

## **U.S. v. Bond**

### **Brief Amici Curiae Of The Cato Institute And The Center For Constitutional Jurisprudence Supporting Defendant-Appellant/ Cross-Appellee And Reversal**

- By:
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A lost episode of Jerry Springer found its way into the Supreme Court's 2010-11 term in the case of *United States v. Bond*. Mrs. Bond, upset by the pregnancy that resulted from an affair between her husband and her erstwhile best friend, decided to take revenge. A trained microbiologist working at a chemical manufacturer, Mrs. Bond tried to poison her husband's mistress by dusting her door knobs, mailbox, and car handles with dangerous, possibly lethal chemicals. Upon being caught by (federal) postal inspectors, Mrs. Bond was charged with violating the law Congress passed to implement an international chemical weapons treaty. (There are no generally applicable federal attempted murder statutes, so prosecutors had to get creative to remain in federal court.) But if general criminal statutes are beyond Congress's powers, as even the most ardent federal-power activist must acknowledge, how did Congress have the power to pass the law that ensnared Mrs. Bond? — who, whatever her character flaws, was not selling chemical weapons to terrorists (the treaty's target). Mrs. Bond thus hoped to challenge her conviction by arguing that Congress did not have the power to pass the law in question. The Third Circuit, however, ruled that she did not have standing — a legal doctrine defining who has the right to bring a claim — to challenge the law on federalism grounds. Cato filed a Supreme Court brief supporting Mrs. Bond's position and arguing that it makes no sense to deny standing to someone challenging a law under which she is being prosecuted. The Court unanimously agreed and remanded the case back to the Third Circuit, to finally hear arguments over whether the statute is beyond congressional power. Cato has now reentered the fray, in a brief authored by Georgetown law professor Nicholas Quinn Rosenkranz and joined by the Center for Constitutional Jurisprudence. We again support Mrs. Bond's claim that the law under which she was charged is beyond Congress's enumerated powers. The main obstacle to this argument is the 1920 case *Missouri v. Holland*, a short and not completely clear opinion by Justice Oliver Wendell Holmes that has been interpreted to mean that Congress can expand its enumerated powers via the Treaty Clause. In other words, even though Congress does not have the power to pass, for example, general criminal statutes, if Congress ratifies a treaty calling for such statutes, its power increases beyond constitutional limits. We argue that this is an astounding manner in which to interpret a Constitution that creates a federal government of limited powers. Not only would this mean that the Executive has the ability to expand

congressional power by signing a treaty, but it would mean that foreign governments could change congressional 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 *Missouri v. Holland* is based on a clear misreading of constitutional history and that the ruling is in deep tension with other cases. We're in a constitutional quagmire that can only be escaped by limiting or overturning *Missouri v. Holland*.