



# The Modes of Constitutional Analysis: Judicial Precedent (Part 4)

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This Legal Sidebar Post is the fourth in a nine-part series that discusses certain “methods” or “modes” of analysis that the Supreme Court has employed to determine the meaning of a provision within the Constitution. (For additional background on this topic and citations to relevant sources, please see CRS Report R45129, *Modes of Constitutional Interpretation*)

The Supreme Court’s prior decisions on questions of constitutional law are the most commonly cited source of the Constitution’s meaning. For most Justices, if not all, judicial precedent provides possible principles, rules, or standards to govern judicial decisions in future cases with arguably similar facts. Although the Court routinely purports to rely upon precedent, [it is unclear](#) how often precedent has actually constrained the Court’s decisions because the Justices have latitude in how broadly or narrowly they choose to construe their prior decisions.

In some cases, however, a single precedent may play a particularly prominent role in the Court’s decisionmaking. For example, a plurality of Justices relied on [Roe v. Wade](#) as controlling precedent in their opinion in [Planned Parenthood v. Casey](#). In that case, the plurality reaffirmed *Roe*’s holding that a woman has a protected liberty interest in terminating her pregnancy prior to fetal viability, stating that the essential holding of *Roe* “should be retained.” Another example of the heightened role that precedent can play in constitutional interpretation is the Court’s decision in [Dickerson v. United States](#). That case addressed the constitutionality of a federal statute governing the admissibility of statements made during police interrogation, a law that functionally would have overruled the Court’s 1966 case [Miranda v. Arizona](#). In striking down the statute, the majority declined to overrule *Miranda*, noting that the 1966 case had “become embedded in routine police practice to the point where the warnings have become part of our national culture.”

More often, the Court reasons from the logic of several precedents in rendering its decisions. An example is [Arizona State Legislature v. Arizona Independent Redistricting Commission](#), which held that the voters of Arizona could remove from the state legislature the authority to redraw the boundaries for legislative districts and vest that authority in an independent commission. In so holding, the Court examined the [Elections Clause](#), which states that the “Times, Places, and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof.” The Court determined that the term “Legislature” encompassed the voters of a state making law through a referendum. In reaching

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this determination, the Court relied on three cases from the early twentieth century to support a more expansive view of the term “Legislature.” The Court described one of these cases from 1916, *Ohio ex rel. Davis v. Hildebrand*, as holding that a state referendum was “part of the legislative power” and could be “exercised by the people to disapprove the legislation creating congressional districts.”

Proponents of the primacy of precedent as a source of constitutional meaning point to the legitimacy of decisions that adhere to principles set forth in prior, well-reasoned written opinions. They contend that following the principle of *stare decisis* and rendering decisions grounded in earlier cases supports the Court’s role as a neutral, impartial, and consistent decisionmaker. Reliance on precedent in constitutional interpretation is said to provide more predictability, consistency, and stability in the law for judges, legislators, lawyers, and political branches and institutions that rely on the Court’s rulings; prevent the Court from overruling all but the most misguided decisions; and allow constitutional norms to evolve slowly over time.

Some argue that judicial overreliance on precedent can be problematic. For one thing, certain precedents might have been wrongly decided, in which case relying on them merely *perpetuates their erroneous construction* of the Constitution. Indeed, critics argue that, if the Court strictly adheres to precedent, once a precedent has been established on a question of constitutional law, the only way to alter that ruling is to amend the Constitution. This inflexibility is particularly problematic when those outside the Court begin to disagree about general background principles underlying a precedent; as such, disagreements arguably cause that precedent to lose its authority. For example, when precedent offends basic moral principles (e.g., *Plessy v. Ferguson*), the power of the Court’s precedent may necessarily be weakened. Other commentators argue that “consistency,” “predictability,” “stability,” and “neutrality” are not actually benefits of reliance on precedent, as judges *may choose among precedents* and, to some extent, interpret precedents in accordance with their own views in order to overrule them implicitly; to expand them; or to narrow them. In addition, some proponents of original meaning as a method of constitutional interpretation *object* to the use of judicial precedent that conflicts with original meaning, because it favors the views of the Court over the views of those who ratified the Constitution, thereby allowing mistaken interpretations of the Constitution to persist.

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