



























- <sup>106</sup> 450 U.S. 455 (1981).
- <sup>107</sup> *Obergefell*, 135 S. Ct. at 2598 (citing *Baker v. Nelson*, 409 U.S. 810 (1972)).
- <sup>108</sup> 133 S. Ct. 2675 (2013).
- <sup>109</sup> *Id.* at 2683, 2691–92.
- <sup>110</sup> *Obergefell*, 135 S. Ct. at 2604.
- <sup>111</sup> The dissents in *Obergefell* emphasized the federalism implications of the Court’s decision. *See id.* at 2611 (Roberts, J., dissenting) (“Although the policy arguments for extending marriage to same-sex couples may be compelling, the legal arguments for requiring such an extension are not. The fundamental right to marry does not include a right to make a State change its definition of marriage. And a State’s decision to maintain the meaning of marriage that has persisted in every culture throughout human history can hardly be called irrational. In short, our Constitution does not enact any one theory of marriage. The people of a State are free to expand marriage to include same-sex couples, or to retain the historic definition.”); *id.* at 2643 (Alito, J., dissenting) (“The system of federalism established by our Constitution provides a way for people with different beliefs to live together in a single nation. If the issue of same-sex marriage had been left to the people of the States, it is likely that some States would recognize same-sex marriage and others would not . . . . The majority today makes that impossible.”).
- <sup>112</sup> 554 U.S. 570 (2008).
- <sup>113</sup> 561 U.S. 742 (2010).
- <sup>114</sup> 529 U.S. 598 (2000).
- <sup>115</sup> 545 U.S. 1 (2005).
- <sup>116</sup> 132 S. Ct. 2566 (2012).
- <sup>117</sup> In dissent, four justices maintained that the Commerce Clause supplied the necessary Congressional power, emphasizing federalism issues. *See id.* at 2615 (Ginsburg, J., concurring in part, concurring in the judgment in part, and dissenting in part) (“The Commerce Clause, it is widely acknowledged, ‘was the Framers’ response to the central problem that gave rise to the Constitution itself.’ . . . Under the Articles of Confederation, the Constitution’s precursor, the regulation of commerce was left to the States. This scheme proved unworkable . . . . The Framers’ solution was the Commerce Clause, which, as they perceived it, granted Congress the authority to enact economic legislation ‘in all Cases for the general Interests of the Union, and also in those Cases to which the States are separately incompetent.’”) (citations omitted); *see also id.* at 2609 (“Since 1937, our precedent has recognized Congress’ large authority to set the Nation’s course in the economic and social welfare realm . . . . The Chief Justice’s crabbed reading of the Commerce Clause harks back to the era in which the Court routinely thwarted Congress’ efforts to regulate the national economy in the interest of those who labor to sustain it.”).
- <sup>118</sup> *See Oneok, Inc. v. Learjet, Inc.*, 135 S. Ct. 1591, 1594–95 (2015).
- <sup>119</sup> *See Northwest, Inc. v. Ginsberg*, 134 S. Ct. 1422 (2014).
- <sup>120</sup> *See PLIVA, Inc. v. Mensing*, 131 S. Ct. 2567 (2011).
- <sup>121</sup> *See Arizona v. United States*, 132 S. Ct. 2492 (2012).
- <sup>122</sup> *See Am. Trucking Ass’ns, Inc. v. City of Los Angeles*, 133 S. Ct. 2096 (2013).
- <sup>123</sup> *See Kurns v. R.R. Friction Prods. Corp.*, 132 S. Ct. 1261 (2012).
- <sup>124</sup> *See Marmet Health Care Ctr., Inc. v. Brown*, 132 S. Ct. 1201 (2012).
- <sup>125</sup> *See Am. Elec. Power Co. v. Connecticut*, 131 S. Ct. 2527 (2011).
- <sup>126</sup> *See Rowe v. N.H. Motor Transport Ass’n.*, 552 U.S. 364 (2012).
- <sup>127</sup> *See Nat’l Meat Ass’n v. Harris*, 132 S. Ct. 965 (2012).
- <sup>128</sup> *See, e.g., Oneok, Inc. v. Learjet, Inc.*, 135 S. Ct. 1591, 1591 (2015) (state antitrust claims arising from natural gas pricing); *CTS Corp. v. Waldburger*, 134 S. Ct. 2175 (2014) (state statutes of repose in certain environmental cases); *Chadbourne & Parke LLP v. Troice*, 134 S. Ct. 1058 (2013) (state law class action arising from bank certificates of deposit).
- <sup>129</sup> 554 U.S. 570 (2008).
- <sup>130</sup> *Id.* at 598.
- <sup>131</sup> *Id.* at 599.
- <sup>132</sup> Benjamin Kaplan, *A Prefatory Note*, 10 B.C. INDUS. & COM. L. REV. 497, 500 (1969).



KOZYAK • TROPIN • THROCKMORTON

is a proud sponsor of JUDICATURE

2525 Ponce de Leon Blvd. 9th Floor, Miami, FL 33134 | 305.372.1800 | kttlaw.com