

Bond v. United States

Brief Of Amici Curiae CATO Institute And Center For Constitutional Jurisprudence In Support Of Petitioner

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In 2010, the Supreme Court decided *United States v. Bond*, a case that seems right out of a soap opera. Carol Anne Bond learned that her best friend was having an affair with her husband, so she spread toxic chemicals on the woman's car and mailbox. Postal inspectors discovered this plot after they caught Bond on film stealing from the woman's mailbox. Rather than leave this caper to local law enforcement to resolve, however, a federal prosecutor charged Bond with violating a statute that implements U.S. treaty obligations under the 1993 Chemical Weapons Convention. Bond pled guilty and was sentenced, but she reserved the right to appeal her conviction on the ground that the statute at issue violates the Tenth Amendment - in that her offense was local in nature and not properly subject to federal prosecution. She won the first part of that appeal process: The Supreme Court unanimously accepted the argument offered in an amicus brief by Cato and the Center for Constitutional Jurisprudence that there's no reason in constitutional structure or history that someone can't use the Tenth Amendment to challenge the constitutionality of the statute under which she was convicted. On remand to the Philadelphia-based U.S Court of Appeals for the Third Circuit, Bond (now with standing to challenge that law) raised the argument that Congress's limited and enumerated powers cannot be increased by treaties. We again filed in that case in support of Bond. The Third Circuit disagreed, however — if reluctantly — based on one sentence by Justice Oliver Wendell Holmes in *Missouri v. Holland* (1920) that has been interpreted to mean that Congress's constitutional powers can indeed be expanded by treaties. Writing separately, Judge Ambro agreed that *Holland* clearly

addressed the issue but "urge[d] the Supreme Court to provide a clarifying explanation of its statement" regarding the treaty power. Bond has thus brought her case back to the Supreme Court, asking the Court to clarify and cabin Holland. In this, our third brief in the case, we are joined again by the Center for Constitutional Jurisprudence in arguing that allowing Congress to broaden its powers via treaties is an astounding manner in which to interpret a document that creates a federal government of limited powers. Not only would this mean that the Executive has the ability to expand federal power by signing a treaty, but it would mean that foreign governments could change federal power by abrogating a previously valid treaty—thus removing the constitutional authority from certain laws. We also point out how the most influential argument supporting Holland is based on a clear misreading of constitutional history that has gotten repeated without question and that the ruling is in deep tension with other cases. We're in a constitutional quagmire with respect to the treaty power that can only be escaped by limiting or overturning *Missouri v. Holland*.

Please see full brief below for more information.

<http://www.jdsupra.com/post/fileServer.aspx?fName=6b453c4d-73fb-41f3-9da6-5a9cf123b325.pdf>