

## Congress Has a History of Legislating Constitutional Issues

Across American history, Congress has utilized its authority to legislate constitutional matters. From civil rights to religion to regulating elections, Congress has often enacted federal statutes directly contravening constitutional decisions from the Supreme Court when lawmakers believed the Court misapplied the Constitution. A few examples follow:

1. In *Dred Scott v. Sandford* (1857), the Court held that Congress could not ban the spread of slavery in the territories.
  - Congress responded in 1862 with a law banning slavery in the territories.
2. In *Ex Parte Milligan* (1866), the Court held that Congress could not use military tribunals in places where civil courts were open.
  - Congress responded with the Reconstruction Act of 1867, authorizing the use of military tribunals where Black people were denied rights in civil courts. During oral arguments of a constitutional challenge, the Supreme Court justices expressed skepticism about the Reconstruction Act. Shortly thereafter and before the Court ruled, Congress passed a law stripping the Supreme Court of jurisdiction to hear the challenge; the Court affirmed Congress's authority to do so (*Ex Parte McCardle*).
3. Through the *Civil Rights Cases* in 1883, the Court held that Congress lacked the constitutional authority to ban racial discrimination in public accommodations.
  - Congress responded with the Civil Rights Act of 1964, banning racial discrimination in public accommodations.
4. In a series of cases from 1884 through 1903 (*Elk v. Wilkins*, *Talton v. Mayes*, and *Lone Wolf v. Hitchcock*), the Court held that the Constitution does not apply to Native Americans, protect them from the federal government, or extend citizenship to them.
  - Congress responded with the Indian Citizenship Act of 1924 (extending citizenship to Native Americans), the Indian Civil Rights Act of 1968 (extending constitutional protections to tribal governments), and the Indian Religious Freedom Act of 1978 (extending 1<sup>st</sup> Amendment protections to Native Americans).
5. Through a series of cases from 1908 to 1923 (*Adair v. U.S.*, *Hammer v. Dagenhart*, *the Child Labor Tax Case*, and *Adkins v. Children's Hospital of D.C.*), the Supreme Court held that Congress could neither regulate nor ban child labor.
  - Congress responded by passing the Fair Labor Standards Act of 1938, which ultimately banned child labor.

6. In *Lassiter v. Northampton County Board of Elections* (1959), the Court held that literacy tests were constitutional under the 15<sup>th</sup> Amendment.
  - Congress responded with the Voting Rights Act of 1965, which banned all literacy tests as an exercise of its power under the 15<sup>th</sup> Amendment.
7. In *Geduldig v. Aiello* (1974), the Court held that pregnancy discrimination is not sex discrimination and does not violate the 14<sup>th</sup> Amendment.
  - Congress responded with the Pregnancy Discrimination Act of 1978, which declared that pregnancy discrimination *is* sex discrimination.
8. In *City of Mobile v. Bolden* (1980), the Court held that the language of the 15<sup>th</sup> Amendment paralleled that of the Voting Rights Act of 1965 and that any claim of minority vote dilution could not be made without proof of discriminatory intent.
  - Congress responded with the Voting Rights Act Amendments of 1982, which amended the 1965 Voting Rights Act to allow that a violation of the Act can be shown based on the “totality of circumstances.”
9. In *City of Cleburne v. Cleburne Living Center* (1985), the Court held that laws that discriminate against people with disabilities do not violate the 14<sup>th</sup> Amendment.
  - Congress responded in 1990 with the Americans with Disabilities Act, a bill that enforced the Commerce Clause and 14<sup>th</sup> Amendment to protect people with disabilities.
10. In *Dobbs v. Jackson Women’s Health Organization* (2022), the Court held that the 14<sup>th</sup> Amendment does not confer a right to abortion.
  - Fifty Senators currently support the Women’s Health Protection Act, a pending bill to establish a right to abortion under the 14<sup>th</sup> Amendment and the Commerce Clause.