Congressional Definition of Fourteenth Amendment Rights

The Supreme Court's view of congressional authority to address racial or ethnic discrimination under the Equal Protection Clause has varied significantly over the years. In the *Civil Rights Cases*,[2118] the Court held that the enforcement authority of the Fourteenth Amendment was only intended to allow Congress to overrule those state laws that the Court already considered violative of the Amendment. Under this line of reasoning, the courts would determine if a state law was impermissible and only then would Congress have the authority to implement that decision.[2119] The Court was quite clear that, under its responsibilities of judicial review, it was the body that would determine that a state law was impermissible and that a federal law passed pursuant to § 5 was necessary and proper to enforce § 1.[2120]

But, in the 1960's case of *United States v. Guest*,[2121] Justice Brennan argued that this view "attributes a far too limited objective to the Amendment's sponsors," that in fact "the primary purpose of the Amendment was to augment the power of Congress, not the judiciary." Then, in *Katzenbach v. Morgan*,[2122] Justice Brennan, this time speaking for the Court, in effect overrode the limiting view and and posited a doctrine by which Congress may define the substance of what legislation could be enacted pursuant to § 5.[2123] In *Katzenbach*, the Court upheld the constitutionality of a provision of the Voting Rights Act of 1965 [2124] barring the application of English literacy requirements to a certain class of voters, despite having previously held that such requirements did not violate equal protection.[2125]

According to Justice Brennan, Congress had the authority to question the justifications put forward by the state in defense of its law and conclude that the requirements were unrelated to those justifi-

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1978) (en banc), *rev'd*, 442 U.S. 366 (1979); Scott v. Moore, 680 F.2d 979 (5th Cir. 1982) (en banc). The Court's decision in *Morrison*, however, appears to preclude the use of § 1985(3) in relation to Fourteenth Amendment rights absent some state action.

[2118] 109 U.S. 3 (1883).

[2119] 109 U.S.at 13–14 (1883) ("[T]he legislation which Congress is authorized to adopt in this behalf is not general legislation upon the rights of the citizen, but corrective legislation.").

[2120] *Cf.* Marbury v. Madison, 5 U.S. (1 Cr.) 137 (1803).

[2121] 383 U.S. 745, 783 and n.7 (1966) (concurring and dissenting).

[2122] 384 U.S. 641 (1966).

[2123] 384 U.S. at 648 (rejecting the argument that "an exercise of congressional power under § 5 . . . that prohibits the enforcement of a state law can only be sustained if the judicial branch determines that the state law is prohibited by the provisions of the Amendment that Congress sought to enforce").

[2124] 79 Stat. 439, 42 U.S.C. § 1973b(e).

[2125] Lassiter v. Northampton County Bd. of Elections, 360 U.S. 45 (1959).