No. 99-5525

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES THOMAS DICKERSON
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

BRIEF *AMICUS CURIAE* OF THE BIPARTISAN LEGAL ADVISORY GROUP OF THE UNITED STATES HOUSE OF REPRESENTATIVES IN SUPPORT OF AFFIRMANCE

Filed March 9, 2000

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INTEREST OF THE AMICUS CURIAE[1]

The Bipartisan Legal Advisory Group of the U.S. House of Representatives respectfully submits this brief as *amicus curiae* supporting affirmance of the judgment of the U.S. Court of Appeals for the Fourth Circuit.[2] The Bipartisan Legal Advisory Group and its predecessors have traditionally represented the institutional interests of the House in judicial proceedings, and have often appeared before this Court where such institutional interests are at stake.[3]

On November 1, 1999, the Attorney General notified the Speaker of the House of her determination that Section 3501 of Title 18 "cannot constitutionally authorize the admission of statements that would be excluded under the Supreme Court's holding in [*Miranda v. Arizona*, 384 U.S.

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[1] All parties have consented to the filing of this brief; letters of consent have been lodged with the Clerk. No counsel for a party authored this brief in whole or in part, and no person or entity other than the *amici curiae* and their counsel have made a monetary contribution to the preparation or submission of this brief.

[2] Pursuant to House Rule II(8), the Bipartisan Legal Advisory Group includes the Speaker of the House, the Majority Leader, the Majority Whip, the Minority Leader and the Minority Whip. The Minority Leader and the Minority Whip declined to support the filing of this brief.

[3] See, e.g., *Raines v. Byrd*, 521 U.S. 811, 818 n.2 (1997); *United States v. Eichman*, 496 U.S. 310 (1990); *American Foreign Serv. Ass'n v. Garfinkel*, 490 U.S. 153 (1989); *Morrison v. Olson*, 487 U.S. 654 (1988); *Burke v. Barnes*, 479 U.S. 361(1987); *Bowsher v. Synar*, 478 U.S. 714 (1986); *Japan Whaling Ass'n v. American Cetacean Soc'y*, 478 U.S. 221 (1986); *Helstoski v. Meanor*, 442 U.S. 500 (1979); *United States v. Helstoski*, 442 U.S. 477 (1979).

436 (1966)]."[4] Acknowledging the "traditional practice of the Department of Justice in virtually all cases to defend the constitutionality of an Act of Congress unless it is plainly unconstitutional or an impermissible encroachment on the constitutional power of the Executive," the Attorney General nonetheless stated that the Justice Department would not defend the judgment of the court of appeals below upholding the constitutionality of Section 3501, but would ask this Court to grant *certiorari* and reverse that judgment.[5]

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[4] The Attorney General's letter cited the notification requirements of Pub. L. No. 96-132, § 21(a)(2), 93 Stat. 1049-1050. Other statutes also impose notification requirements on the Attorney General when she declines to defend the constitutionality of an Act of Congress. *See* 2 U.S.C. § 130f(b) ("The Attorney General shall notify the General Counsel of the House of Representatives with respect to any proceeding in which the United States is a party of any determination by the Attorney General or Solicitor General not to appeal any court decision affecting the constitutionality of an Act or joint resolution of Congress within such time as will enable the House to direct the General Counsel to intervene as a party in such proceeding pursuant to applicable rules of the House of Representatives."); 2 U.S.C. § 288k(b) (same notification requirement with respect to Senate Legal Counsel). These provisions are designed to ensure that each House of Congress has an opportunity to protect its interest in defending the constitutionality of federal statutes, but they in no way approve or authorize any refusals to defend by the Justice Department. *See, e.g.*, H.R. Rep. 99-113 at 17 n.1 (1985) ("legislative history makes it clear that the [notification] provision was not intended to ratify the Department's refusal to enforce a statute . . . [but] to assure that Congress would receive early notification if the Department attempted to do so."); *id.* at 18 ("[S]ince all . . . statutes are presumed constitutional until judicially determined otherwise, the Attorney General may not refuse to enforce these statutes.").

[5] The Justice Department has stated that it "appropriately refuses to defend an act of Congress only in the rare case when the statute either infringes on the constitutional power of the Executive or when prior precedent overwhelmingly indicates the statute is invalid." Letter of Attorney General William French Smith to the Honorable Strom Thurmond and the Honorable Joseph R. Biden, Jr., 5 O.L.C. 25 (Apr. 6, 1981).

As the Fourth Circuit noted, the "Department of Justice's refusal to defend the constitutionality of an Act of Congress is an extraordinary event." J.A 184-85 n.14. Even more extraordinary--if not unprecedented--is the situation presented here, where the Justice Department is asking this Court to *reverse* the judgment of a court of appeals sustaining the constitutionality of a duly enacted Act of Congress which does not--and is not alleged to--infringe upon the executive power in any way.

The House has a well recognized institutional interest in defending the constitutionality of a duly enacted statute where the Justice Department refuses to do so. *See INS v. Chadha*, 462 U.S. 919, 940 (1983) ("We have long held that Congress is the proper party to defend the validity of a statute when an agency of government, as a defendant charged with enforcing the statute, agrees with plaintiffs that the statute is inapplicable or unconstitutional."). This interest is particularly strong where, as here, the Justice Department's refusal to defend flies in the face of the manifestly compelling arguments in support of the statute's constitutionality, arguments that were accepted by the Fourth Circuit below.[6]

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[6] The constitutionality of Section 3501 has also been recognized by other lower courts, *see United States v. Crocker*, 510 F.2d 1129, 1137 (10th Cir. 1975) and *United States v. Rivas-Lopez*, 988 F. Supp. 1424, 1430-36 (D. Utah 1997), and by the Justice Department itself. *See* U.S. Dep't of Justice, Office of Legal Policy, Report to the Attorney General on the Law of Pre-Trial Interrogation at 103 (Feb. 12, 1986), *reprinted in* 22 U. Mich. J. L. Reform 437 (1989) ("Since the Supreme Court now holds that *Miranda*'s rules are merely prophylactic, and that the Fifth Amendment is not violated by the admission of a defendant's voluntary statements despite non-compliance with *Miranda*, a decision by the Court invalidating this statute [Section 3501] would require some extraordinarily imaginative legal theorizing of an unpredictable nature."). On a number of occasions the Justice Department has argued to federal courts that unwarned custodial confessions may be admitted pursuant to Section 3501, including in the district court here. J.A. 175. *See generally* Testimony of Paul G. Cassell Before the Subcommittee on Criminal

To vindicate this interest and to protect the ability of Congress to enact future legislation in this area, the Bipartisan Legal Advisory Group respectfully submits this brief.

SUMMARY OF ARGUMENT

This case involves the constitutionality of 18 U.S.C. § 3501, which was enacted by Congress in 1968 as part of the Omnibus Crime Control and Safe Streets Act of 1968. Section 3501 is "the statute governing the admissibility of confessions in federal prosecutions." *United States v. Alvarez-Sanchez*, 511 U.S. 350, 351 (1994). In pertinent part Section 3501 provides that a confession "shall be admissible in evidence if it is voluntarily given" and specifies certain factors that the trial judge must consider in making the voluntariness determination, including, but not limited to, whether the warnings required by *Miranda v. Arizona*, 384 U.S. 436 (1966), were given. 18 U.S.C. §§ 3501(a),(b). The statute does not overrule *Miranda*'s legal conclusion that a confession produced as a result of the pressures of custodial interrogation may be compelled within the meaning of the Fifth Amendment, but simply ensures that all unwarned confessions are not automatically excluded from evidence.

The Fourth Circuit correctly held that Section 3501 is constitutional because the rule set forth in Miranda--that a confession obtained without the *Miranda* warnings is conclusively presumed involuntary and therefore inadmissible--is not required by the Constitution. J.A. 207. First, this Court's post-*Miranda* precedents clearly and repeatedly state that the *Miranda* warnings are recommended procedural safeguards, not constitutional requirements. Even more importantly, these precedents hold that an unwarned, but

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Justice Oversight of the Committee on the Judiciary, United States Senate, Concerning the Enforcement of 18 U.S.C. 3501, 1999 WL 16947869 (May 13, 1999).

voluntary, confession may be used against a defendant for various purposes, including for impeachment, and that the fruits of such a confession may also be admitted. Since petitioner's confession was determined to be voluntary for purposes of admitting derivative evidence, it follows that admitting the confession pursuant to Section 3501 would not violate his constitutional rights.

Second, the *Miranda* decision itself does not hold that Congress lacks the authority to authorize the admission of unwarned, but voluntary, confessions. The language that the Justice Department relies upon to argue that *Miranda* limits future legislation is dicta, and the Justice Department's broad construction of that dicta is inconsistent with the presumption of constitutionality that is afforded to federal statutes. Moreover, the Justice Department's reading of *Miranda* would unnecessarily bring that case into conflict with this Court's later precedents. Under a proper reading of *Miranda*, Section 3501 can be upheld without "overruling" that case.

Miranda's rule of automatic exclusion is a conclusive presumption based upon the *Miranda* Court's empirical assessment of the coercive nature of custodial interrogation at the time of that decision. This conclusive presumption, however, is a rule of judicial convenience and efficiency, not a constitutional requirement. Moreover, in enacting Section 3501, Congress rejected *Miranda*'s empirical assessment of custodial interrogation, as it had the right to do. Thus, Section 3501's requirement of an individualized determination of voluntariness is clearly constitutional.

Finally, the policy arguments advanced by the Justice Department and others do not justify striking down Section 3501. In the first place, these arguments significantly misstate the costs and benefits of upholding Section 3501. Most importantly, they incorrectly assume that Section 3501 would lead to the abandonment, or at least the substantial modification, of current law enforcement practices with respect to providing *Miranda* warnings. In fact, Section 3501

would have no such effect. In the second place, policy concerns regarding the operation of Section 3501 are properly addressed to Congress, not the courts. Congress is the institution responsible for, and most capable of, balancing the need for extra-constitutional prophylactic measures to protect the rights of individuals against the need for effective law enforcement to protect the general public.

ARGUMENT

"Judging the constitutionality of an Act of Congress is properly considered 'the gravest and most delicate duty that this Court is called upon to perform.'" *Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 319 (1985) (internal citations omitted) (quoting *Blodgett v. Holden*, 275 U.S. 142, 148 (1927) (Holmes, J.)). In undertaking this task, "the Court accords 'great weight to the decisions of Congress,'" recognizing that "[t]he Congress is a coequal branch of government whose Members take the same oath we do to uphold the Constitution of the United States." *Rostker v. Goldberg*, 453 U.S. 57, 64 (1981) (quoting *Columbia Broad. System, Inc. v. Democratic Nat'l Comm.*, 412 U.S. 94, 102 (1973)); *see also United States v. Lopez*, 514 U.S. 549, 580 (1995) (noting "the circumspection with which we invalidate an Act of Congress") (Kennedy, J. concurring); *United States v. Watson*, 423 U.S. 411, 416 (1976) (noting that "there is a 'strong presumption of constitutionality due to an Act of Congress'") (quoting *United States v. Di Re*, 332 U.S. 581, 585 (1948)).

As the Fourth Circuit noted, the question of "[w]hether Congress has the authority to enact § 3501 . . . turns on whether the rule set forth by the Supreme Court in *Miranda* [that an unwarned confession is automatically inadmissible] is required by the Constitution." J.A. 201. If the answer is yes, Section 3501 is unconstitutional as applied to unwarned custodial confessions such as petitioner's. If the answer is no, Section 3501 is clearly valid as an exercise of Congress' "plenary authority over the promulgation of evidentiary rules for the federal courts." *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 31 (1976); *see also Vance v. Terrazas*, 444 U.S. 252, 265-66 (1980) (Congress' power "to prescribe rules of evidence and standards of proof in the federal courts . . ., rooted in the authority of Congress conferred by Art. 1, § 8, cl. 9 of the Constitution to create federal courts, is undoubted and has been frequently noted and sustained.").

I. BECAUSE *MIRANDA*'S RULE THAT AN UNWARNED CONFESSION IS AUTOMATICALLY INADMISSIBLE IS NOT REQUIRED BY THE CONSTITUTION, SECTION 3501 CAN BE UPHELD WITHOUT "OVERRULING" *MIRANDA*

A. This Court's Post-*Miranda* Jurisprudence Establishes that the Constitution Does Not Require the Exclusion of Unwarned, but Voluntary, Statements

If the *Miranda* Court had held that the Constitution required the exclusion of all unwarned custodial confessions, then Section 3501 could not be constitutionally applied to admit petitioner's confession without overruling *Miranda*. As the Fourth Circuit pointed out, the *Miranda* decision itself is opaque as to the precise basis for its requirement that unwarned confessions be excluded from evidence, although the better reading of *Miranda* is that this requirement is a judicially-created, non-constitutional, rule designed to "allow the Court to avoid the constitutional issues associated with state interrogations." J.A. 203. This reading of *Miranda* is strongly supported by the fact that the Court explicitly invited Congress and the States to modify this rule by legislation.

Miranda, 384 U.S. at 467, 490.

The Court's post-*Miranda* jurisprudence, moreover, eliminates any ambiguity on this point and clearly establishes that the procedural safeguards set forth in *Miranda* are not constitutionally required and that unwarned, but voluntary, confessions may constitutionally be admitted into evidence. *See, e.g., Davis v. United States*, 512 U.S. 452, 457 (1994) ("The right to counsel established in *Miranda* was one of a 'series of recommended 'procedural safeguards' . . . [that] were not themselves rights protected by the Constitution but were instead measures to insure that the right against compulsory self-incrimination was protected.'") (quoting *Michigan v. Tucker*, 417 U.S. 433, 443-44 (1974)); *Duckworth v. Eagan*, 492 U.S. 195, 203 (1989) ("The prophylactic *Miranda* warnings are 'not themselves rights protected by the Constitution . . .'") (quoting *Michigan v. Tucker*); *Moran v. Burbine*, 475 U.S. 412, 424 (1986) (same); *Oregon v. Elstad*, 470 U.S. 298, 306 (1985) ("The *Miranda* exclusionary rule . . . may be triggered even in the absence of a Fifth Amendment violation [and] [t]hus, in the individual case, *Miranda*'s preventive medicine provides a remedy to the defendant who has suffered no identifiable constitutional harm."); *see also Withrow v. Williams*, 507 U.S. 680, 702 (1993) ("the exclusion of statements obtained in violation of *Miranda* is not constitutionally required.") (O'Connor, J., concurring in part and dissenting in part); *Duckworth*, 492 U.S. at 209 ("The *Miranda* rule is not, nor did it ever claim to be, a dictate of the Fifth Amendment itself.") (O'Connor, J., concurring).

The Justice Department acknowledges that "the language used in *Tucker* and its progeny that a violation of *Miranda* is not itself a violation of the Constitution could be read to support an inference that *Miranda* is not a constitutional rule." Brief of the United States at 23. However, it is not merely the language of these cases, but their square holdings, that compels this conclusion. Thus, the

Court has held that unwarned confessions may be used for impeachment and that evidence derived from such unwarned confessions may be admitted. *See Elstad*, 470 U.S. at 305-06; *Oregon v. Hass*, 420 U.S. 714, 722-23 (1975). Similarly, in *New York v. Quarles*, 467 U.S. 649 (1984), the Court held that a "public safety" exception to the *Miranda* exclusionary rule allowed the admission of an unwarned confession resulting from questioning a suspect about the location of a gun. The Court concluded that the "need for answers to questions in a situation posing a threat to the public safety outweighs the need for the prophylactic rule protecting the Fifth Amendment's privilege against self-incrimination." *Id.* at 657. Absent evidence of "actual coercion" that would violate the Fifth Amendment, "there is no constitutional imperative requiring the exclusion of the evidence that results from police inquiry of this kind." *Id.* at 658 n.7. Thus, the mere fact that *Miranda* warnings were not given did not establish that the confession was involuntary, *id.* at 655 n.5, and there was no constitutional prohibition against the admission of an unwarned, but voluntary, confession.

It is true, as the Justice Department points out, that, apart from *Quarles*, the post-*Miranda* cases continue to adhere to *Miranda*'s rule that unwarned confessions are inadmissible in the prosecution's case-in-chief. *See* Brief of the United States at 39. But this observation begs the question of whether the Constitution requires the *Miranda* rule in the first place. Indeed, while the Justice Department describes the dichotomy in this Court's cases--unwarned, voluntary confessions may be used for impeachment or for derivative evidence, but may not generally be used in the prosecution's case-in-chief--it does not explain how that dichotomy can be justified as a constitutional requirement. After all, a statement compelled in violation of the Fifth Amendment cannot be used for any purpose, including

impeachment or derivative evidence.[7] Since in this case petitioner's statements have been determined to be voluntary, and therefore usable against him for purposes of admitting evidence derived therefrom, J.A. 211-12, it follows inexorably that the use of those statements against him in the prosecution's case-in-chief would not violate his constitutional rights.

B. *Miranda*'s Statements Regarding the Minimum Requirements for Future Legislation Are Dicta

The Justice Department contends that because *Miranda* is a "constitutional decision" or a decision of "constitutional dimension," it controls the outcome of this case unless this Court "overrules" *Miranda*.[8] However, while *Miranda* was designed to protect the Fifth Amendment right against self-incrimination, it is clear--as the Justice Department acknowledges–"that the procedural safeguards articulated in *Miranda* are not themselves required by the Constitution and that a violation of *Miranda*'s prophylactic rules does not necessarily produce statements that are themselves 'compelled.'" Brief of United States at 40. The

[7] *See New Jersey v. Portash*, 440 U.S. 450, 458-59 (1979) (testimony compelled under grant of immunity cannot be used for impeachment); *Mincey v. Arizona*, 437 U.S. 385, 397-98 (1978) (involuntary confession cannot be used for impeachment); *Kastigar v. United States*, 406 U.S. 441 (1972) (fruits of testimony compelled under grant of immunity cannot be admitted into evidence). Even if there were some constitutional distinction between the different uses of compelled testimony, that distinction would not explain this Court's ruling in *Quarles*. There is no "public safety" exception to the Fifth Amendment.

[8] *See* Brief for the United States at 8 (*Miranda* is a "constitutional decision"), *id.* at 9, 29 (*Miranda* is of "constitutional dimension"); *id.* at 7 (*Miranda* is a "constitutionally based ruling); *id.* at 8 & 25 (*Miranda* is "constitutional in nature"); *id.* at 23, 24, 26, 29 (*Miranda* rests on a "constitutional basis" or "constitutional grounds").

question presented here--whether Congress is constitutionally prohibited from providing for the admission of unwarned confessions which are not actually "compelled" in violation of the Fifth Amendment-- was simply not before the *Miranda* Court. If anything, *Miranda* made it clear that the rules laid down in its decision could be altered by subsequent state or federal legislation, and stated that "[o]ur decision in no way creates a constitutional straitjacket which will handicap sound efforts at reform, nor is it intended to have this effect." *Miranda*, 384 U.S. at 467.

The Justice Department--like others supporting petitioner--argues that *Miranda* limits future acceptable legislation to that which is "fully as effective" or "at least as effective" as the *Miranda* rules "in apprising accused persons of their right of silence and in assuring a continuous opportunity to exercise it." Brief of United States at 27 (quoting *Miranda*, 384 U.S. at 467, 490). It contends that Section 3501 fails to meet this "constitutional standard of adequacy stated in *Miranda*" and thus the statute must be struck down unless *Miranda* is "overruled." Brief of United States at 28-29.

However, whatever interpretation may be placed on the "fully as effective" language from the *Miranda* decision, it is clear that this language in no sense constituted part of the holding of that case.[9] It is pure dicta, designed to provide guidance to the legislatures as the Court "encourage[d] Congress and the States to continue their laudable search for increasingly effective ways of protecting the rights of the individual while promoting efficient enforcement of our

[9] *See Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 399-400 (1821) ("It is a maxim, not be disregarded, that general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used. If they go beyond the case, they may be respected, but ought not to control the judgment in a subsequent suit, when the very point is presented for decision.") (Marshall, C.J.).

criminal laws."[10] *Miranda*, 384 U.S. at 467. The Justice Department's approach--giving this guidance the status of a holding that requires the invalidation of Section 3501--would be inconsistent not only with *Miranda*'s disavowal of an intent to create a "constitutional straitjacket,"[11] but with this Court's careful and circumspect approach to passing on the constitutionality of an Act of Congress.

Moreover, applying the *Miranda* dicta in the context of Section 3501 is problematic because the *Miranda* Court was envisioning legislation that sought to replace the warnings with a set of alternative safeguards to protect the privilege. Section 3501, however, does not seek to supercede or replace the practice of giving warnings--a practice that was followed by federal law enforcement even before the *Miranda* decision. *See Miranda*, 384 U.S. at 483-86. Instead, Section 3501 modifies the consequences of a "technical" failure to give warnings--*i.e.*, a failure that does not result in an actual constitutional violation--by providing that such a failure does not automatically lead to the exclusion of the unwarned confession.[12] Section 3501 provides a series of objective

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[10] The Court has already rejected other dicta in the *Miranda* opinion. *See Harris v. New York*, 401 U.S. 222, 224 (1971) ("Some comments in the *Miranda* opinion can indeed be read as indicating a bar to use of an uncounseled statement for any purpose, but discussion of that issue was not at all necessary to the Court's holding and cannot be regarded as controlling.").

[11] Cf. Smith v. Robbins, 120 S. Ct. 746, 757 (2000) (refusing to adopt an interpretation of *Anders v. California*, 386 U.S. 738 (1967) which would "convert[] it from a suggestion into a straitjacket [that] would contravene this Court's established practice of allowing the States wide discretion, subject to the minimum requirements of the Fourteenth Amendment, to experiment with solutions to difficult policy problems.").

[12] As Justice O'Connor has pointed out, many--if not most--*Miranda* violations present precisely such technical issues:

factors (including whether the *Miranda* warnings were given) to guide the trial court in making the determination of admissibility, but still leaves the trial court with ample flexibility to exclude any unwarned confessions that were obtained in violation of the defendant's constitutional rights.[13] Such a statutory procedure, which is "fully effective" to protect a suspect's constitutional rights, was not involved in

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> In case after case, the courts are asked on habeas to decide purely technical *Miranda* questions that contain not even a hint of police overreaching. And in case after case, no voluntariness issue is raised, primarily because none exists. Whether the suspect was "in custody," whether or not there was "interrogation," whether warnings were given or were adequate, whether the defendant's equivocal statement constituted an invocation of rights, whether waiver was knowing and intelligent--this is the stuff that *Miranda* claims are made of. While these questions create litigable issues under *Miranda*, they generally do not indicate the existence of coercion--pressure tactics, deprivations, or exploitations of the defendant's weaknesses--sufficient to establish involuntariness.

Withrow v. Williams, 507 U.S. at 709-710 (O'Connor, J., concurring in part and dissenting in part) (footnotes omitted).

[13] *See* S. Rep. No. 90-1097 (1968), *reprinted in* 1968 U.S.C.C.A.N. 2112, 2282 ("[The proposed statute] would avoid the inflexible rule of excluding such statements *solely* on technical grounds such as delay or failure to warn the accused as to his rights to silence or to counsel. We have not nullified, however, the rights of defendants to the safeguards of federal law or the Constitution. On the contrary, we have provided a more reasonable rule in that the judge shall consider all the defendant's rights . . . and their possible violation in deciding as to the voluntariness of the confession and thus its admissibility.") (Individual Views of Messrs. Dirksen, Hruska, Scott and Thurmond) (emphasis in original).

Miranda, nor directly addressed by the Court even in dicta.[14]

In the final analysis, the Justice Department postulates an irreconcilable "tension" between *Miranda* and the post-*Miranda* case law. Brief of the United States at 39. This "tension," of course, is eliminated simply by acknowledging--as the Justice Department has in the past--that *Miranda*'s exclusionary rule is not constitutionally required.[15] *Miranda* can and should be construed so as to avoid such tension. In any event, if the tension existed, principles of *stare decisis* would not foreclose this Court from deciding the case is such

[14] The Justice Department strains mightily to conclude that the listing of factors in Section 3501(b) made no change from pre-*Miranda* voluntariness law. Brief of United States at 15-18. However, the fact that each of the listed factors had been considered (or at least mentioned) in prior cases proves nothing because under pre-*Miranda* law "[a]lmost everything was relevant, but almost nothing was decisive." Y. Kamisar, *Gates, "Probable Cause," "Good Faith" and Beyond*, 69 Iowa L. Rev. 551, 570 (1984). By contrast, Section 3501 identifies a limited number of objective factors which, if not necessarily decisive, would (if they weighed against the prosecution) at least create a heavy presumption of involuntariness without any specific proof of coercion. Thus, it is entirely reasonable to read Section 3501 as more protective of Fifth Amendment rights than was pre-*Miranda* law, a reading that would be consistent with the well-established proposition that statutes must be construed to avoid constitutional doubt. *See Dep't of Commerce v. U.S. House of Representatives*, 119 S.Ct. 765, 781 (1999) (Scalia, J., concurring); *Edward J. Bartolo Corp. v. Florida Gulf Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988).

[15] *See* Brief of the United States as Amicus Curiae Supporting Petitioner at 9; *Withrow v. Williams*, 507 U.S. 680, 706-07 (1993) (No. 91-1030) ("*Miranda*'s prophylactic rules lead to the exclusion of highly probative evidence not obtained in violation of the Constitution"); *id.* at 14 ("'[t]he *Miranda* rule is not, nor did it ever claim to be, a dictate of the Fifth Amendment'") (citing *Duckworth*, 492 U.S. at 209 (O'Connor, J., concurring)); *see also* U.S. Dep't of Justice, Office of Legal Policy, Report to the Attorney General on the Law of Pre-Trial Interrogation at 103 (Feb. 12, 1986), reprinted in 22 U. Mich. J.L. Reform 437 (1989).

a way as to resolve that tension. *See Church of the Lukumi Babali Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 574 (1993) (Souter, J., concurring). Since the application of Section 3501 to admit petitioner's confession would not actually violate the Constitution, the statute should be upheld. No principle of this Court's flexible doctrine of *stare decisis* requires *extending* a precedent to invalidate a duly enacted Act of Congress which does not in fact violate the Constitution.

II. *MIRANDA*'S CONCLUSIVE PRESUMPTION THAT CUSTODIAL INTERROGATIONS ARE INHERENTLY COERCIVE IS NOT DICTATED BY THE CONSTITUTION AND WAS NOT BINDING ON CONGRESS

A. *Miranda*'s Conclusive Presumption Is a Rule of Convenience, Not a Constitutional Requirement

Since *Miranda* clearly did not hold that all unwarned confessions were actually involuntary, the most reasonable interpretation of *Miranda* is that its rule of automatic exclusion is a rule of judicial convenience, based on the difficulty of determining whether an unwarned confession was in fact voluntary. By conclusively presuming that unwarned confessions are involuntary, *Miranda* enabled courts to avoid "spending countless hours reviewing the facts of individual custodial interrogations." *Quarles*, 467 U.S. at 683 (Marshall, J., dissenting).[16] This is consistent with the

[16] *See also Quarles*, 467 U.S. at 683 (Marshall, J., dissenting) ("In practice [the pre-*Miranda*] courts found it exceedingly difficult to determine whether a given confession had been coerced. Difficulties of proof and subtleties of interrogation technique made it impossible in most cases for the judiciary to decide with confidence whether the defendant had voluntarily confessed his guilt or whether his testimony had been unconstitutionally compelled."); *see id.* at 684 n.7 (acknowledging that

purpose of all conclusive presumptions, which are simply "designed to avoid the costs of excessive inquiry where a *per se* rule will achieve the correct result in almost all cases." *Coleman v. Thompson*, 501 U.S. 722, 723 (1991).

As the Fourth Circuit noted, however, such "conclusive presumptions, like the one contained in *Miranda*, are dictated by convenience, not the Constitution." J.A. 207 n.20. Thus, even if most custodial interrogations did involve inherent coercion, it would be within Congress's power to require an individualized determination as to whether a particular interrogation involved sufficient coercion to render a confession involuntary.

Moreover, this Court's post-*Miranda* cases clearly establish that the conclusive presumption is not constitutionally required. These cases demonstrate that the courts do not need a conclusive presumption in order to distinguish between unwarned, but voluntary confessions, on the one hand, and those which are involuntary, on the other. *See, e.g., Elstad*, 470 U.S. at 305-06; *Quarles*, 467 U.S at 657-58; *Tucker*, 417 U.S. at 443-44. If a conclusive presumption is neither necessary nor appropriate when evaluating the voluntariness of an unwarned confession for purposes of impeachment or derivative evidence (or in the context of the "public safety" exception), it cannot be otherwise with respect to considering the admissibility of the very same confession in the prosecution's case-in-chief.

"*Miranda* was overbroad in that its application excludes some statements made during custodial interrogations that are not in fact coercive").

B. In Enacting Section 3501, the 1968 Congress Rejected *Miranda*'s Empirical Assessment of Custodial Interrogation

Apart from its non-constitutional status, a conclusive presumption is based on an empirical assessment of the likelihood that it will result in the correct outcome in the large majority of cases. *See Coleman*, 501 U.S. at 737 ("*Per se* rules should not be applied, however, in situations where the generalization is incorrect as an empirical matter; the justification for a conclusive presumption disappears when application of the presumption will not reach the correct result most of the time."). Thus, the *Miranda* Court made clear that the rule it announced was premised on a specific understanding of custodial interrogation as it was practiced at that time. *See Miranda*, 384 U.S. at 445 ("An understanding of the nature and setting of this in-custody interrogation is essential to our decisions today."). After surveying various accounts of police brutality and abuses, the Court noted that "[u]nless a proper limitation upon custodial interrogation is achieved--such as these decisions will advance--there can be no assurance that practices of this nature will be eradicated in the foreseeable future." *Id.* at 447. The Court then reviewed various police manuals to identify commonly used psychological techniques designed to pressure or trick suspects into confessing. *Id.* at 447-55. Finally, the Court adopted the warnings, enforced by a rule of automatic inadmissibility, as its "solution for the inherent compulsions of the interrogation process as it is presently conducted." *Id.* at 467.

In enacting Section 3501, Congress did not reject *Miranda*'s interpretation of the Fifth Amendment, but did reject *Miranda*'s empirical assumption that most custodial interrogations involve sufficient pressure to render resulting confessions involuntary. In this connection the Senate Judiciary Committee report pointed out the superior ability of

the legislative branch to find facts and make broad policy decisions in this area, noting that the *Miranda* "Court's invitation for Congress to act could stem from a widespread notion that Congress is better able to cope with the problem of confessions than is the Court."[17] The report specifically criticized the sketchy basis upon which the *Miranda* Court had based its factual assumptions, noting that "[e]xamples of presumed police practice and data supporting the conclusion of inherent coercion in custodial interrogation were drawn solely from police manuals and texts which may or may not have been followed."[18]

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[17] *See* S. Rep. No. 90-1097 (1968) at 46, *reprinted in* 1968 U.S.C.C.A.N. 2112, 2132. Various witnesses testified before the Senate Special Subcommittee on Criminal Laws and Procedures of the Committee on the Judiciary in support of this proposition. For example, Chief Judge J. Edward Lumbard of the U.S. Court of Appeals for the Second Circuit testified:

> The legislative process is far better calculated to set standards and rules by statute than is the process of announcing principles through court decision where the facts are limited. The legislative process is better adapted to seeing the situation in all its aspects and establishing a system and rules which can govern a multitude of different cases.

Id. at 46, 1968 U.S.C.C.A.N. at 2133. California Attorney General Thomas C. Lynch similarly stated that "[I]t seems to me that the Court has implicitly acknowledged that Congress, with its vastly superior fact-finding powers, is in a much better position than the Court to formulate standards most likely to result in a correct determination, in a given case, of the issue of voluntariness of a confession." *Id.* at 47, 1968 U.S.C.C.A.N. at 2133.

[18] S. Rep. No. 90-1097 (1968) at 55, *reprinted in* 1968 U.S.C.C.A.N. 2112, 2142. This view echoed that expressed by Justice White in his *Miranda* dissent. *See Miranda*, 384 U.S. at 532-33 (The Court "extrapolates a picture of what it conceives to be the norm from police

The Senate Judiciary Committee report cited the testimony of witnesses with extensive knowledge of law enforcement practices and methods of custodial interrogation. For example, then-District Attorney (now U.S. Senator) Arlen Specter "pointed out that the so-called third degree methods deplored by the Supreme Court and cited as a basis for their opinion in *Miranda* is not a correct portrayal of what actually goes on in police stations across the country."[19] Quinn Tamm, the executive director of the International Association of Chiefs of Police, likewise stated that while such coercive "practices might have been approved 30 years ago, they have no place in modern police techniques."[20] Thus, coercive practices in police interrogations constituted the "exception rather than the rule," and the Senate Judiciary Committee concluded that custodial interrogations were not in fact inherently coercive.[21]

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investigatorial manuals, published in 1959 and 1962 or earlier, without any attempt to allow for adjustments in police practices that may have occurred in the wake of more recent decisions of state appellate tribunals or this Court. . . . Judged by any of the standards for empirical investigation utilized in the social sciences the factual basis for the Court's premise is patently inadequate.") (White, J., dissenting).

[19] S. Rep. No. 90-1097 (1968) at 47-48, *reprinted in* 1968 U.S.C.C.A.N. 2112, 2134.

[20] S. Rep. No. 90-1097 (1968) at 48, *reprinted in* 1968 U.S.C.C.A.N. 2112, 2134.

[21] S. Rep. No. 90-1097 (1968) at 48, 60 *reprinted in* 1968 U.S.C.C.A.N. 2112, 2134, 2137-38. Other witnesses who testified also supported the view this conclusion as to the nature of custodial interrogations. *See, e.g., Controlling Crime Through More Effective Law Enforcement: Hearings on S. 300, S. 552, S. 580, S. 674, S. 675, S. 678, S. 798, S. 824, S. 916, S. 917, S. 922, S. 1007, S. 1094, S. 1194, S. 1333, and S. 2050 Before the Subcomm. on Criminal Laws and Procedures of the Senate Comm. on the Judiciary* ("Senate Hearing") , 90th Cong. 1120-23 (1967) (Statement of

The Senate Judiciary Committee recognized that opponents of the legislation had expressed the view that it would be found unconstitutional as violating *Miranda*.[22] However, the Committee stated that "it is constitutionally permissible for Congress to formulate a test of admissibility different from that adopted by the Court, inasmuch as the adoption does not follow upon any attempt to change constitutional theory but rather upon a qualifying of the factual basis of the effectuation of that policy."[23]

As this Court has noted, "[w]hen Congress makes findings on essentially factual issues . . ., those findings are of course entitled to a great deal of deference, inasmuch as Congress is an institution better equipped to amass the vast amounts of data bearing on such an issue." *Walters*, 473 U.S. at 330 n.12; *see also Rostker*, 453 U.S. at 82-83 (in evaluating constitutionality of a statute, "[t]he District Court was quite wrong in undertaking an independent evaluation of this evidence, rather than adopting an appropriately deferential examination of Congress' evaluation of that evidence."). It would be wholly inconsistent with this deferential approach to disregard the factual findings underlying Section 3501 merely because they were inconsistent with the *Miranda*

Frank S. Hogan, New York County District Attorney).

[22] S. Rep. No. 90-1097 (1968) at 51, *reprinted in* 1968 U.S.C.C.A.N. 2112, 2147.

[23] S. Rep. No. 90-1097 (1968) at 63, *reprinted in* 1968 U.S.C.C.A.N. 2112, 2150; *see also Hearings on the Supreme Court Before the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary*, 90th Cong. 25 (1968) ("A decision of the Supreme Court, if it is based on a factual assumption which is incorrect, may be subject to Congress' power to legislate") (remarks of Senator Ervin) (*quoted in* J.A. 209-10 n.22).

Court's prior assessment of custodial interrogations.[24]

As the Justice Department concedes, the factual premises of *Miranda* were debatable at the time that case was decided. *See* Brief of United States at 47. Our purpose here is not to criticize *Miranda*'s fact-finding methodology or conclusions, or even to contend that the 1968 Congress's conclusions were necessarily superior. We do, however, strongly dispute the view that the judiciary, simply by making broad and debatable factual assumptions or judgments about the nature of custodial interrogations, can somehow cut off the constitutional authority of the legislative branch to conduct its own inquiry on the matter, reach different conclusions, and legislate on that basis.

C. The 1968 Congress's Legal Disagreement With *Miranda* Is Irrelevant

Although many legislative supporters of Section 3501 disagreed vehemently with the legal reasoning of *Miranda*, Section 3501 does not--as noted by the Senate report--attempt to overrule *Miranda*'s "constitutional theory." For example, Section 3501 does not contradict *Miranda*'s legal conclusion that the right against self-incrimination applies to custodial interrogations. Nor does Section 3501 contradict *Miranda*'s conclusion that the pressures of custodial interrogation can, even in circumstances falling short of physical coercion or "third degree" tactics, violate that right. Instead, Section 3501 simply seeks to ensure that clearly voluntary statements are not excluded from evidence solely because of a failure to give Miranda warnings.

The Justice Department and other parties supporting petitioner suggest that the 1968 Congress acted in a reckless

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[24] Cf. Wallace v. Jafree, 472 U.S. 38, 99 (1985) ("*stare decisis* may bind courts as to matters of law, but it cannot bind them as to matters of history") (Rehnquist, J., dissenting).

and politically-motivated disregard of this Court's final authority to interpret the Constitution.[25] As noted earlier, however, objections to the constitutionality of Section 3501 were debated by the Congress, and a considered response was offered by the statute's proponents. Thus, "[t]he customary deference accorded the judgments of Congress is certainly appropriate when, as here, Congress specifically considered the question of the Act's constitutionality." *Rostker*, 453 U.S. at 64. In any event, the validity of Section 3501 ultimately depends on whether it was within Congress's constitutional authority, not upon the wisdom of the statute or the motives of its proponents.

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[25] For example, the House Democratic Leadership, as *amicus curiae*, expresses the view that "Congress enacted section 3501 largely for symbolic purposes, to make an election-year statement in 1968 about law and order, not to mount a challenge to *Miranda*." *Brief Amicus Curiae* of the House Democratic Leadership at 8; *see also id.* at 5, 9-10, 13, 19, 22. Even if this view were correct, it would have absolutely no bearing on the meaning or the constitutionality of Section 3501. *See generally* S. Breyer, *On the Uses of Legislative History in Interpreting Statutes*, 65 S. Cal. L. Rev. 845, 865-66 (1991) (explaining the difference between legislative purpose and the personal or political motives that may cause a legislator to vote for a particular bill); *cf. Michael M. v. Superior Court of Sonoma County*, 450 U.S. 464, 472 n.7 (1981) ("'[I]t is a familiar practice of constitutional law that this court will not strike down an otherwise constitutional statute on the basis of an alleged illicit legislative motive'") (quoting *United States v. O'Brien*, 391 U.S. 367, 383 (1968)). We are aware of no authority--and the House Democratic Leadership cites none--for the proposition that a duly enacted Act of Congress may be disregarded or struck down because it was intended to be "symbolic" or because political considerations played a role in its passage.

III. THE POLICY OBJECTIONS TO SECTION 3501 DO NOT CONSTITUTE A BASIS FOR INVALIDATING THE STATUTE

Much of the Justice Department's attack on Section 3501 is based on its clearly stated policy concerns about the effect that the statute would have on law enforcement and the criminal justice system. *See* Brief of the United States at 29-50. In brief, the Justice Department argues that *Miranda*'s "core procedures are not difficult to administer," that "*Miranda* has proved workable in practice and is in many respects beneficial to law enforcement," and that *Miranda* "provides bright-line rules that can be readily applied by the police and the courts to a large variety of factual circumstances." *Id.* at 33-34. Other parties supporting petitioner echo these sentiments.[26]

At the outset, we do not believe that dressing these concerns in the rubric of *stare decisis* alters their nature as policy, rather than constitutional, considerations. It is worth noting, however, that the Justice Department significantly overstates the costs, and understates the benefits, of upholding Section 3501. We also believe that the concerns raised by the Justice Department and other parties supporting petitioner argue in favor of recognizing the congressional prerogative to legislate in this area, rather than leaving the issue of the admissibility of custodial confessions solely to the judiciary's case-by-case adjudication.

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[26] *See, e.g.*, Brief of Griffin B. Bell, et al., as *Amici Curiae* at 6-22; Brief of Benjamin Civiletti *Amicus Curiae* at 5-6; Brief *Amici Curiae* of the National Association of Criminal Defense Lawyers and California Attorneys for Criminal Justice at 21-24.

A. The Justice Department and Others Misstate the Costs and Benefits of Section 3501

The alleged "cost" of sustaining the constitutionality of Section 3501 is based almost entirely on the assumption that it would lead to the abandonment, or at least the substantial modification, of current law enforcement practices with respect to providing *Miranda* warnings. Yet it seems clear--indeed virtually undisputed--that Section 3501 would have no such effect. In the first place, as the Fourth Circuit noted, law enforcement has a strong incentive to give the *Miranda* warnings under Section 3501 because providing those warnings "is still the best way to guarantee a finding of voluntariness." J.A. 211.[27] In the second place, as the Justice Department explicitly acknowledges, federal law enforcement agencies would continue to require *Miranda* warnings if Section 3501 were upheld--an assertion which is given added credibility by the fact that they provided such warnings even before *Miranda* was decided. *See* Brief of United States at 49 n.37. Finally, even if the Justice Department were concerned that federal law enforcement personnel would fail to give *Miranda* warnings absent the threat of automatic inadmissibility (a concern which it does not raise and which seems implausible), nothing in Section 3501 requires the Justice Department to offer into evidence statements which were obtained in deliberate violation of law enforcement policy.[28]

The only other "cost" of upholding Section 3501 is suggested by the brief of former Attorney General Bell and others. These *amici* suggest that Section 3501 would encourage courts, regardless of whether or not *Miranda* warnings are given, to scrutinize police methods to determine "whether the suspect's decision to talk was truly voluntary." Brief of Griffin B. Bell, *et al.*, as *Amici Curiae* at 16. The implication is that under current law the courts suppress

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[27] It could be suggested that Section 3501 provides a slightly greater incentive to law enforcement officials not to give *Miranda* warnings because an unwarned confession might be admissible in the prosecution's case in chief. However, as numerous *amici* point out, the uncertainty of whether such a confession would ultimately be determined to be voluntary would be very high. *See* Brief for *Amicus Curiae* The American Civil Liberties Union at 5-7; Brief of Griffin Bell, *et al.*, as *Amici Curiae* at 11-15; Brief of Benjamin Civiletti *Amicus Curiae* at 5-6. Moreover, a law enforcement officer who deliberately failed to give warnings when they were required would risk not only administrative discipline and penalties, but also civil liability in the event an involuntary confession was procured. *See, e.g., California Attorneys for Criminal Justice v. Butts*, 195 F.3d 1039 (9th Cir. 1999), *amended by*, _ F.3d _, 2000 WL 1639 (9th Cir. Jan. 3, 2000). Thus, while some incentive to fail to give warning exists even under the Court's *Miranda* jurisprudence (since unwarned confessions may be used for impeachment or derivative evidence), any additional incentive provided by Section 3501 would seem to be negligible at best.

[28] The Justice Department asserts that it is unable to predict whether state and local law enforcement would continue the policy of giving *Miranda* warnings if Section 3501 were upheld. *See* Brief of the United States at 49 n.37. This concern, however, would only be an issue in states which adopt statutes similar to Section 3501; apparently only Arizona has done so to date. In contrast, a number of states have adopted, as a matter of state law, rules that are identical to or more stringent than those applicable under *Miranda* and its progeny. *See State v. Valera*, 74 Haw. 424, 848 P.2d 376, 380 (1993) ("[W]e have consistently provided criminal defendants with greater protection under Hawaii's version of the privilege against self-incrimination . . . than is otherwise ensured by the federal courts under *Miranda* and its progeny."); *State v. Randolph*, 179 W.Va. 546, 370 S.E.2d 741, 743 (1988) (holding that, notwithstanding *Colorado v. Spring*, 479 U.S. 564 (1987), state law dictated the conclusion that a suspect who was not informed of the nature of the charges against him had not knowingly and intelligently waived his *Miranda* rights). Moreover, to the extent that states do enact analogues to Section 3501, there is every reason to believe that state and local law enforcement would continue to give *Miranda* warnings. *See generally* Brief *Amici Curiae* of Americans for Effective Law Enforcement, Inc., Joined by the International Association of Chiefs of Police, Inc., the National Sheriffs' Association and the Virginia Association of Chiefs of Police.

unwarned confessions, whether voluntary or involuntary, but admit warned confessions without determining if they are actually voluntary. If that be so, it is not clear why this demonstrates the superiority of the *status quo*. In any event, the Court should reject the argument that Congress should not be allowed to legislate lest it cause the judiciary to adjudicate.

With respect to the benefits of upholding Section 3501, the Justice Department admits that "[t]here is no doubt that the public pays a heavy price if technical violations of *Miranda* result in suppression of otherwise probative evidence, and non-prosecution or acquittal of felons ensues." Brief of the United States at 50. However, the Justice Department contends that the *Miranda* doctrine is generally workable, and suggests that the Court has in the past made--and can continue to make in the future--needed modifications to improve the functioning of the doctrine. *Id.* at 35-36. In fact, the Justice Department identifies several areas where it believes that modifications to the *Miranda* doctrine are needed; for example, it indicates that it will ask the Court for a "good faith" exception to the *Miranda* exclusionary rule for situations where officers inadvertently fail to give *Miranda* warnings. *Id.* at 36 n.26.

While the Justice Department may be correct that *Miranda* is "generally workable," it seems clear that there are a significant number of cases--including the present case--where technical violations can lead to exclusion of probative evidence. *See generally Withrow*, 507 U.S. at 709 ("[C]ertainly it is reasonable to suppose that most technical errors in the administration of *Miranda*'s warnings are just that.") (O'Connor, J., dissenting in part and concurring in part); *id.* ("In case after case, the courts are asked on habeas to decide purely technical *Miranda* questions that contain not even a hint of police overreaching."). Section 3501 is designed to deal with precisely those cases. Section 3501 thus will provide the very modifications that the Justice Departments says are needed to ensure that the public does

not unnecessarily pay a "heavy price" with respect to the prosecution of dangerous criminals. *See Davis*, 512 U.S. at 465 (The Justice Department's refusal to invoke Section 3501 "may have produced--during an era of intense national concern about the problem of runaway crime--the acquittal and the nonprosecution of many dangerous felons, enabling them to continue their depredations upon our citizens.") (Scalia, J., concurring).

B. Congress Has the Institutional Capability to Make Rules Governing Custodial Interrogations

The Justice Department suggests that although Congress presumably has the power to enact some alternative procedure to the *Miranda* warnings, it lacks the authority to legislate the very changes in the application of the *Miranda* doctrine that the Justice Department contends the Court itself can and should make. Not only does this suggestion make little sense, it ignores Congress's "creative rule-making capacit[y]" recognized by the *Miranda* Court itself. *Miranda*, 384 U.S. at 467.[29] This capacity gives the Congress significant advantages over the judiciary when it comes to designing rules of general applicability designed to govern the conduct of custodial interrogations.

As noted earlier, Congress has the ability to obtain information from a much wider spectrum of sources than does the judiciary. Congress can hear not only from prosecutors and defense counsel, but from others such as police officers, crime victims, and persons who have been subjected to

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[29] *See also Miranda*, 384 U.S. at 524 (Harlan, J., dissenting) (noting that "legislative reforms when they come would have the vast advantage of empirical data and comprehensive study, they would allow experimentation and use of solutions not open to the courts, and they would restore the initiative in criminal law reform to those forums where it truly belongs.").

coercive interrogation. Through its committee process, Congress can fully explore related issues such as the effect of *Miranda* requirements on police training and procedures, the use of new technology to protect suspect's rights, and the extent to which *Miranda* may in different situations "overprotect" or "underprotect" the constitutional right against self-incrimination.[30] In light of its superior fact-finding powers and its democratic accountability, Congress is clearly the institution most capable of balancing the need for extra-constitutional prophylactic measures to protect the rights of individuals against the need for effective law enforcement to protect the general public.[31]

The Justice Department argues, however, that "overruling" *Miranda* would "undermine public confidence in the fairness" of the criminal justice system because "*Miranda* has come to play a unique and important role in the

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[30] For example, several years ago Congress held hearings on possible modifications of the exclusionary rule. *See Taking Back Our Streets Act of 1995: Hearings on H.R. 3 Before the Subcomm. on Crime of the House Comm. on the Judiciary*, 104th Cong. 343-408 (1995).

[31] *See, e.g., Schweiker v. Chilicky*, 487 U.S. 412, 429 (1988) (holding that Congress could supplant a judicially-created remedy for unconstitutional deprivation of welfare benefits because "[w]hether or not we believe that its response was the best response, Congress is the body charged with making the inevitable compromises required in the design of a massive and complex welfare benefits program"); *Bush v. Lucas*, 462 U.S. 367, 389 (1982) (Congress is "in a far better position than a court" to determine the appropriate remedy for violations of the First Amendment rights of government employees because "[n]ot only has Congress developed considerable familiarity with balancing governmental efficiency and the rights of employees, but it also may inform itself through factfinding procedures such as hearings that are not available to the courts."); *see generally Sorenson v. Sec'y of the Treasury*, 475 U.S. 851, 865 (1986) ("The ordering of competing social policies is a quintessentially legislative function."); *Diamond v. Chakrabarty*, 447 U.S. 303, 317 (1980) (The "balancing of competing values and interests . . . in our democratic system is the business of elected representatives.").

nation's conception of [that system]." Brief of the United States at 49. Similarly, *amici* argue that *Miranda* warnings "have permeated our mass culture" because "[e]very Hollywood crime drama and television police show that depicts an arrest shows the officer warning the arrestee of his rights in accordance with *Miranda*." Brief of Griffin B. Bell, et al., as *Amici Curiae* at 3, 23.

These arguments are flawed, of course, because affirming the Fourth Circuit's judgment in this case requires neither the "overruling" of *Miranda* nor the abandonment of *Miranda* warnings. More fundamentally, however, *Miranda*'s celebrity does not somehow elevate it above the Constitution or normal principles of jurisprudence. This Court should not abandon its traditional approach to passing upon the constitutionality of Acts of Congress based on such novel arguments.

CONCLUSION

For the reasons set forth herein, the Bipartisan Legal Advisory Group of the U.S. House of Representatives respectfully requests that the Court affirm the judgment of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

GERALDINE R. GENNET
General Counsel
KERRY W. KIRCHER
Deputy General Counsel
MICHAEL L. STERN*
Senior Counsel
CAROLYN BETZ
Assistant Counsel

Office of General Counsel
United States House of
Representatives
Washington, D.C. 20015
(202) 225-9700

Counsel for *Amicus Curiae*

*Counsel of Record

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