Court had "restored" the law or, rather, departed from it, by overruling *Bowers.*

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[110] *Adarand,* 515 U.S. at 204-05.

[111] *Id.* at 231-32. ("As we have explained, *Metro Broadcasting* undermined important principles of this Court's equal protection jurisprudence, established in a line of cases stretching back over 50 years. Those principles together stood for an 'embracing' and 'intrinsically sound' understanding of equal protection 'verified by experience,' namely, that the Constitution imposes upon federal, state, and local governmental actors the same obligation to respect the personal right to equal protection of the laws."). The court further explained that "[r]emaining true to an 'intrinsically sounder' doctrine established in prior cases better serves the values of *stare decisis* than would following a more recently decided case inconsistent with the decisions that came before it; the latter course would simply compound the recent error and would likely make the unjustified break from previously established doctrine complete." *Id.* at 231.

[112] *Id.* at 233-34.

[113] 539 U.S. 558, 578 (2003).

[114] *Id.* at 562.

[115] 478 U.S. 186, 189-90 (1986).

[116] 517 U.S. 620 (1996).

[117] *Id.* at 635; *Lawrence,* 539 U.S. at 573-74 ("Two principal cases decided after *Bowers* cast its holding into even more doubt.").

[118] *Id.* at 574-75.

[119] *Id.* at 588 (Scalia, J., dissenting) (quoting Washington v. Glucksberg, 521 U.S. 702, 721 (1997) (internal quotation marks omitted).

Whether There Is a Changed Understanding of Relevant Facts

The Supreme Court has also indicated that changes in how the Justices and society understand the facts underlying a prior decision may undermine the authoritativeness of a precedent, leading the Court to overrule it.[120] In *Casey*, the plurality opinion pointed to two major examples from the Court's twentieth-century jurisprudence that it stated had demonstrated the occasional necessity of overruling a prior decision based on subsequent factual developments.[121] In the first case from 1937, *West Coast Hotel v. Parrish*,[122] the Court effectively overturned precedents that had struck down as unconstitutional state laws instituting a minimum wage or maximum working hours for employees, reversing its prior holdings that these laws violated employers' freedom to contract guaranteed by the Fourteenth Amendment's Due Process Clause.[123] Supposedly dispensing with its earlier acceptance of principles of contractual freedom, the Court in *West Coast Hotel* held that overruling precedent was necessary in light of the nation's struggles during the Great Depression, stating that "the economic conditions which have supervened" required consideration of the "exercise of the protective power of the state" to institute minimum wage laws.[124] The Court, resting its decision in part on these recent factual developments, concluded that the state could enact legislation to address its concerns about the exploitation of "defenseless" workers with less bargaining power than their employees, as well as the burden on taxpayers to provide for workers denied a living wage.[125]

The *Casey* plurality's second example of how the Court's overruling of precedent stemmed from changes in factual understandings involved supposed social change rather than economic developments. In the 1954 case of *Brown v. Board of Education,* the Court held that that a state, in segregating its public school systems by race, violated the Fourteenth Amendment.[126] Specifically, the Court held that the practice of "separate but equal" as applied to schools violated the Equal Protection Clause, a provision that prohibits state governments from depriving their citizens of the equal protection of the law.[127] *Brown* rejected factual understandings underlying the Court's prior decision in *Plessy v. Ferguson*, which had upheld the constitutionality of a Louisiana law mandating racial segregation in railway cars, determining that "separate but equal"

[120] Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 855 (1992) (plurality opinion) (discussing the inquiry into whether "facts have so changed, or come to be seen so differently, as to have robbed the old rule of significant application or justification").

[121] *Id.* at 863-64 (stating that the Court's decisions in *West Coast Hotel v. Parrish* and *Brown v. Board of Education* "each rested on facts, or an understanding of facts, changed from those which furnished the claimed justifications for the earlier constitutional resolutions. Each case was comprehensible as the Court's response to facts that the country could understand, or had come to understand already, but which the Court of an earlier day, as its own declarations disclosed, had not been able to perceive. As the decisions were thus comprehensible they were also defensible, not merely as the victories of one doctrinal school over another by dint of numbers (victories though they were), but as applications of constitutional principle to facts as they had not been seen by the Court before.").

[122] 300 U.S. 379, 400 (1937).

[123] *See, e.g.,* Lochner v. New York, 198 U.S. 45, 64 (1905) (striking down a New York law establishing a ceiling on the number of hours a bakery employee could work during a week). The Fourteenth Amendment Due Process Clause prohibits any state from "depriv[ing] any person of life, liberty, or property, without due process of law ... "

[124] *West Coast Hotel*, 300 U.S. at 390 (overturning Adkins v. Children's Hosp., 261 U.S. 525 (1923), which had struck down a state's minimum wage law for women).

[125] *West Coast Hotel*, 300 U.S. at 399. *See also Casey,* 505 U.S. at 861-62 ("[T]he lesson that seemed unmistakable to most people by 1937 [was] that the interpretation of contractual freedom protected in *Adkins* rested on fundamentally false factual assumptions about the capacity of a relatively unregulated market to satisfy minimal levels of human welfare.").

[126] 347 U.S. 483, 495 (1954).

[127] *Id.*

public accommodations did not violate Thirteenth or Fourteenth Amendment guarantees.[128] The Court in *Brown,* relying on academic studies, pointed to changes in society's understanding of the stigmatizing effects of racial discrimination in reaching its result, noting that "[w]hatever may have been the extent of psychological knowledge at the time of *Plessy v. Ferguson*, this finding [of racial stigma] is amply supported by modern authority. Any language in *Plessy v. Ferguson* contrary to this finding is rejected."[129] The Court later characterized *Brown* as having overruled *Plessy.*[130] Regardless of whether the *Casey* plurality's account of the Court's decisions in *West Coast Hotel* and *Brown* was completely accurate, it is clear that, throughout the Court's history, at least some Justices have considered changes in factual understandings to be a key element in determining whether to retain or overrule precedent.

Factual developments also played a key role in a decision from the 2017-2018 term, *South Dakota v. Wayfair*, in which the Court overturned its holdings in two earlier cases,[131] determining that the Commerce Clause does not restrict states from requiring retailers that lack a physical presence in the state, such as Internet retailers, to collect and remit taxes on sales made to state residents.[132] In rejecting its precedents to the contrary, the Court noted that since deciding these cases, the economy had changed drastically, with a marked increase in the prevalence and power of Internet access and concomitant increases in retailers selling goods remotely to consumers.[133] As a result, states faced an increased "revenue shortfall" estimated at up to $33 billion per year in sales tax revenue, allegedly traceable to the Court's prior decisions.[134] These drastic changes in the economy required the Court to overturn two of its precedents that had prevented states from taxing such sales.[135]

Reliance on the Precedent

In contrast to the four factors above, which generally ask whether a precedent should be overruled because of some deficiency in its legal or factual underpinnings, the reliance factor asks whether the Supreme Court should retain a precedent, even if flawed, because certain parties would suffer hardship if a case were overruled.[136] This factor considers reliance on the rules and principles

[128] 163 U.S. 537, 542, 550-52 (1896).

[129] *Brown,* 347 U.S. at 494-95.

[130] Bob Jones Univ. v. United States, 461 U.S. 574, 592-93 (1983) ("Prior to 1954, public education in many places still was conducted under the pall of *Plessy v. Ferguson,* 163 U. S. 537 (1896); racial segregation in primary and secondary education prevailed in many parts of the country. This Court's decision in *Brown v. Board of Education,* 347 U. S. 483 (1954), signalled an end to that era.") (citation omitted).

[131] The Court overruled *Nat'l Bellas Hess, Inc.* v. *Dep't of Revenue of the State of Illinois,* 386 U.S. 753 (1967), and *Quill Corp.* v. *North Dakota,* 504 U.S. 298 (1992).

[132] 585 U.S. ___, No. 17-494, slip op. at 23-24 (2018).

[133] *Id.* at 18-19.

[134] *Id.*

[135] *Id.*

[136] *See id.* at 20 ("Reliance interests are a legitimate consideration when the Court weighs adherence to an earlier but flawed precedent."); Dickerson v. United States, 530 U.S. 428, 443-44 (2000) (stating that *Miranda v. Arizona,* which held that certain warnings must be given to a criminal suspect in order to admit statements he made during custodial interrogation into evidence, had become "embedded in routine police practice to the point where the warnings have become part of our national culture"); Hubbard v. United States, 514 U.S. 695, 716 (1995) (Scalia, J., concurring in part) (stating that stare decisis "protects the legitimate expectations of those who live under the law"); Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 855 (1992) (plurality opinion) (considering whether *Roe* could be overruled "without serious inequity to those who have relied upon it"); Hilton v. S.C. Pub. Rys. Comm'n, 502 U.S. 197, 202 (1991) (stating that stare decisis "has added force when the legislature, in the public sphere, and citizens, in the private realm, have acted in reliance on a previous decision, for in this instance overruling the decision would

contained in the Supreme Court's prior decisions by individuals, companies, or organizations; society as a whole; or legislative, executive, or judicial government officials.[137]

Economic Reliance

Throughout its history, the Supreme Court has often adhered to precedent because of economic reliance interests (i.e., investment of time, effort, or money).[138] The early Court held that economic reliance by businesses or individuals on the Court's precedents should weigh against overruling precedent, particularly in matters of property or contract law.[139] By contrast, although economic reliance may counsel against overturning precedent, the Court has not given much weight to individual reliance on procedural or evidentiary rules.[140]

A recent example of the Supreme Court considering economic reliance when determining whether to overrule precedent is *Janus*, in which the Supreme Court overturned *Abood v. Detroit Board of Education*[141] and determined that laws that require public employees to pay "fair share" fees to the union designated to represent their bargaining unit, even if the employees are not members of the union, violated the First Amendment by compelling speech on matters of public concern.[142] In doing so, the Court rejected arguments that public employers and labor unions relied upon *Abood* allowing compelled payment of fees when negotiating and entering into collective bargaining agreements.[143] The Court stated that reliance was insufficient to save *Abood* for several reasons, including that free speech rights were of greater importance than reliance interests; the labor contracts would expire in a few years anyway; *Abood'*s unworkable standard for deciding when a union could charge fees to nonmembers meant that parties should not have relied upon it; and the Court had given notice in its prior decisions that *Abood* might be overruled by criticizing *Abood*'s reasoning.[144]

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dislodge settled rights and expectations or require an extensive legislative response.").

[137] *See* STEPHEN BREYER, AMERICA'S SUPREME COURT: MAKING OUR DEMOCRACY WORK 152 (2011) ("Individuals and firms may have invested time, effort, and money based on [a judicial] decision. The more the Court undermines this kind of reliance, the riskier investment becomes. The more the Court engages in a practice that appears to ignore that reliance, the more the practice threatens economic prosperity."); Kozel, *supra* note 49, at 452 ("The universe of reliance interests can be usefully (if roughly) divided into four categories: reliance by specific individuals, groups, and organizations; reliance by governments; reliance by courts; and reliance by society at large.").

[138] Lee, *supra* note 35, at 734.

[139] *Id.* at 691-703 (discussing cases). *See also, e.g.*, McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 401 (1819) ("[A]n exposition of the constitution, deliberately established by legislative acts, on the faith of which an immense property has been advanced, ought not to be lightly disregarded.").

[140] *See* Payne v. Tennessee, 501 U.S. 808, 828 (1991) ("Considerations in favor of stare decisis are at their acme in cases involving property and contract rights, where reliance interests are involved ... the opposite is true in cases such as the present one involving procedural and evidentiary rules.") (citations omitted).

[141] 431 U.S. 209 (1977).

[142] 585 U.S. ___, No. 16-1466, slip op. at 1 (2018) ("We conclude that this arrangement violates the free speech rights of nonmembers by compelling them to subsidize private speech on matters of substantial public concern.").

[143] *Id.* at 44-45.

[144] *Id.* at 44-47. In a footnote, the Court rejected the argument that state legislators had relied upon *Abood* by enacting statutes authorizing agency fee provisions and that the legislators would face difficulties in amending these laws to comply with *Janus*. *Id.* at 47 n.27.

Societal Reliance

In the late twentieth century, the Supreme Court recognized that reliance could be by society as a whole.[145] A prominent example of this type of reliance is the Court's decision in *Casey*, in which the plurality opinion stated that "for two decades ... people have organized intimate relationships and made choices that define their views of themselves and their places in society, in reliance on the availability of abortion in the event that contraception should fail."[146] The plurality indicated that societal reliance on *Roe* required retention of its central holding, arguing that the "ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives."[147] On the other hand, a dissenting Chief Justice Rehnquist accused the plurality of "having failed to put forth any evidence to prove any true reliance" and having instead relied "solely on generalized assertions about the national psyche, on a belief that the people of this country have grown accustomed to the *Roe* decision over the last 19 years and have 'ordered their thinking and living around' it."[148] As is evident, arguments for retaining precedent based on societal reliance prompted strong debate among the Justices in *Casey*.

An example of a majority of the Supreme Court adhering to precedent because of societal reliance is the Court's decision in *Dickerson v. United States*, which addressed the constitutionality of a federal statute governing the admissibility of statements made during police interrogation, a law that functionally would have overruled the 1966 case of *Miranda v. Arizona*.[149] In striking down the statute, the majority opinion, authored by Chief Justice Rehnquist, declined to overrule *Miranda* despites doubts about the merits of its reasoning, noting that the 1966 case had "become embedded in routine police practice to the point where the warnings have become part of our national culture."[150]

Although the Court's reference to societal reliance as a justification for retaining precedent may help to preserve precedents that recognize constitutional protection of an individual right,[151] the notion of "cultural" or "societal" reliance has been criticized by some commentators as providing the Court with unbounded discretion to retain or overturn precedent.[152] Indeed, the Supreme

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[145] *See, e.g.,* Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 856 (1992) (plurality opinion) (stating that "reliance on *Roe* cannot be exactly measured" but that hardship to "people who have ordered their thinking and living around that case [cannot] be dismissed.").

[146] *Id.*

[147] *Id.*

[148] *Id.* at 957 (Rehnquist, C.J., dissenting).

[149] 530 U.S. 428, 431–32 (2000).

[150] *Id.* at 443; *see also id.* at 432 ("We hold that *Miranda*, being a constitutional decision of this Court, may not be in effect overruled by an Act of Congress, and we decline to overrule *Miranda* ourselves. We therefore hold that *Miranda* and its progeny in this Court govern the admissibility of statements made during custodial interrogation in both state and federal courts.").

[151] *See* Lawrence v. Texas, 539 U.S. 558, 577 ("In *Casey* we noted that when a Court is asked to overrule a precedent recognizing a constitutional liberty interest, individual or societal reliance on the existence of that liberty cautions with particular strength against reversing course."); Payne v. Tennessee, 501 U.S. 808, 852-53 (1991) (Marshall, J., dissenting) (stating that stare decisis' role in preserving judicial integrity "is in many respects even *more* critical in adjudication involving constitutional liberties than in adjudication involving commercial entitlements.").

[152] *See e.g.* Alexander Lazaro Mills, *Reliance by Whom? The False Promise of Societal Reliance in Stare Decisis Analysis*, 92 N.Y.U. L. REV. 2094, 2096 (2017) ("Ultimately, societal reliance provides the Court with vast and unpredictable discretion when deciding whether to overturn a contested precedent.").

Court has not provided significant guidance as to when societal or cultural reliance interests favor overruling precedent and when they do not.[153]

Government Reliance

The Supreme Court's precedents may also foster government reliance. They may provide guidance for officials in the legislative, executive, and judicial branches as to what actions and practices comport with the Constitution.[154] As a result, they may demarcate and illuminate the relationships between the branches of the federal government or the federal government and states.[155] Government reliance has been implicated in some of the Court's most critical, long-standing precedents of major economic importance, such as decisions that adopted a broad view of Congress' power under the Commerce Clause and thereby established the foundation for the modern administrative state[156] and the Court's 1870 decision in *Knox v. Lee,* which established the constitutionality of Congress authorizing the issuance of paper money as legal tender.[157]

Some Justices have argued that legislators may rely on the Supreme Court's decisions about the constitutionality of certain types of laws when they draft legislation. For example, in *Lawrence v. Texas*, the Court struck down a Texas law that banned private, consensual same-sex sexual activity as violating the Due Process Clause of the Fourteenth Amendment.[158] Justice Kennedy debated a dissenting Justice Scalia over whether reliance on the Court's earlier decision in *Bowers v. Hardwick*, which had upheld a law criminalizing similar same-sex activities, required retaining *Bowers* as precedent.[159] Justice Kennedy argued that there were no relevant reliance interests that counseled against overruling *Bowers.*[160] In a vigorous dissent, Justice Scalia argued that legislators had relied upon *Bowers* in enacting numerous laws regulating certain sexual behaviors deemed immoral by the governing majority.[161] Scalia argued that *Lawrence* called into

[153] *Id.* at 2095 (stating that the Supreme Court often references reliance "summarily"); Kozel, *supra* note 49, at 452 (stating that the Court has not explained in detail what reliance means for purposes of stare decisis but has instead "briefly nodded toward the importance of reliance and then forged ahead").

[154] *See infra* notes 155-68 and accompanying text.

[155] Gerhardt, *The Role of Precedent, supra* note 3, at 86.

[156] *A Talk with Judge Robert H. Bork,* DISTRICT LAW., May/June 1985, at 32 ("So many statutes, regulations, governmental institutions, private expectations, and so forth have been built up around that broad interpretation of the commerce clause that it would be too late, even if a justice or judge became certain that that broad interpretation is wrong as a matter of original intent, to tear it up and overturn it."). For a list of a sample of these cases, see Gerhardt, *The Role of Precedent, supra* note 3, at 88-89 & nn.79-80.

[157] Knox v. Lee, 79 U.S. (12 Wall.) 457, 569-70 (1870) (overruling Hepburn v. Griswold, 75 U.S. (8 Wall.) 603 (1870). *See also* Gerhardt, *supra* note 3, at 88 ("The decision is over one hundred years old; financial and other important social institutions have been built on expectations that the decision will not be overruled; and, even though it has been criticized as a deviation from original understanding, it has been accepted by a wide range of political interests such that there is no well-organized political force working to undo it. It is hard to conceive of circumstances in which the Court would even consider overruling it."); Cooper, *supra* note 49, at 410 ("Surely a judge need not vote to overrule an erroneous precedent if to do so would pitch the country into the abyss.... I am advised by experts in such matters that the paper money case is one such case ... ").

[158] 539 U.S. 558, 578-79 (2003).

[159] *See id.* at 589-90 (Scalia, J., dissenting).

[160] *See id.* at 577 (majority opinion).

[161] *Id.* at 589-90 (Scalia, J., dissenting) ("Countless judicial decisions and legislative enactments have relied on the ancient proposition that a governing majority's belief that certain sexual behavior is 'immoral and unacceptable' constitutes a rational basis for regulation.").

question the viability of these laws, and that protecting legislative reliance interests merited retention of *Bowers*.[162]

Executive branch officials also arguably rely on Supreme Court precedents. For instance, in *Arizona v. Gant*, the Court held that the search-incident-to-arrest exception to the Fourth Amendment's requirement that the government obtain a warrant to search an arrestee's vehicle applied only if the arrestee could access the vehicle at the time of the search so that he could have gained possession of a weapon or destructible evidence or, alternatively, when it was "reasonable to believe that evidence of the offense of arrest might be found in the vehicle."[163] Justice Alito authored a dissent in which he argued that the majority's opinion had effectively overruled *New York v. Belton,*[164] a case that he characterized as providing police officers more certainty as to the permissibility of searching a vehicle's occupant after arrest.[165] Alito wrote that law enforcement officers had relied on *Benton*, and that "the *Benton* rule has been taught to police officers for more than a quarter century. Many searches—almost certainly including more than a few that figure in cases now on appeal—were conducted in scrupulous reliance on that precedent."[166]

And, as noted, judges often rely on precedent, both explicitly by citing to precedent in their opinions,[167] and implicitly, by accepting principles established by precedent, such as the power of judicial review.[168]

Conclusion

The Supreme Court's prior decisions on matters of constitutional law appear to inform the Justices' decisions in future cases.[169] Because these precedents may implicate highly divisive and controversial issues, much debate and litigation has turned on the manner in which the Court determines whether to retain or overrule its prior decisions.[170] Although this debate has often focused on the doctrine of stare decisis, the Court has stated that this doctrine is just one factor, among several others, that it considers when reviewing precedent.[171]

A survey of Court decisions, applying the various stare decisis factors, suggests that it is difficult to predict when the Court will overrule a prior decision. This uncertainty stems from a number of sources, including the fact that the Court has not provided a complete list of factors that it considers when making that determination or explained how it weighs each factor.[172] Furthermore, sometimes a Justice's judicial philosophy may conflict with precedent, potentially

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[162] *Id.*

[163] 556 U.S. 332, 335 (2009).

[164] 453 U.S. 454 (1981).

[165] *Gant*, 556 U.S. at 358-60 (Alito, J., dissenting).

[166] *Id.*

[167] *See, e.g.*, Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n, 576 U.S. ___, No. 13-1314, slip op. at 15 (2015) (relying on three cases from the early twentieth century in holding that the voters of Arizona could remove from the state legislature the authority to redraw the boundaries for legislative districts and vest that authority in an independent commission).

[168] *See, e.g.*, United States v. Hatter, 532 U.S. 557, 560-61 (2001) (striking down part of a federal law as unconstitutional without citing *Marbury v. Madison*).

[169] *Supra* note 167.

[170] See "Introduction" above.

[171] See "Factors the Supreme Court Considers When Deciding Whether to Overrule Constitutional Precedent" above.

[172] *See id.*

requiring a Justice to choose between following his or her philosophy or making a pragmatic exception to it in order to maintain stability in the law.[173]

Although much about how the Supreme Court views precedent remains unclear, the Court's factors for determining whether to retain or overrule precedent provide the Justices with significant discretion.[174] As Justice Samuel Alito stated during his confirmation hearings when asked what "special justifications" counsel for overruling precedent:

> Well, I think what needs to be done is a consideration of all of the factors that are relevant. This is not a mathematical formula. It would be a lot easier for everybody if it were. But it is not. The Supreme Court has said that this is a question that calls for the exercise of judgment. They have said there has to be a special justification for overruling a precedent. There is a presumption that precedents will be followed. But it is not—the rule of *stare decisis* is not an inexorable command, and I don't think anybody would want a rule in the area of constitutional law that ... said that a constitutional decision, once handed down, can never be overruled.[175]

Thus, if the Court is unable to distinguish a precedent from the case before it, the Justices, to preserve the Court's legitimacy, generally attempt to strike a delicate balance between maintaining a stable jurisprudence on which parties can rely while preserving sufficient flexibility to correct errors.[176]

[173] See "Originalism, Textualism, and Stare Decisis" above.

[174] See "Factors the Supreme Court Considers When Deciding Whether to Overrule Constitutional Precedent" above.

[175] *Confirmation Hearing on the Nomination of Samuel A. Alito, Jr. To Be an Associate Justice of the Supreme Court of the United States: Hearing Before the S. Comm. on the Judiciary,* 109th Cong. 399 (2006)

[176] See "Reasons for the Supreme Court's Adherence to Principles of Stare Decisis" and "Reasons for the Supreme Court's Overruling of Precedent" above.

Appendix. Overruled Supreme Court Decisions on Matters of Constitutional Law

The table below lists Supreme Court decisions on substantive questions[177] of federal constitutional law[178] that the Court[179] subsequently overruled. The table was compiled by searching the LEXIS database for all Supreme Court decisions that use the word "overrule" in the headnotes, syllabus, or text of the Court's opinion. Decisions supported by a majority of the Court that expressly overruled[180] an earlier decision were listed in the table. The listed cases include decisions identified by the search terms in which the Court partially overruled or otherwise qualified a prior case.[181] These findings were also cross-checked with other sources to ensure that the search had captured any relevant results.[182]

[177] The table does not include cases in which the Court reversed an earlier procedural ruling (e.g., lifting a previously issued stay). *See, e.g.*, Paramount Publix Corp. v. Am. Tri-Ergon Corp., 293 U.S. 528 (1934) (reversing a prior order denying certiorari).

[178] This list does not include overruled precedents that involved questions of statutory construction, interpretation of state law, common law, or judicial rules of procedure or evidence. It does not include overruled cases that were subject to congressional revision, such as cases upholding or striking down state laws on the grounds that they violated the Commerce Clause, because the Supreme Court treats precedents that Congress could modify through the enactment of legislation as statutory cases for purposes of stare decisis. *See* South Dakota v. Wayfair, 585 U.S. ___, No. 17-494, slip op. at 2 (2018) (Roberts, C.J., dissenting) ("The bar [for departing from stare decisis and overturning precedent] is even higher in fields in which Congress 'exercises primary authority' and can, if it wishes, override this Court's decisions with contrary legislation.") (citations omitted).

[179] The table does not address subsequent developments, such as the enactment of constitutional amendments, which may reverse the Court's decisions. *See supra* note 54.

[180] *See, e.g.*, Hurst v. Florida, 577 U.S. ___, No. 14–7505, slip op., at 9 (2016) ("We now expressly overrule *Spaziano* and *Hildwin* ... "); Williams v. North Carolina, 317 U.S. 287, 304 (1942) ("*Haddock v. Haddock* is overruled ... "). In some cases, the Court may identify several decisions related to a particular legal doctrine and then state that the doctrine is overruled. *See, e.g.*, Elkins v. United States, 364 U.S. 206, 208 (1960) ("In a word, we re-examine here the validity of what has come to be called the silver platter doctrine. For the reasons that follow we conclude that this doctrine can no longer be accepted."). In such circumstances, cases that the Court expressly identifies in the overruling decision are listed.

[181] For example, in *United States v. Hatter*, the Court overruled *Evans v. Gore* "insofar as [*Evans*] holds that the Compensation Clause forbids Congress to apply a generally applicable, nondiscriminatory tax to the salaries of federal judges, whether or not they were appointed before enactment of the tax." 532 U.S. 557, 567 (2001). *See also* Lapides v. Bd. of Regens of Univ. System of Ga., 535 U.S. 613, 623 (2002) ("[F]or these same reasons, we conclude that *Clark*, *Gunter*, and *Gardner* represent the sounder line of authority. Finding *Ford* inconsistent with the basic rationale of that line of cases, we consequently overrule *Ford* insofar as it would otherwise apply."). Similarly, in *Fulton Corp. v. Faulkner*, the Court distinguished an earlier decision's treatment of the Equal Protection and Commerce Clauses, stating: "To the extent that *Darnell* evaluated a discriminatory state tax under the Equal Protection Clause, time simply has passed it by.... [W]hile cases like *Kidd* and *Darnell* may still be authorities under the Equal Protection Clause, they are no longer good law under the Commerce Clause." 516 U.S. 325, 345 (1996). *See also* 44 Liquormart, Inc. v. Rhode Island, 517 U.S. 484, 516 (1996) ("Without questioning the holding in *LaRue*, we now disavow its reasoning insofar as it relied on the Twenty-First Amendment.").

[182] *See, e.g.*, Gerhardt, *The Role of Precedent*, *supra* note 3; MICHAEL J. GERHARDT, THE POWER OF PRECEDENT, *supra* note 3; Jon D. Noland, *Stare Decisis and the Overruling of Constitutional Decisions in the Warren Years*, 4 VAL. U.L. REV. 101 (1969/1970); S. Sidney Ulmer, *An Empirical Analysis of Selected Aspects of Lawmaking of the United States Supreme Court*, 8 J. PUB. L. 414 (1959); Blaustein & Field, *supra* note 18; Charlotte C. Bernhardt, *Supreme Court Reversals on Constitutional Issues*, 34 CORNELL L.Q. 55 (1948/1949); WILLIAM O. DOUGLAS, WE THE JUDGES (1965); William O. Douglas, *Stare Decisis*, 49 COLUM. L. REV. 735 (1949); Burnet v. Coronado Oil & Gas Co., 285 U.S. 393, 406-09 nn.1-4 (1932) (Brandeis, J., dissenting); Payne v. Tennessee, 301 U.S. 808, 830 (1991).

For a decision to be listed as overruled, a majority of the Court must have explicitly stated, in a subsequent decision, that the case has been overruled.[183] Consequently, the table does not include cases that the Court distinguished or limited[184] or cases identified by concurring or dissenting Justices or commentators as overruled,[185] unless such cases have also been expressly overruled by a majority of the Court. The list also does not include cases whose legal foundations have merely been eroded by subsequent decision without explicitly being overruled[186] or that the Court treats as discredited.[187] It also does not include cases in which the Court issued a ruling on the merits after having split evenly on the issue previously.[188] The list does not necessarily reflect the current state of the law.

The table is arranged in chronological order by the date of the overruling decision. For each overruling decision listed, the table gives (1) the name of the overruling decision; (2) the date of

[183] *See, e.g.*, United States v. Rabinowitz, 339 U.S. 56, 66 (1950) ("To the extent that *Trupiano v. United States* ... requires a search warrant solely upon the basis of the practicability of procuring it rather than upon the reasonableness of the search after a lawful arrest, that case is overruled."). The table also lists cases in which a majority of the Court has explicitly rejected some principle announced in an earlier case, even if the Justices did not use the word "overruled." *See, e.g.*, Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495, 502 (1952) ("For the foregoing reasons, we conclude that expression by means of motion pictures is included within the free speech and free press guaranty of the First and Fourteenth Amendments. To the extent that language in the opinion in *Mutual Film Corp. v. Industrial Comm'n* ... is out of harmony with the views here set forth, we no longer adhere to it."); Alpha Portland Cement Co. v. Massachusetts, 268 U.S. 203, 218 (1925) ("So far as the language of *Baltic Mining Co. v. Massachusetts* ... tends to support a different view it conflicts with conclusions reached in later opinions and is now definitely disapproved.").

[184] *See, e.g.*, United States v. Class, 313 U.S. 299, 317 (1941) ("In *Newberry v. United States*, ... four Justices of this Court were of opinion that the term 'elections' in §4 of Article I did not embrace a primary election, since that procedure was unknown to the framers. A fifth Justice, who with them pronounced the judgment of the Court, was of opinion that a primary, held under a law enacted before the adoption of the Seventeenth Amendment, for the nomination of candidates for Senator, was not an election within the meaning of §4 of Article I of the Constitution, presumably because the choice of the primary imposed no legal restrictions on the election of Senators by the state legislatures to which their election had been committed by Article I, §3. The remaining four Justices were of the opinion that a primary election for the choice of candidates for Senator or Representative were elections subject to regulation by Congress within the meaning of §4 of Article I. The question then has not been prejudged by any decision of this Court."); *In re* Ayers, 123 U.S. 443 (1887) (distinguishing Osborn v. Bank of the United States, 22 U.S. (9 Wheat.) 738 (1824)).

[185] *See, e.g.*, Mitchell v. W.T. Grant Co., 416 U.S. 600, 634-35 (1975) (Stewart, J., dissenting) ("Yet the Court today has unmistakably overruled a considered decision of this Court that is barely two years old, without pointing to any change in either societal perceptions or basic constitutional understandings that might justify this total disregard of *stare decisis*."); Berger v. New York, 388 U.S. 41, 64 (1967) (Douglas, J., concurring) ("I join the opinion of the Court because at long last it overrules *sub silentio Olmstead v. United States* ... and its offspring and brings wiretapping and other electronic eavesdropping fully within the purview of the Fourth Amendment.").

[186] Katz v. United States, 389 U.S. 347, 353 (1967) ("We conclude that the underpinnings of *Olmstead* and *Goldman* have been so eroded by our subsequent decisions that the 'trespass' doctrine there enunciated can no longer be regarded as controlling.").

[187] In a few instances, this approach may have counterintuitive results, such as the list's treatment of *Plessy v. Ferguson*. 163 U.S. 537 (1896). This 1896 decision, which held that the provision of "separate but equal" accommodations for African Americans does not run afoul of the constitutional guarantee of equal protection, is sometimes said to have been overruled by the Court's 1954 decision in *Brown v. Board of Education*. 347 U.S. 483 (1954). However, *Brown*'s language is more limited, stating only that "We conclude that, in the field of public education, the doctrine of 'separate but equal' has no place," (*Id*. at 495) and distinguishing potentially conflicting case law as simply not addressing the ultimate holding in *Brown*. 347 U.S. at 491 (noting that "in *Cumming v. County Board of Education*, 175 U.S. 528, and *Gong Lum v. Rice*, 275 U.S. 78, the validity of the doctrine [of 'separate but equal' in public education] itself was not challenged."). Instead, the list provides that *Plessy* was firmly repudiated by the Court in a much later case, *Bob Jones University v. United States*, 461 U.S. 574 (1983).

[188] *Compare* Chesapeake & Ohio Ry. Co. v. Leitch, 276 U.S. 429 (1928) (rehearing), *with* Chesapeake & Ohio Ry. Co. v. Leitch, 275 U.S. 507 (1927) (per curiam) (affirming the decision of the lower court by a vote of four votes to four votes).

the overruling decision; (3) the name of the overruled decision; (4) the date of the overruled decision; and (5) the exact words used by the overruling Court in overturning the earlier decision.

Table A-1. List of Overruled Supreme Court Decisions

Decisions on Matters of Constitutional Law

No.	Overruling Decision	Date of Overruling Decision	Overruled Decision(s)	Date of Overruled Decision(s)	Operative Language
1	The Propeller Genesee Chief, 53 U.S. (12 How.) 443	1851	The Steamboat Thomas Jefferson, 23 U.S. (10 Wheat.) 428 (1825)	1837 1825	It is the decision in the case of The Thomas Jefferson which mainly embarrasses the Court in the present inquiry. We are sensible of the great weight to which it is entitled. But at the same time we are convinced that if we follow it, we follow an erroneous decision into which the Court fell when the great importance of the question as it now presents itself could not be foreseen, and the subject did not therefore receive that deliberate consideration which at this time would have been given to it by the eminent men who presided here when that case was decided.
2	Knox v. Lee (Legal Tender Cases), 79 U.S. (12 Wall.) 457	1871	Hepburn v. Griswold, 75 U.S. (8 Wall.) 603	1870	In so holding, we overrule so much of what was decided in Hepburn v. Griswold, as ruled the acts unwarranted by the Constitution so far as they apply to contracts made before their enactment.
3	Kilbourn v. Thompson, 103 U.S. 168	1881	Anderson v. Dunn, 19 U.S. (6 Wheat.) 204	1821	We must, therefore, hold, notwithstanding what is said in the case of Anderson v. Dunn, that the resolution of the House of Representatives finding Kilbourn guilty of contempt, and the warrant of its speaker for his commitment to prison, are not conclusive in this case, and in fact are no justification, because, as the whole plea shows, the House was without authority in the matter.
4	In re Ayers, 123 U.S. 443	1887	Osborn v. Bank of the United States, 22 U.S. (9 Wheat.) 738	1824	We insist that this court has repeatedly overruled the announcement made in that case that "the Eleventh Amendment which restrains the jurisdiction granted by the Constitution over suits against the State, is, of necessity, limited to those suits in which a State is a party on the record."
5	Garland v. Washington, 232 U.S. 642	1914	Crain v. United States, 162 U.S. 625	1896	Holding this view, notwithstanding our reluctance to overrule former decisions of this court, we now are constrained to hold that the technical enforcement of formal rights in criminal procedure sustained in the Crain Case is no longer required in the prosecution of offenses under present systems of law, and so far as that case is not in accord with the views herein expressed it is necessarily overruled.

No.	Overruling Decision	Date of Overruling Decision	Overruled Decision(s)	Date of Overruled Decision(s)	Operative Language
6	United States v. Nice, 241 U.S. 591	1916	Matter of Heff, 197 U.S. 488	1905	We recognize that a different construction was placed upon § 6 of the act of 1887 in Matter of Heff, 197 U.S. 488, but after reexamining the question in the light of other provisions in the act and of many later enactments clearly reflecting what was intended by Congress, we are constrained to hold that the decision in that case is not well grounded, and it is accordingly overruled.
7	Pa. R.R. Co. v. Towers, 245 U.S. 6	1917	Lake Shore & Mich. S. Ry. Co. v. Smith, 173 U.S. 684	1899	True it is that it may not be possible to reconcile these views with all that is said in the opinion delivered for the majority of the court in the case of Lake Shore & Michigan Southern Ry. Co. v. Smith.... The views therein expressed with are inconsistent with the right of the States to fix reasonable commutation fares when the carrier has itself established fares for such service, must be regarded as overruled by the decision in this case.
8	Terral v. Burke Constr. Co., 257 U.S. 529	1922	Security Mut. Life Ins. Co. v. Prewitt, 202 U.S. 246 (1906); Doyle v. Cont'l Ins. Co., 94 U.S. 535 (1877)	1906 1877	It follows that the cases of Doyle v. Continental Insurance Co. ... and Security Mutual Life Insurance Co. v. Prewitt ... must be considered as overruled and that the views of the minority judges in those cases have become the law of this court.
9	Alpha Portland Cement Co. v. Massachusetts, 268 U.S. 203	1925	Baltic Mining Co. v. Massachusetts, 231 U.S. 68	1913	So far as the language of Baltic Mining Co. v. Massachusetts ... tends to support a different view it conflicts with conclusions reached in later opinions and is now definitely disapproved.
10	Farmers Loan & Tr. Co. v. Minnesota, 280 U.S. 204	1930	Blackstone v. Miller, 188 U.S. 189 (1903)	1903	Blackstone v. Miller no longer can be regarded as a correct exposition of existing law; and to prevent misunderstanding it is definitely overruled.
11	Fox Film Corp. v. Doyal, 286 U.S. 123	1932	Long v. Rockwood, 277 U.S. 142	1928	The affirmance of the judgment in the instant case cannot be reconciled with the decision in Long v. Rockwood ... upon which appellant relies, and in view of the conclusions now reached upon a re-examination of the question, that case is definitely overruled.
12	W. Coast Hotel Co. v. Parrish, 300 U.S. 379	1937	Adkins v. Children's Hosp. of D.C., 261 U.S. 525 (1923)	1936 1923	Our conclusion is that the case of Adkins v. Children's Hospital ... should be, and it is, overruled.

No.	Overruling Decision	Date of Overruling Decision	Overruled Decision(s)	Date of Overruled Decision(s)	Operative Language
13	Helvering v. Mountain Producers Corp., 303 U.S. 376	1938	Burnet v. Coronado Oil & Gas Co., 285 U.S. 393 (1932); Gillespie v. Oklahoma, 257 U.S. 501 (1922)	1932 1922	We are convinced that the rulings in Gillespie v. Oklahoma, supra, and Burnet v. Coronado Oil & Gas Co. ... are out of harmony with correct principle and accordingly they should be, and they now are, overruled.
14	Erie R.R. v. Tompkins, 304 U.S. 64	1938	Swift v. Tyson, 41 U.S. (16 Pet.) 1	1842	In disapproving that doctrine [i.e., that of Swift], we do not hold unconstitutional § 34 of the Federal Judiciary Act of 1789 or any other Act of Congress.
15	Graves v. New York ex rel. O'Keefe, 306 U.S. 466	1939	New York ex rel. Rogers v. Graves, 299 U.S. 401 (1937); Collector v. Day, 78 U.S. (11 Wall.) 113 (1871)	1937 1871	Collector v. Day, supra, and New York ex rel. Rogers v. Graves, supra, are overruled so far as they recognize an implied constitutional immunity from income taxation of the salaries of officers or employees of the national or a state government or their instrumentalities.
16	O'Malley v. Woodrough, 307 U.S. 277	1939	Miles v. Graham, 268 U.S. 501 (1925); Evans v. Gore, 253 U.S. 245 (1920)	1925 1920	[T]he meaning which Evans v. Gore imputed to the history which explains Article III, § 1, was contrary to the way in which it was read by other English-speaking courts. The decision met wide and steadily growing disfavor from legal scholarship and professional opinion. Evans v. Gore itself was rejected by most of the courts before whom the matter came after that decision ... But to the extent that what the Court now says is inconsistent with what was said in Miles v. Graham ... the latter cannot survive.
17	Madden v. Kentucky, 309 U.S. 83	1940	Colgate v. Harvey, 296 U.S. 404 (1935)	1935	Appellant relies upon Colgate v. Harvey as a precedent to support his argument that the present statute is not within the limits of permissible classification and violates the privileges and immunities clause. In view of our conclusions, we look upon the decision in that case as repugnant to the line of reasoning adopted here. As a consequence, Colgate v. Harvey must be and is overruled.
18	Tigner v. Texas, 310 U.S. 141	1940	Connolly v. Union Sewer Pipe Co., 184 U.S. 540	1902	Connolly's case has been worn away by the erosion of time, and we are of opinion that it is no longer controlling.

No.	Overruling Decision	Date of Overruling Decision	Overruled Decision(s)	Date of Overruled Decision(s)	Operative Language
19	United States v. Darby, 312 U.S. 100	1941	Hammer v. Dagenhart, 247 U.S. 251 (1918)	1936	The conclusion is inescapable that Hammer v. Dagenhart, was a departure from the principles which have prevailed in the interpretation of the Commerce Clause both before and since the decision and that such vitality, as a precedent, as it then had has long since been exhausted. It should be and now is overruled.
20	United States v. Chicago, Milwaukee, St. Paul & Pac. R.R., 312 U.S. 592	1941	United States v. Lynah, 188 U.S. 445 (1903)	1919 1903	The case has often been cited as authority for the settled doctrine that an authorized taking of property for public use gives rise to an implied promise to pay just compensation. But we think this Court has never followed it as a binding decision that compensation is due for injury or destruction of a riparian owner's property located in the bed of a navigable stream. And we think that, so far as it sanctions such a principle, it is in irreconcilable conflict with our later decisions and cannot be considered as expressing the law.
21	Olsen v. Nebraska ex rel. W. Reference & Bond Ass'n, 313 U.S. 236	1941	Ribnik v. McBride, 277 U.S. 350	1928	The drift away from Ribnik v. McBride ... has been so great that it can no longer be deemed a controlling authority.
22	Alabama v. King & Boozer, 314 U.S. 1	1941	Graves v. Texas Co., 298 U.S. 393 (1936); Panhandle Oil Co. v. Mississippi ex rel. Knox, 277 U.S. 218 (1928)	1936 1928	So far as a different view has prevailed, see Panhandle Oil Co. v. Knox ...; Graves v. Texas Co...., we think it no longer tenable.
23	Graves v. Schmidlapp, 315 U.S. 657	1942	Wachovia Bank & Trust Co. v. Doughton, 272 U.S. 567	1926	The Wachovia case should be and now is overruled and the constitutional power of New York to levy the present tax is sustained.
24	State Tax Comm'n of Utah v. Aldrich, 316 U.S. 174	1942	First Nat'l Bank of Boston v. Maine, 284 U.S. 312	1932	For the reasons stated, we do not think that First National Bank v. Maine should survive. We overrule it.
25	Williams v. North Carolina, 317 U.S. 287	1942	Haddock v. Haddock, 201 U.S. 562	1906	Haddock v. Haddock is overruled.

No.	Overruling Decision	Date of Overruling Decision	Overruled Decision(s)	Date of Overruled Decision(s)	Operative Language
26	Murdock v. Pennsylvania, 319 U.S. 105 (1943); Jones v. Opelika, 319 U.S. 103 (1943) (re-argument)	1943	Jones v. Opelika, 316 U.S. 584 (1942)	1942	For the reasons stated in the opinion of the Court in the Murdock case and in the dissenting opinions filed in the present cases after the argument last term, the Court is of opinion that the judgment in each case should be reversed.
27	Okla. Tax Comm'n v. United States, 319 U.S. 598	1943	Childers v. Beaver, 270 U.S. 555	1926	Childers v. Beaver ... was in effect overruled by the Mountain Producers decision.
28	W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624	1943	Minersville Sch. Dist. v. Gobitis, 310 U.S. 586	1940	The decision of this Court in Minersville School District v. Gobitis and the holdings of those few per curiam decisions which preceded and foreshadowed it are overruled ...
29	Smith v. Allwright, 321 U.S. 649	1944	Grovey v. Townsend, 295 U.S. 45	1935	Grovey v. Townsend is overruled.
30	Angel v. Bullington, 330 U.S. 183	1947	David Lupton's Sons v. Auto. Club of Am., 225 U.S. 489	1912	Cases like Lupton's Sons Co. v. Automobile Club ... are obsolete insofar as they are based on a view of diversity jurisdiction which came to an end with Erie Railroad v. Tompkins ...
31	Sherrer v. Sherrer, 334 U.S. 343	1948	Andrews v. Andrews, 188 U.S. 14	1903	On its facts, the Andrews case presents variations from the present situation. But insofar as the rule of that case may be said to be inconsistent with the judgment herein announced, it must be regarded as having been superseded by subsequent decisions of this Court.
32	Lincoln Fed. Labor Union v. Nw. Iron & Metal Co., 335 U.S. 525	1949	Coppage v. Kansas 236 U.S. 1 (1915); Adair v. United States, 208 U.S. 161 (1908)	1915 1908	This Court beginning at least as early as 1934, when the Nebbia case was decided, has steadily rejected the due process philosophy enunciated in the Adair-Coppage line of cases. In doing so it has consciously returned closer and closer to the earlier constitutional principle that states have power to legislate against what are found to be injurious practices in their internal commercial and business affairs, so long as their laws do not run afoul of some specific federal constitutional prohibition, or of some valid federal law.

No.	Overruling Decision	Date of Overruling Decision	Overruled Decision(s)	Date of Overruled Decision(s)	Operative Language
33	Okla. Tax Comm'n v. Texas Co., 336 U.S. 342	1949	Oklahoma ex rel. Okla. Tax Comm'n v. Barnsdall Refineries, Inc., 296 U.S. 521 (1936); Large Oil Co. v. Howard, 248 U.S. 549 (1919); Howard v. Gipsy Oil Co., 247 U.S. 503 (1918); Indian Territory Illuminating Oil Co. v. Oklahoma, 240 U.S. 522 (1916); Choctaw, Okla. & Gulf R.R. Co. v. Harrison, 235 U.S. 292 (1914)	1936 1919 1918 1916 1914	In the light of the broad groundings of the Mountain Producers decision and of later decisions, we cannot say that the Gipsy Oil, Large Oil and Barnsdall Refineries decisions remain immune to the effects of the Mountain Producers decision and others which have followed it. They "are out of harmony with correct principle," as were the Gillespie and Coronado decisions and, accordingly, they should be, and they now are, overruled.... Moreover, since the decisions in Choctaw, O. & G. R. Co. v. Harrison ... and Indian Territory Illuminating Oil Co. v. Oklahoma ... rest upon the same foundations as those underlying the Gipsy Oil, Large Oil and Barnsdall Refineries decisions, indeed supplied those foundations, we think they too should be, and they now are, overruled.
34	United States v. Rabinowitz, 339 U.S. 56	1950	Trupiano v. United States, 334 U.S. 699 (1948)	1948 1948	To the extent that Trupiano v. United States ... requires a search warrant solely upon the basis of the practicability of procuring it rather than upon the reasonableness of the search after a lawful arrest, that case is overruled.
35	Standard Oil Co. v. Peck, 342 U.S. 382	1952	Ayer & Lord Tie Co. v. Kentucky, 202 U.S. 409 (1906); Old Dominion S.S. Co. v. Virginia, 198 U.S. 299 (1905); St. Louis v. The Ferry Co., 78 U.S. (11 Wall.) 423 (1870)	1906 1905 1870	Under the earlier view governing the taxability of vessels moving in the inland waters (St. Louis v. Ferry Co., 11 Wall. 423; Ayer & Lord Tie Co. v. Kentucky, 202 U.S. 409; cf. Old Dominion S. S. Co. v. Virginia, 198 U.S. 299), Ohio, the state of the domicile, would have a strong claim to the whole of the tax that has been levied. But the rationale of those cases was rejected in Ott v. Mississippi Barge Line Co., 336 U.S. 169, where we held that vessels moving in interstate operations along the inland waters were taxable by the same standards as those which Pullman's Car Co. v. Pennsylvania, 141 U.S. 18, first applied to railroad cars in interstate commerce. The formula approved was one which fairly apportioned the tax to the commerce carried on within the state. In that way we placed inland water transportation on the same constitutional footing as other interstate enterprises

No.	Overruling Decision	Date of Overruling Decision	Overruled Decision(s)	Date of Overruled Decision(s)	Operative Language
36	Joseph Burstyn, Inc. v. Wilson, 343 U.S. 495	1952	Mut. Film Corp. v. Indus. Comm'n of Ohio, 236 U.S. 230	1915	For the foregoing reasons, we conclude that expression by means of motion pictures is included within the free speech and free press guaranty of the First and Fourteenth Amendments. To the extent that language in the opinion in Mutual Film Corp. v. Industrial Comm'n ... is out of harmony with the views here set forth, we no longer adhere to it.
37	Carroll v. Lanza, 349 U.S. 408	1955	Bradford Elec. Light Co. v. Clapper, 286 U.S. 145	1932	Pacific Employers Insurance Co. v. Commission ... departed, however, from the Clapper decision.
38	Reid v. Covert, 354 U.S. 1	1957	Reid v. Covert, 351 U.S. 487 (1956); Kinsella v. Krueger, 351 U.S. 470 (1956)	1956 1956	The two cases were consolidated and argued last Term and a majority of the Court, with three Justices dissenting and one reserving opinion, held that military trial of Mrs. Smith and Mrs. Covert for their alleged offenses was constitutional.... Subsequently, the Court granted a petition for rehearing ... Now, after further argument and consideration, we conclude that the previous decisions cannot be permitted to stand. We hold that Mrs. Smith and Mrs. Covert could not constitutionally be tried by military authorities.
39	Vanderbilt v. Vanderbilt, 354 U.S. 416	1957	Thompson v. Thompson, 226 U.S. 551	1913	Petitioner claims that this case is governed by Thompson v. Thompson ... For the reasons given in a concurring opinion in Armstrong v. Armstrong, ... the Thompson case, insofar as it held that an ex parte divorce destroyed alimony rights, can no longer be considered controlling.
40	United States v. Raines, 362 U.S. 17	1960	United States v. Reese, 92 U.S. 214	1876	The District Court relied primarily on United States v. Reese.... As we have indicated, that decision may have drawn support from the assumption that if the Court had not passed on the statute's validity in toto it would have left standing a criminal statute incapable of giving fair warning of its prohibitions. But to the extent Reese did depend on an approach inconsistent with what we think the better one and the one established by the weightiest of the subsequent cases, we cannot follow it here.
41	Elkins v. United States, 364 U.S. 206	1960	Weeks v. United States, 232 U.S. 383	1914	[R]eason and experience ... point to the rejection of [the *Weeks*] doctrine.

No.	Overruling Decision	Date of Overruling Decision	Overruled Decision(s)	Date of Overruled Decision(s)	Operative Language
42	Mapp v. Ohio, 367 U.S. 643	1961	Wolf v. Colorado, 338 U.S. 25	1949	It, therefore, plainly appears that the factual considerations supporting the failure of the Wolf Court to include the Weeks exclusionary rule when it recognized the enforceability of the right to privacy against the States in 1949, while not basically relevant to the constitutional consideration, could not, in any analysis, now be deemed controlling.
43	Gideon v. Wainwright, 372 U.S. 335	1963	Betts v. Brady, 316 U.S. 455	1942	Since the facts and circumstances of the two cases are so nearly indistinguishable, we think the Betts v. Brady holding if left standing would require us to reject Gideon's claim that the Constitution guarantees him the assistance of counsel. Upon full reconsideration we conclude that Betts v. Brady should be overruled.
44	Ferguson v. Skrupa, 372 U.S. 726	1963	Adams v. Tanner, 244 U.S. 590	1917	Not only has the philosophy of Adams been abandoned, but also this Court almost 15 years ago expressly pointed to another opinion of this Court as having "clearly undermined" Adams.
45	Wesberry v. Sanders, 376 U.S. 1	1964	Colegrove v. Green, 328 U.S. 549	1964	Mr. Justice Frankfurter's Colegrove opinion contended that Art. I, § 4, of the Constitution 7 had given Congress "exclusive authority" to protect the right of citizens to vote for Congressmen, but we made it clear in Baker that nothing in the language of that article gives support to a construction that would immunize state congressional apportionment laws which debase a citizen's right to vote from the power of courts to protect the constitutional rights of individuals from legislative destruction, a power recognized at least since our decision in Marbury v. Madison….
46	Malloy v. Hogan, 378 U.S. 1, 6	1964	Adamson v. California, 332 U.S. 46 (1947); Twining v. New Jersey, 211 U.S. 78 (1908)	1947 1908	We hold today that the Fifth Amendment's exception from compulsory self-incrimination is also protected by the Fourteenth Amendment against abridgment by the States. Decisions of the Court since Twining and Adamson have departed from the contrary view expressed in those cases.
47	Murphy v. Waterfront Comm'n of N.Y. Harbor, 378 U.S. 52	1964	Feldman v. United States, 322 U.S. 487 (1944); United States v. Murdock, 284 U.S. 141 (1931);	1944 1931	We have now overruled Feldman and held that the Federal Government may make no such use of the answers.... We reject—as unsupported by history or policy—the deviation from that construction only recently adopted by this Court in United States v. Murdock ... and Feldman v. United States ... We hold that the constitutional privilege against self-incrimination protects a state witness against incrimination under federal as well as state law and a federal witness against incrimination under state as well as federal law.

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48	Jackson v. Denno, 378 U.S. 368	1964	Stein v. New York, 346 U.S. 156	1953	Stein v. New York is overruled.
49	McLaughlin v. Florida, 379 U.S. 184	1964	Pace v. Alabama, 106 U.S. 583	1883	In our view, however, Pace represents a limited view of the Equal Protection Clause which has not withstood analysis in the subsequent decisions of this Court.
50	Escobedo v. Illinois, 378 U.S. 478	1964	Cicenia v. Lagay, 357 U.S. 504 (1958); Crooker v. California, 357 U.S. 433 (1958)	1958 1958	In any event, to the extent that Cicenia or Crooker may be inconsistent with the principles announced today, they are not to be regarded as controlling.
51	Pointer v. Texas, 380 U.S. 400	1965	West v. Louisiana, 194 U.S. 258	1904	In the light of Gideon, Malloy, and other cases cited in those opinions holding various provisions of the Bill of Rights applicable to the States by virtue of the Fourteenth Amendment, the statements made in West and similar cases generally declaring that the Sixth Amendment does not apply to the States can no longer be regarded as the law.
52	Harper v. Va. Bd. of Elections, 383 U.S. 663	1966	Breedlove v. Suttles, 302 U.S. 277 (1937)	1937	Breedlove v. Suttles sanctioned its use as "a prerequisite of voting." To that extent the Breedlove case is overruled. (Internal citation omitted.)
53	Miranda v. Arizona, 384 U.S. 436	1966	Crooker v. California, 357 U.S. 433 (1958); Cicenia v. La Gay, 357 U.S. 504 (1958)	1958 1958	In accordance with our holdings today and in Escobedo v. Illinois, 378 U.S. 478, 492, Crooker v. California, 357 U.S. 433 (1958) and Cicenia v. Lagay, 357 U.S. 504 (1958) are not to be followed.
54	Spevack v. Klein, 385 U.S. 511	1967	Cohen v. Hurley, 366 U.S. 117 (1961)	1961	We conclude that Cohen v. Hurley should be overruled, that the Self-Incrimination Clause of the Fifth Amendment has been absorbed in the Fourteenth, that it extends its protection to lawyers as well as to other individuals, and that it should not be watered down by imposing the dishonor of disbarment and the deprivation of a livelihood as a price for asserting it.

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55	Keyishian v. Bd. of Regents, 385 U.S. 589	1967	Adler v. Bd. of Educ., 342 U.S. 485	1952	Indeed, that theory was expressly rejected in a series of decisions following Adler.... We proceed then to the question of the validity of the provisions of subdivision 1 (c) of § 105 and subdivision 2 of § 3022, barring employment to members of listed organizations. Here again constitutional doctrine has developed since Adler.
56	Afroyim v. Rusk, 387 U.S. 253	1967	Perez v. Brownell, 356 U.S. 44	1958	Perez v. Brownell is overruled.
57	Warden, Md. Penitentiary v. Hayden, 387 U.S. 294	1967	Gouled v. United States, 255 U.S. 298 1921	1921	The premise in Gouled that government may not seize evidence simply for the purpose of proving crime has likewise been discredited.
58	Camara v. Mun. Court of San Francisco, 387 U.S. 523	1967	Frank v. Maryland, 359 U.S. 360	1959	Having concluded that Frank v. Maryland, to the extent that it sanctioned such warrantless inspections, must be overruled, we reverse.
59	Katz v. United States, 389 U.S. 347	1967	Goldman v. United States, 316 U.S. 129 (1942); Olmstead v. United States, 277 U.S. 438 (1928)	1942 1928	We conclude that the underpinnings of Olmstead and Goldman have been so eroded by our subsequent decisions that the "trespass" doctrine there enunciated can no longer be regarded as controlling.
60	Marchetti v. United States, 390 U.S. 39	1967	Lewis v. United States, 348 U.S. 419 (1955); United States v. Kahriger, 345 U.S. 22 (1953)	1955 1953	Nothing in the Supreme Court's opinions in Kahriger... and Lewis... now suffices to preclude petitioner's assertion of the constitutional privilege as a defense to the indictments under which he was convicted. To this extent Kahriger and Lewis are overruled.
61	Bruton v. United States, 391 U.S. 123	1968	Delli Paoli v. United States, 352 U.S. 232	1957	We have concluded, however, that Delli Paoli should be overruled. We hold that, because of the substantial risk that the jury, despite instructions to the contrary, looked to the incriminating extrajudicial statements in determining petitioner's guilt, admission of Evans' confession in this joint trial violated petitioner's right of cross-examination secured by the Confrontation Clause of the Sixth Amendment. We therefore overrule Delli Paoli ...

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62	Duncan v. Louisiana, 391 U.S. 145	1968	Maxwell v. Dow, 176 U.S. 581	1900	Maxwell held that no provision of the Bill of Rights applied to the States—a position long since repudiated—and that the Due Process Clause of the Fourteenth Amendment did not prevent a State from trying a defendant for a noncapital offense with fewer than 12 men on the jury.
63	Lee v. Florida, 392 U.S. 378	1968	Schwartz v. Texas, 344 U.S. 199	1952	In view of the Nardone and Benanti decisions, the doctrine of Schwartz v. Texas cannot survive the demise of Wolf v. Colorado ...
64	Jones v. Alfred H. Mayer Co., 392 U.S. 409	1969	Hodges v. United States, 203 U.S. 1	1906	The conclusion of the majority in Hodges rested upon a concept of congressional power under the Thirteenth Amendment irreconcilable with the position taken by every member of this Court in the Civil Rights Cases and incompatible with the history and purpose of the Amendment itself. Insofar as Hodges is inconsistent with our holding today, it is hereby overruled.
65	Moore v. Ogilvie, 394 U.S. 814	1969	MacDougall v. Green, 335 U.S. 281	1948	MacDougall v. Green is overruled.
66	Brandenburg v. Ohio, 395 U.S. 444	1969	Whitney v. California, 274 U.S. 357	1927	Such a statute falls within the condemnation of the First and Fourteenth Amendments. The contrary teaching of Whitney v. California ... cannot be supported, and that decision is therefore overruled.
67	Chimel v. California, 395 U.S. 752	1969	United States v. Rabinowitz, 339 U.S. 56 (1950); Harris v. United States, 331 U.S. 145 (1947)	1950 1947	Rabinowitz and Harris have been the subject of critical commentary for many years, and have been relied upon less and less in our own decisions. It is time, for the reasons we have stated, to hold that on their own facts, and insofar as the principles they stand for are inconsistent with those that we have endorsed today, they are no longer to be followed.
68	Benton v. Maryland, 395 U.S. 784	1969	Palko v. Connecticut, 302 U.S. 319	1937	For the same reasons, we today find that the double jeopardy prohibition of the Fifth Amendment represents a fundamental ideal in our constitutional heritage, and that it should apply to the States through the Fourteenth Amendment. Insofar as it is inconsistent with this holding, Palko v. Connecticut is overruled.

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69	Ashe v. Swenson, 397 U.S. 436	1970	Hoag v. New Jersey, 356 U.S. 464	1958	The doctrine of Benton v. Maryland ... puts the issues in the present case in a perspective quite different from that in which the issues were perceived in Hoag v. New Jersey.... The question is no longer whether collateral estoppel is a requirement of due process, but whether it is a part of the Fifth Amendment's guarantee against double jeopardy.
70	Price v. Georgia, 398 U.S. 323	1970	Brantley v. Georgia, 217 U.S. 284	1910	While the Brantley holding may have had some vitality at the time the Georgia courts rendered their decisions in this case, it is no longer a viable authority and must now be deemed to have been overruled by subsequent decisions of this Court.
71	Williams v. Florida, 399 U.S. 78	1970	Thompson v. Utah 170 U.S. 343	1898	This Court's earlier decisions have assumed an affirmative answer to this question. The leading case so construing the Sixth Amendment is Thompson v. Utah, 170 U.S. 343 (1898).... The defendant's new trial proceeded under Utah's Constitution, providing for a jury of only eight members. This Court reversed the resulting conviction, holding that Utah's constitutional provision was an ex post facto law as applied to the defendant. In reaching its conclusion, the Court announced that the Sixth Amendment was applicable to the defendant's trial when Utah was a Territory, and that the jury referred to in the Amendment was a jury "constituted, as it was at common law, of twelve persons, neither more nor less."
72	Perez v. Campbell, 402 U.S. 637	1971	Kesler v. Dep't of Pub. Safety, 369 U.S. 153 (1962); Reitz v. Mealey 314 U.S. 33 (1941)	1962 1941	[W]e conclude that Kesler and Reitz can have no authoritative effect to the extent they are inconsistent with the controlling principle that any state legislation which frustrates the full effectiveness of federal law is rendered invalid by the Supremacy Clause.
73	Griffin v. Breckenridge, 403 U.S. 88	1971	Collins v. Hardyman, 341 U.S. 651	1951	Whether or not Collins v. Hardyman was correctly decided on its own facts is a question with which we need not here be concerned. But it is clear, in the light of the evolution of decisional law in the years that have passed since that case was decided, that many of the constitutional problems there perceived simply do not exist.
74	Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356	1973	Quaker City Cab Co. v. Pennsylvania, 277 U.S. 389	1928	Quaker City Cab Co. v. Pennsylvania is only a relic of a bygone era. We cannot follow it and stay within the narrow confines of judicial review, which is an important part of our constitutional tradition.

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75	Miller v. California, 413 U.S. 15	1973	A Book Named "John Cleland's Memoirs of a Woman of Pleasure" v. Attorney General, 383 U.S. 413	1966	The case we now review was tried on the theory that the California Penal Code § 311 approximately incorporates the three-stage Memoirs test ... But now the Memoirs test has been abandoned as unworkable by its author, and no Member of the Court today supports the Memoirs formulation.
76	N.D. State Bd. of Pharmacy v. Snyder's Drug Stores, Inc., 414 U.S. 156	1973	Louis K. Liggett Co. v. Baldridge, 278 U.S. 105	1928	The Liggett case was a creation at war with the earlier constitutional view of legislative power... and opposed to our more recent decisions... The Liggett case, being a derelict in the stream of the law, is hereby overruled. (Internal citations omitted.)
77	Edelman v. Jordan, 415 U.S. 651	1974	Sterrett v. Mothers' & Children's Rights Org., 409 U.S. 809 (1973); State Dep't of Health & Rehab. Servs. v. Zarate, 407 U.S. 918 (1972); Wyman v. Bowens, 397 U.S. 49 (1970) Shapiro v. Thompson, 394 U.S. 618 (1969)	1973 1972 1970 1969	This case, therefore, is the first opportunity the Court has taken to fully explore and treat the Eleventh Amendment aspects of such relief in a written opinion. Shapiro v. Thompson and these three summary affirmances obviously are of precedential value in support of the contention that the Eleventh Amendment does not bar the relief awarded by the District Court in this case. Equally obviously, they are not of the same precedential value as would be an opinion of this Court treating the question on the merits. Since we deal with a constitutional question, we are less constrained by the principle of stare decisis than we are in other areas of the law. Having now had an opportunity to more fully consider the Eleventh Amendment issue after briefing and argument, we disapprove the Eleventh Amendment holdings of those cases to the extent that they are inconsistent with our holding today.
78	Taylor v. Louisiana, 419 U.S. 522	1975	Hoyt v. Florida, 368 U.S. 57	1961	Accepting as we do, however, the view that the Sixth Amendment affords the defendant in a criminal trial the opportunity to have the jury drawn from venires representative of the community, we think it is no longer tenable to hold that women as a class may be excluded or given automatic exemptions based solely on sex if the consequence is that criminal jury venires are almost totally male. To this extent we cannot follow the contrary implications of the prior cases, including Hoyt v. Florida.

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79	Michelin Tire Corp. v. Wages, 423 U.S. 276	1976	Low v. Austin, 80 U.S. (13 Wall.) 29	1872	We affirm without addressing the question whether the Georgia Supreme Court was correct in holding that the tires had lost their status as imports. We hold that, in any event, Georgia's assessment of a nondiscriminatory ad valorem property tax against the imported tires is not within the constitutional prohibition against laying "any Imposts or Duties on Imports ..." and that insofar as Low v. Austin ... is to the contrary, that decision is overruled.
80	Hudgens v. NLRB, 424 U.S. 507	1976	Amalgamated Food Emps. Union Local 590 v. Logan Valley Plaza, Inc., 391 U.S. 308	1968	It matters not that some Members of the Court may continue to believe that the Logan Valley case was rightly decided. Our institutional duty is to follow until changed the law as it now is, not as some Members of the Court might wish it to be. And in the performance of that duty we make clear now, if it was not clear before, that the rationale of Logan Valley did not survive the Court's decision in the Lloyd case. Not only did the Lloyd opinion incorporate lengthy excerpts from two of the dissenting opinions in Logan Valley; the ultimate holding in Lloyd amounted to a total rejection of the holding in Logan Valley ... (Internal citations omitted.)
81	Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc., 425 U.S. 748	1976	Valentine v. Chrestensen, 316 U.S. 52	1942	The appellants contend that the advertisement of prescription drug prices is outside the protection of the First Amendment because it is "commercial speech." There can be no question that in past decisions the Court has given some indication that commercial speech is unprotected. In Valentine v. Chrestensen, ... the Court upheld a New York statute that prohibited the distribution of any "handbill, circular ... or other advertising matter whatsoever in or upon any street." ... Since the decision in Breard, however, the Court has never denied protection on the ground that the speech in issue was "commercial speech."
82	Nat'l League of Cities v. Usery, 426 U.S. 833	1976	Maryland v. Wirtz, 392 U.S. 183	1968	While there are obvious differences between the schools and hospitals involved in Wirtz, and the fire and police departments affected here, each provides an integral portion of those governmental services which the States and their political subdivisions have traditionally afforded their citizens. We are therefore persuaded that Wirtz must be overruled.
83	City of New Orleans v. Dukes, 427 U.S. 297	1976	Morey v. Doud, 354 U.S. 457	1957	Morey is, as appellee and the Court of Appeals properly recognized, essentially indistinguishable from this case, but the decision so far departs from proper equal protection analysis in cases of exclusively economic regulation that it should be, and it is, overruled.

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84	Gregg v. Georgia, 428 U.S. 153	1976	McGautha v. California, 402 U.S. 183	1971	While Furman did not overrule McGautha, it is clearly in substantial tension with a broad reading of McGautha's holding. In view of Furman, McGautha can be viewed rationally as a precedent only for the proposition that standardless jury sentencing procedures were not employed in the cases there before the Court so as to violate the Due Process Clause. We note that McGautha's assumption that it is not possible to devise standards to guide and regularize jury sentencing in capital cases has been undermined by subsequent experience. In view of that experience and the considerations set forth in the text, we adhere to Furman's determination that where the ultimate punishment of death is at issue a system of standardless jury discretion violates the Eighth and Fourteenth Amendments.
85	Craig v. Boren, 429 U.S. 190	1976	Goesaert v. Cleary, 335 U.S. 464	1948	Insofar as Goesaert v. Cleary ... may be inconsistent, that decision is disapproved. Undoubtedly reflecting the view that Goesaert's equal protection analysis no longer obtains, the District Court made no reference to that decision in upholding Oklahoma's statute. Similarly, the opinions of the federal and state courts cited earlier in the text invalidating gender lines with respect to alcohol regulation uniformly disparaged the contemporary vitality of Goesaert.
86	Oregon ex rel. State Land Bd. v. Corvallis Sand & Gravel Co., 429 U.S. 363	1977	Bonelli Cattle Co. v. Arizona, 414 U.S. 313	1973	Upon full reconsideration of our decision in Bonelli, we conclude that it was wrong in treating the equal-footing doctrine as a source of federal common law after that doctrine had vested title to the riverbed in the State of Arizona as of the time of its admission to the Union. We also think there was no other basis in that case, nor is there any in this case, to support the application of federal common law to override state real property law.
87	Shaffer v. Heitner, 433 U.S. 186	1977	Pennoyer v. Neff, 95 U.S. 714	1978	It would not be fruitful for us to re-examine the facts of cases decided on the rationales of Pennoyer and Harris to determine whether jurisdiction might have been sustained under the standard we adopt today. To the extent that prior decisions are inconsistent with this standard, they are overruled.

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88	Burks v. United States, 437 U.S. 1	1978	Forman v. United States, 361 U.S. 416 (1960); Yates v. United States, 354 U.S. 298 (1957); Bryan v. United States, 338 U.S. 552 (1950)	1960 1957 1950	Since we hold today that the Double Jeopardy Clause precludes a second trial once the reviewing court has found the evidence legally insufficient, the only "just" remedy available for that court is the direction of a judgment of acquittal. To the extent that our prior decisions suggest that by moving for a new trial, a defendant waives his right to a judgment of acquittal on the basis of evidentiary insufficiency, those cases are overruled.
89	United States v. Scott, 437 U.S. 82	1978	United States v. Jenkins, 420 U.S. 358	1975	Yet, though our assessment of the history and meaning of the Double Jeopardy Clause in Wilson, Jenkins, and Serfass v. United States ... occurred only three Terms ago, our vastly increased exposure to the various facets of the Double Jeopardy Clause has now convinced us that Jenkins was wrongly decided. It placed an unwarrantedly great emphasis on the defendant's right to have his guilt decided by the first jury empaneled to try him so as to include those cases where the defendant himself seeks to terminate the trial before verdict on grounds unrelated to factual guilt or innocence. We have therefore decided to overrule Jenkins ...
90	United States v. Salvucci, 448 U.S. 83	1980	Jones v. United States, 362 U.S. 257	1960	Today we hold that defendants charged with crimes of possession may only claim the benefits of the exclusionary rule if their own Fourth Amendment rights have in fact been violated. The automatic standing rule of Jones v. United States ... is therefore overruled.
91	United States v. Ross, 456 U.S. 798	1982	Robbins v. California, 453 U.S. 420	1981	Our decision today is inconsistent with the disposition in Robbins v. California and with the portion of the opinion in Arkansas v. Sanders on which the plurality in Robbins relied. Nevertheless, the doctrine of stare decisis does not preclude this action. Although we have rejected some of the reasoning in Sanders, we adhere to our holding in that case; although we reject the precise holding in Robbins, there was no Court opinion supporting a single rationale for its judgment, and the reasoning we adopt today was not presented by the parties in that case.

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92	Bob Jones Univ. v. United States, 461 U.S. 574	1983	Plessy v. Ferguson, 163 U.S. 537	1896	But there can no longer be any doubt that racial discrimination in education violates deeply and widely accepted views of elementary justice. Prior to 1954, public education in many places still was conducted under the pall of Plessy v. Ferguson, 163 U.S. 537 (1896); racial segregation in primary and secondary education prevailed in many parts of the country ... This Court's decision in Brown v. Board of Education, 347 U.S. 483 (1954), signalled an end to that era.
93	Illinois v. Gates, 462 U.S. 213	1983	Spinelli v. United States, 393 U.S. 410 (1969); Aguilar v. Texas, 378 U.S. 108 (1964)	1969 1964	For all these reasons, we conclude that it is wiser to abandon the "two-pronged test" established by our decisions in Aguilar and Spinelli. In its place we reaffirm the totality-of-the-circumstances analysis that traditionally has informed probable-cause determinations.
94	Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89	1984	Rolston v. Missouri Fund Comm'rs, 120 U.S. 390	1887	The dissent in Larson made many of the arguments advanced by Justice Stevens['] dissent today, and asserted that many of the same cases were being overruled or ignored. Those arguments were rejected, and the cases supporting them are moribund. Since Larson was decided in 1949, no opinion by any Member of this Court has cited the cases on which the dissent primarily relies for a proposition as broad as the language the dissent quotes. Many if not most of these cases have not been relied upon in an Eleventh Amendment context at all.
95	United States v. One Assortment of 89 Firearms, 465 U.S. 354	1984	Coffey v. United States, 116 U.S. 436	1886	Indeed, for nearly a century, the analytical underpinnings of Coffey have been recognized as less than adequate. The time has come to clarify that neither collateral estoppel nor double jeopardy bars a civil, remedial forfeiture proceeding initiated following an acquittal on related criminal charges. To the extent that Coffey v. United States suggests otherwise, it is hereby disapproved.
96	Limbach v. Hooven & Allison Co., 466 U.S. 353	1984	Hooven & Allison Co. v. Evatt, 324 U.S. 652	1945	Although Hooven I was not expressly overruled in Michelin, it must be regarded as retaining no vitality since the Michelin decision.... So that there may be no misunderstanding, Hooven I, to the extent it espouses that doctrine, is not to be regarded as authority and is overruled.

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97	Garcia v. San Antonio Metro. Transit Auth., 469 U.S. 528	1985	Nat'l League of Cities v. Usery, 426 U.S. 833	1976	Our examination of this "function" standard applied in these and other cases over the last eight years now persuades us that the attempt to draw the boundaries of state regulatory immunity in terms of "traditional governmental function" is not only unworkable but is also inconsistent with established principles of federalism and, indeed, with those very federalism principles on which National League of Cities purported to rest. That case, accordingly, is overruled. (Internal citations omitted).
98	United States v. Miller, 471 U.S. 130	1985	Ex parte Bain, 121 U.S. 1	1887	To the extent Bain stands for the proposition that it constitutes an unconstitutional amendment to drop from an indictment those allegations that are unnecessary to an offense that is clearly contained within it, that case has simply not survived. To avoid further confusion, we now explicitly reject that proposition.
99	Daniels v. Williams, 474 U.S. 327	1986	Parratt v. Taylor, 451 U.S. 527	1981	Parratt is overruled to the extent that it states that mere lack of due care by a state official may "deprive" an individual of life, liberty, or property under the Fourteenth Amendment.
100	Batson v. Kentucky, 476 U.S. 79	1986	Swain v. Alabama, 380 U.S. 202	1965	To the extent that anything in Swain v. Alabama ... is contrary to the principles we articulate today, that decision is overruled.
101	Puerto Rico v. Branstad, 483 U.S. 219	1987	Kentucky v. Dennison, 65 U.S. (24 How.) 66	1861	Kentucky v. Dennison is the product of another time. The conception of the relation between the States and the Federal Government there announced is fundamentally incompatible with more than a century of constitutional development.... We conclude that it may stand no longer.
102	Solorio v. United States, 483 U.S. 435	1987	O'Callahan v. Parker, 395 U.S. 258	1969	This case presents the question whether the jurisdiction of a court-martial convened pursuant to the Uniform Code of Military Justice (U. C. M. J.) to try a member of the Armed Forces depends on the "service connection" of the offense charged. We hold that it does not, and overrule our earlier decision in O'Callahan v. Parker ...
103	Welch v. Texas Dep't of Highways & Public Transp., 483 U.S. 468	1987	Parden v. Terminal Ry. of Alabama State Docks Dep't, 377 U.S. 184	1964	Accordingly, to the extent that Parden v. Terminal Railway ... is inconsistent with the requirement that an abrogation of Eleventh Amendment immunity by Congress must be expressed in unmistakably clear language, it is overruled.

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104	South Carolina v. Baker, 485 U.S. 505	1988	Pollock v. Farmers' Loan & Tr. Co., 157 U.S. 429	1895	We thus confirm that subsequent case law has overruled the holding in Pollock that state bond interest is immune from a nondiscriminatory federal tax.
105	Thornburgh v. Abbott, 490 U.S. 401	1989	Procunier v. Martinez, 416 U.S. 396	1974	Any attempt to justify a similar categorical distinction between incoming correspondence from prisoners (to which we applied a reasonableness standard in Turner) and incoming correspondence from nonprisoners would likely prove futile, and we do not invite it. To the extent that Martinez itself suggests such a distinction, we today overrule that case; the Court accomplished much of this step when it decided Turner.
106	Alabama v. Smith, 490 U.S. 794	1989	Simpson v. Rice, 395 U.S. 711 (decided with North Caroline v. Pearce)	1969	Believing, as we do, that there is no basis for a presumption of vindictiveness where a second sentence imposed after a trial is heavier than a first sentence imposed after a guilty plea, we overrule Simpson v. Rice ... to that extent.
107	Collins v. Youngblood, 497 U.S. 37	1990	Thompson v. Utah, 170 U.S. 343 (1898); Kring v. Missouri, 107 U.S. 221 (1883)	1898 1883	The holding in Kring can only be justified if the Ex Post Facto Clause is thought to include not merely the Calder categories, but any change which "alters the situation of a party to his disadvantage." We think such a reading of the Clause departs from the meaning of the Clause as it was understood at the time of the adoption of the Constitution, and is not supported by later cases. We accordingly overrule Kring ... The Court's holding in Thompson v. Utah that the Sixth Amendment requires a jury panel of 12 persons is also obsolete. (Internal citations omitted.)
108	California v. Acevedo, 500 U.S. 565	1991	Arkansas v. Sanders, 442 U.S. 753	1979	Although we have recognized firmly that the doctrine of stare decisis serves profoundly important purposes in our legal system, this Court has overruled a prior case on the comparatively rare occasion when it has bred confusion or been a derelict or led to anomalous results. Sanders was explicitly undermined in Ross, and the existence of the dual regimes for automobile searches that uncover containers has proved as confusing as the Chadwick and Sanders dissenters predicted. We conclude that it is better to adopt one clear-cut rule to govern automobile searches and eliminate the warrant requirement for closed containers set forth in Sanders. (Internal citations omitted)

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109	Payne v. Tennessee, 501 U.S. 808	1991	South Carolina v. Gathers, 490 U.S. 805 (1989); Booth v. Maryland, 482 U.S. 496 (1987)	1989 1987	Booth and Gathers were decided by the narrowest of margins, over spirited dissents challenging the basic underpinnings of those decisions. They have been questioned by Members of the Court in later decisions and have defied consistent application by the lower courts. Reconsidering these decisions now, we conclude, for the reasons heretofore stated, that they were wrongly decided and should be, and now are, overruled. (internal citations omitted)
110	Quill Corp. v. North Dakota, 504 U.S. 298	1992	Nat'l Bellas Hess, Inc. v. Dep't of Revenue of Ill., 386 U.S. 753	1967	[I]n Bellas Hess the Court suggested that [physical] presence was not only sufficient for jurisdiction under the Due Process Clause, but also necessary ... Thus, to the extent that our decisions have indicated that the Due Process Clause requires physical presence in a State for the imposition of duty to collect a use tax, we overrule those holdings as superseded by developments in the law of due process.
111	Planned Parenthood of S.E. Pa. v. Casey, 505 U.S. 833	1992	Thornburgh v. Am. Coll. of Obstetricians & Gynecologists, 476 U.S. 747 (1986); City of Akron v. Akron Ctr. for Reprod. Health, Inc., 462 U.S. 416 (1983)	1986 1983	Although we must overrule those parts of Thornburgh and Akron I which, in our view, are inconsistent with Roe's statement that the State has a legitimate interest in promoting the life or potential life of the unborn the central premise of those cases represents an unbroken commitment by this Court to the essential holding of Roe. (Internal citations omitted.)
112	United States v. Dixon, 509 U.S. 688	1993	Grady v. Corbin, 495 U.S. 508	1990	We have concluded, however, that Grady must be overruled.
113	Nichols v. United States, 511 U.S. 738	1994	Baldasar v. Illinois, 446 U.S. 222	1980	Today we adhere to Scott v. Illinois ... and overrule Baldasar. Accordingly we hold, consistent with the Sixth and Fourteenth Amendments of the Constitution, that an uncounseled misdemeanor conviction, valid under Scott because no prison term was imposed, is also valid when used to enhance punishment at a subsequent conviction.

No.	Overruling Decision	Date of Overruling Decision	Overruled Decision(s)	Date of Overruled Decision(s)	Operative Language
114	Adarand Constructors, Inc. v. Peña, 515 U.S. 200	1995	Metro Broadcasting, Inc. v. FCC, 497 U.S. 547	1990	[W]e hold today that racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests. To the extent that Metro Broadcasting is inconsistent with that holding, it is overruled.
115	United States v. Gaudin, 515 U.S. 506	1995	Sinclair v. United States, 279 U.S. 263	1929	And we think stare decisis cannot possibly be controlling when, in addition to those factors, the decision in question has been proved manifestly erroneous, and its underpinnings eroded, by subsequent decisions of this Court.
116	Seminole Tribe of Florida v. Florida, 517 U.S. 44	1996	Pennsylvania v. Union Gas Co., 491 U.S. 1	1989	In overruling Union Gas today, we reconfirm that the background principle of state sovereign immunity embodied in the Eleventh Amendment is not so ephemeral as to dissipate when the subject of the suit is an area, like the regulation of Indian commerce, that is under the exclusive control of the Federal Government.
117	44 Liquormart, Inc. v. Rhode Island, 517 U.S. 484	1996	California v. LaRue, 409 U.S. 109	1972	Without questioning the holding in LaRue, we now disavow its reasoning insofar as it relied on the Twenty-first Amendment.
118	Agostini v. Felton, 521 U.S. 203	1997	Aguilar v. Felton, 473 U.S. 402 (1985); Sch. Dist. of Grand Rapids v. Ball, 473 U.S. 373 (1985)	1985 1985	We therefore overrule Ball and Aguilar to the extent those decisions are inconsistent with our current understanding of the Establishment Clause.
119	Hudson v. United States, 522 U.S. 93	1997	United States v. Halper, 490 U.S. 435	1989	We believe that Halper's deviation from longstanding double jeopardy principles was ill considered. As subsequent cases have demonstrated, Halper's test for determining whether a particular sanction is "punitive," and thus subject to the strictures of the Double Jeopardy Clause, has proved unworkable.
120	Minnesota v. Mille Lacs Band of Chippewa Indians, 526 U.S. 172	1999	Ward v. Race Horse, 163 U.S. 504	1896	Race Horse rested on the premise that treaty rights are irreconcilable with state sovereignty. It is this conclusion—the conclusion undergirding the Race Horse Court's equal footing holding—that we have consistently rejected over the years.

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121	Coll. Savs. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666	1999	Parden v. Terminal Ry. of Ala. State Docks Dep't, 377 U.S. 184	1964	We think that the constructive-waiver experiment of Parden was ill conceived, and see no merit in attempting to salvage any remnant of it. As we explain below in detail, Parden broke sharply with prior cases, and is fundamentally incompatible with later ones.... In short, Parden stands as an anomaly in the jurisprudence of sovereign immunity, and indeed in the jurisprudence of constitutional law. Today, we drop the other shoe: Whatever may remain of our decision in Parden is expressly overruled.
122	Mitchell v. Helms, 530 U.S. 793	2000	Wolman v. Walter, 433 U.S. 229 (1977); Meek v. Pittenger, 421 U.S. 349 (1975)	1977 1975	Accordingly, we hold that Chapter 2 is not a law respecting an establishment of religion. Jefferson Parish need not exclude religious schools from its Chapter 2 program. To the extent that Meek and Wolman conflict with this holding, we overrule them.
123	United States v. Hatter, 532 U.S. 557	2001	Evans v. Gore, 253 U.S. 245	1920	We now overrule Evans insofar as it holds that the Compensation Clause forbids Congress to apply a generally applicable, nondiscriminatory tax to the salaries of federal judges, whether or not they were appointed before enactment of the tax.
124	Lapides v. Bd. of Regents of Univ. System of Ga., 535 U.S. 613	2002	Ford Motor Co. v. Dep't of Treasury of State of Ind., 323 U.S. 459	1945	[F]or these same reasons, we conclude that Clark, Gunter, and Gardner represent the sounder line of authority. Finding Ford inconsistent with the basic rationale of that line of cases, we consequently overrule Ford insofar as it would otherwise apply.
125	United States v. Cotton, 535 U.S. 625	2002	Ex parte Bain, 121 U.S. 1	1887	Insofar as it held that a defective indictment deprives a court of jurisdiction, Bain is overruled.
126	Atkins v. Virginia, 536 U.S. 304	2002	Penry v. Lynaugh, 492 U.S. 302	1989	Much has changed since then.... The practice, therefore, has become truly unusual, and it is fair to say that a national consensus has developed against it.
127	Ring v. Arizona, 536 U.S. 584	2002	Walton v. Arizona, 497 U.S. 639	1990	Accordingly, we overrule Walton to the extent that it allows a sentencing judge, sitting without a jury, to find an aggravating circumstance necessary for imposition of the death penalty.
128	Lawrence v. Texas, 539 U.S. 558	2003	Bowers v. Hardwick, 478 U.S. 186	1986	Bowers was not correct when it was decided, and it is not correct today. It ought not to remain binding precedent. Bowers v. Hardwick should be and now is overruled.

No.	Overruling Decision	Date of Overruling Decision	Overruled Decision(s)	Date of Overruled Decision(s)	Operative Language
129	Crawford v. Washington, 541 U.S. 36	2004	Ohio v. Roberts, 448 U.S. 56	1980	Roberts' failings were on full display in the proceedings below ...
130	Roper v. Simmons, 543 U.S. 551	2005	Stanford v. Kentucky, 492 U.S. 361	1989	These considerations mean Stanford v. Kentucky should be deemed no longer controlling on this issue. To the extent Stanford was based on review of the objective indicia of consensus that obtained in 1989, it suffices to note that those indicia have changed ... It is also inconsistent with the premises of our recent decision in Atkins. (Internal citations omitted)
131	Cent. Va. Cmty. Coll. v. Katz, 546 U.S. 356	2006	Hoffman v. Conn. Dep't of Income Maint., 492 U.S. 96	1989	We acknowledge that statements in both the majority and the dissenting opinions in Seminole Tribe of Fla. v. Florida, 517 U.S. 44, 116 S. Ct. 1114, 134 L. Ed. 2d 252 (1996), reflected an assumption that the holding in that case would apply to the Bankruptcy Clause. See also Hoffman v. Connecticut Dept. of Income Maintenance, 492 U.S. 96, 105, 109 S. Ct. 2818, 106 L. Ed. 2d 76 (1989) (O'CONNOR, J., concurring). Careful study and reflection have convinced us, however, that that assumption was erroneous.
132	Pearson v. Callahan, 555 U.S. 223	2009	Saucier v. Katz, 533 U.S. 194	2001	On reconsidering the procedure required in Saucier, we conclude that, while the sequence set forth there is often appropriate, it should no longer be regarded as mandatory.
133	Montejo v. Louisiana, 556 U.S. 778	2009	Michigan v. Jackson, 475 U.S. 625	1986	In sum, when the marginal benefits of the Jackson rule are weighed against its substantial costs to the truth-seeking process and the criminal justice system, we readily conclude that the rule does not "pay its way," ... Michigan v. Jackson should be and now is overruled. (Internal citations omitted).
134	Citizens United v. FEC, 558 U.S. 310	2010	McConnell v. FEC, 540 U.S. 93	2003	Given our conclusion we are further required to overrule the part of McConnell that upheld [the Bipartisan Campaign Reform Act] § 203's extension of § 441b's restrictions on corporate independent expenditures. The McConnell Court relied on the antidistortion interest recognized in Austin to uphold a greater restriction on speech than the restriction upheld in Austin, and we have found this interest unconvincing and insufficient. This part of McConnell is now overruled. (Internal citations omitted)
135	Alleyne v. United States, 570 U.S. ___, No. 11–9335, slip op.	2013	Harris v. United States, 536 U.S. 545	2002	Mandatory minimum sentences increase the penalty for a crime. It follows, then, that any fact that increases the mandatory minimum is an "element" that must be submitted to the jury. Accordingly, Harris is overruled.

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136	Obergefell v. Hodges, 576 U.S. ___, No. 14–556, slip op.	2015	Baker v. Nelson, 409 U.S. 810	1972	Baker v. Nelson must be and now is overruled, and the State laws challenged by Petitioners in these cases are now held invalid to the extent they exclude same-sex couples from civil marriage on the same terms and conditions as opposite-sex couples.
137	Johnson v. United States, 576 U.S. ___, No. 13–7120, slip op.	2015	Sykes v. United States, 564 U.S. 1; James v. United States, 550 U.S. 192	2011 2007	We hold that imposing an increased sentence under the residual clause of the Armed Career Criminal Act violates the Constitution's guarantee of due process. Our contrary holdings in James and Sykes are overruled.
138	Hurst v. Florida, 577 U.S. ___, No. 14–7505, slip op.	2016	Hildwin v. Florida, 490 U.S. 638 (per curiam); Spaziano v. Florida, 468 U.S. 447	1989 1984	*Spaziano* and *Hildwin* summarized earlier precedent to conclude that "the Sixth Amendment does not require that the specific findings authorizing the imposition of the sentence of death be made by the jury." Their conclusion was wrong, and irreconcilable with *Apprendi*. (Internal citations omitted).
139	South Dakota v. Wayfair, 585 U.S. ___, No. 17-494, slip op.	2018	Quill Corp. v. North Dakota, 504 U.S. 298; Nat'l Bella Hess v. Dep't of Revenue of Illinois, 386 U.S. 753	1992 1967	For these reasons, the Court concludes that the physical presence rule of Quill is unsound and incorrect. The Court's decisions in Quill Corp. v. North Dakota and National Bella Hess, Inc. v. Department of Revenue of Ill. should be, and now are, overruled. (Internal citations omitted).
140	Trump v. Hawaii, 585 U.S. ___, No. 17-695, slip op.	2018	Korematsu v. United States, 323 U.S. 214	1944	The dissent's reference to Korematsu, however, affords this Court the opportunity to make express what is already obvious: Korematsu was gravely wrong the day it was decided, has been overruled in the court of history, and—to be clear—"has no place in law under the Constitution." (Citation omitted).
141	Janus v. Am. Fed. of State, County, & Munic. Emps., 585 U.S. ___, No. 16-1466, slip op.	2018	Abood v. Detroit Bd. Of Educ., 431 U.S. 209	1977	All these reasons—that Abood's proponents have abandoned its reasoning, that the precedent has proved unworkable, that it conflicts with other First Amendment decisions, and that subsequent developments have eroded its underpinnings—provide the "special justification[s]" for overruling Abood. (Citation omitted).

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Author Information

Brandon J. Murrill
Legislative Attorney

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