

The Jurisdictional Nature of Statutory Time Restrictions [*Bowles v. Russell*, 127 S. Ct. 2360 (2007)]

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*Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.*¹

I. INTRODUCTION

To grasp the impact of the United States Supreme Court's decision in *Bowles v. Russell*,² picture the following scenario: The police execute a search warrant without probable cause, find illegal drugs, and arrest the suspect. The judge refuses to exclude the drugs as evidence, and a jury convicts him of drug possession. He appeals his conviction, but a court denies it on the merits.

With hope growing dim, he sends a petition for a writ of habeas corpus pro se because he cannot afford an attorney.³ The district judge denies the petition, but the litigant does not receive the denial notice until after his appeal deadline expires. He then asks the district judge to reopen the filing period because he did not receive timely notice of the denial. The judge grants the request and tells him by court order that he has fifteen days to file his notice of appeal. The judge, however, forgot that the statute requires the petitioner to file within fourteen days. The litigant files the notice of appeal on the fifteenth day pursuant to the district court order, but the appellate court dismisses the case for lack of jurisdiction. In its decision, the appellate court does not consider his re-

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1. THE YALE BOOK OF QUOTATIONS 427 (Fred R. Shapiro ed., 2006) (quoting a letter written by Martin Luther King, Jr. from the Birmingham Jail).

2. 127 S. Ct. 2360 (2007).

3. A pro se litigant is a person who represents oneself without the help of an attorney. BLACK'S LAW DICTIONARY 1236-37 (7th ed. 1999).

liance on the judge's mistake or that he is acting pro se.

The procedural aspect of this scenario may seem unfair to many. One may think that our judicial system could not be so harsh as to deny an opportunity for relief to a pro se litigant who reasonably relies on a judge's mistake. This is, however, the impact of the United States Supreme Court's decision in *Bowles v. Russell*. In the wake of *Bowles*, litigants should be wary of what federal courts tell them. The Supreme Court overruled the possibility of equitable exceptions by holding that statutory deadlines of filing a notice of appeal are jurisdictional.⁴ This Comment will explain why labeling statutory deadlines as jurisdictional makes little sense based on the Court's own precedent. It will also explain how the Court's decision violates due process. Finally, it will analyze how this decision is incompatible with the underlying concept of the collateral bar rule.

II. CASE DESCRIPTION

Keith Bowles was out with friends one evening when they found an acquaintance in physical distress.⁵ The acquaintance told them that another group had beaten him.⁶ Bowles and his group searched for the perpetrators and found one of them, Ollie Gibson.⁷ Bowles initially participated in the attack against Gibson, but later left and waited in the car while the rest of the group threw the final, deadly blows.⁸ Gibson died the following day from the injuries he sustained.⁹ A jury convicted Bowles on one count of murder and sentenced him to prison for fifteen years to life.¹⁰

Bowles then filed a petition for a writ of habeas corpus, which the district court judge dismissed.¹¹ On August 6, 2003, Bowles filed a motion for a new trial or, in the alternative, to amend the judgment.¹² The judge denied this motion one month later.¹³ Bowles claimed that no one served the court's order on him or his attorney.¹⁴ As a result, Bowles missed the thirty-day deadline for appeal as provided under Rule

4. See *infra* notes 65-74 and accompanying text for a background of the excusable neglect doctrine, which allowed courts to grant equitable exceptions for untimely filings of notices of appeal before the Supreme Court overruled it in *Bowles*.

5. *Bowles v. Russell*, 432 F.3d 668, 669 (6th Cir. 2005), *aff'd*, 127 S. Ct. 2360 (2007).

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.* at 670.

11. Brief for the Petitioner at 4, *Bowles v. Russell*, 127 S. Ct. 2360 (2007) (No. 06-5306).

12. *Bowles*, 432 F.3d at 670.

13. *Id.* The court denied the motion on September 9, 2003. *Id.*

14. *Id.* The court explained, "The parties do not dispute the lack of notice, but Bowles blames the error on the court while the Warden claims that Bowles was at fault for failing to comply with the requirements imposed by electronic filing. Regardless, Bowles's contention apparently had merit . . ." *Id.*

4(a)(1)(A) of the Federal Rules of Appellate Procedure.¹⁵ In December 2003, Bowles filed a motion to reopen the time for appeal under Rule 4(a)(6).¹⁶ The rule allows the court to grant the request to reopen the time to file an appeal for fourteen days under certain circumstances.¹⁷ The court granted his motion on February 10, 2004.¹⁸ Instead of reopening the time to appeal for fourteen days, the judge “inexplicably” ordered a deadline of February 27, 2004, allowing a seventeen-day window.¹⁹ Bowles filed his motion on February 26, one day before the deadline written on the court order, but after the statutory period expired.²⁰

On appeal, the State contended that Bowles filed the notice of appeal after the fourteen-day statutory limit and therefore outside the court’s jurisdictional scope.²¹ The United States Court of Appeals for the Sixth Circuit agreed and held that Rule 4(a)(6) is a timeline defining the types of cases that it may hear.²² Consequently, it dismissed the case for lack of jurisdiction.²³

The only issue before the Supreme Court was whether the Sixth Circuit had jurisdiction to hear the appeal filed after the statutory deadline, based on Bowles’s reliance on the district court order.²⁴ The Court affirmed the decision by holding that Rule 4(a)(6) is jurisdictional and, thus, outside of the appellate court’s jurisdiction.²⁵ In the majority opinion, Justice Thomas wrote that it has “long held that the taking of an appeal within the prescribed time is ‘mandatory and jurisdictional.’”²⁶

15. *Id.* Rule 4(a)(1)(A) is also found under 28 U.S.C. § 2107(a) providing in full, “Except as otherwise provided in this section, no appeal shall bring any judgment, order or decree in an action, suit or proceeding of a civil nature before a court of appeals for review unless notice of appeal is filed, within thirty days after the entry of such judgment, order or decree.”

28 U.S.C. § 2107(a) (2000).

16. *See* Brief for the Petitioner, *supra* note 11, at 4. Rule 4(a)(6) is also found under 28 U.S.C. § 2107(c), which allows a court to reopen the time to appeal for fourteen days if the petitioner shows reasonable neglect or good cause. 28 U.S.C. § 2107(c) (2000).

17. 28 U.S.C. § 2107(c). The statute requires the court to find that the party did not receive the original judgment within twenty-one days and it would not prejudice either party. *Id.*

18. *Bowles*, 432 F.3d at 670.

19. *Id.*

20. *See id.* at 670-71.

21. *See id.* at 671.

22. *See id.* at 673. *See supra* text accompanying note 16 for the content of Rule 4(a)(6).

23. *Id.* at 677.

24. *See Bowles v. Russell*, 127 S. Ct. 2360, 2362 (2007).

25. *Id.* Justice Thomas wrote the majority opinion, which Justices Scalia, Kennedy, Alito, and Chief Justice Roberts joined. *Id.* at 2361. Justice Souter authored the dissent joined by Justices Stevens, Ginsburg, and Breyer. *Id.* at 2361-62.

26. *Id.* at 2363 (citing *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 61 (1982)).

III. BACKGROUND

A. *The Common Law's Treatment of Statutory Timelines As Jurisdictional*

The Supreme Court has historically held that statutory timelines are jurisdictional, thus not allowing equitable exceptions.²⁷ The Court, however, has noted that some deadlines provide more flexibility.²⁸ Most notably, there is more flexibility in deadlines that do not mark a significant point in the litigation.²⁹ As early as 1848, the Court held in favor of the jurisdictional nature of statutory deadlines.³⁰ In *United States v. Curry*,³¹ the Supreme Court held that a statutory deadline to file a notice of appeal was jurisdictional.³² In the Court's opinion, Chief Justice Taney wrote, "[T]he power to hear and determine a case like this is conferred upon the court by acts of Congress"³³

After *Curry*, the Court considered statutory deadlines as jurisdictional for well over a century.³⁴ In *United States v. Robinson*,³⁵ the Court decided whether the United States Court of Appeals for the District of Columbia Circuit had jurisdiction in a criminal case where the appellant filed untimely.³⁶ The district court concluded that the untimely filing was due to "excusable neglect."³⁷ The Supreme Court dis-

27. See, e.g., *United States v. Robinson*, 361 U.S. 220, 230 (1960); *United States v. Curry*, 47 U.S. (6 How.) 106, 113 (1848).

28. E. King Poor, *Jurisdictional Deadlines in the Wake of Kontrick and Eberhart: Harmonizing 160 Years of Precedent*, 40 CREIGHTON L. REV. 181, 182 (2007).

29. *Id.* An example of a significant point in litigation is filing a notice of appeal. *Id.*

30. See *id.* at 187.

31. 47 U.S. (6 How.) 106 (1848).

32. *Id.* at 113.

33. *Id.* Thomas Curry won his dispute against the government over whether he had title to land in Louisiana. *Id.* at 110. According to the procedural rules at that time, the government had to appeal a district court decision either by serving the respondent with a request to appear before the Supreme Court during the next term or by filing the appeal within a year after the district court's final judgment. Poor, *supra* note 27, at 187 (citing *Curry*, 47 U.S. at 107-10). Instead of following either of these procedures, the government petitioned the district court for an extension to appeal until December 1847—a common practice in state courts. *Id.* The district court granted the motion. *Id.* When the case reached the Supreme Court, Curry argued that the Court should dismiss the appeal for lack of jurisdiction. *Id.*

34. See *Scarborough v. Pargoud*, 108 U.S. 567, 568 (1883) (holding that where the litigant did not bring the writ of error within the statutory timeline of two years, the Court had no jurisdiction to hear the case); *Edmonson v. Bloomshire*, 74 U.S. (1 Wall.) 306, 310 (1869) (finding that courts should dismiss cases where the appellant filed the appeal in an untimely manner *sua sponte*).

35. 361 U.S. 220 (1960).

36. *Id.* at 222.

37. *Id.* at 221-22. Robinson argued that he filed late due to a misunderstanding with his attorney as to who would file the notice. *Id.* at 221. Under Rule 37(a)(2) of the Federal Rules of Criminal Procedure, a defendant has ten days after the final judgment to appeal. See *id.* at 222. Rule 37(a)(2) provides:

"Time for Taking Appeal. An appeal by a defendant may be taken within 10 days after entry of the judgment or order appealed from, but if a motion for a new trial or in arrest of judgment has been made within the 10-day period an appeal from a judgment of conviction may be taken within 10 days after entry of the order denying the motion. When a court after trial imposes sentence upon a defendant not represented by counsel, the defendant shall be advised of his right to appeal and if he so requests, the clerk shall prepare and file forth-

agreed, holding that the ten-day time period prescribed in Rule 37(a)(2) was “mandatory and jurisdictional.”³⁸ Many subsequent cases have relied on the *Robinson* holding.³⁹

Almost two decades after *Robinson*, the Court continued this line of precedent in *Browder v. Director, Department of Corrections of Illinois*.⁴⁰ In *Browder*, the issue was whether the appellate court had jurisdiction over the respondent’s appeal of an order for the petitioner’s release.⁴¹ The State filed the relevant motion past the ten-day deadline pursuant to the Federal Rules of Civil Procedure.⁴² Justice Powell relied on *Robinson*, among other cases, in stating that the “30-day time limit [to file a notice of appeal] is ‘mandatory and jurisdictional.’”⁴³

B. *Kontrick, Scarborough, Eberhart, and Arbaugh: A Change of Direction*

Recent Supreme Court decisions have questioned the surviving vitality of cases like *Robinson* and *Browder*. In *Kontrick v. Ryan*,⁴⁴ a creditor filed an untimely objection to a debtor’s bankruptcy discharge.⁴⁵ In its opinion, the Court recognized that it has been “less than meticulous” in how it had used the term “jurisdictional” in past cases.⁴⁶

with a notice of appeal on behalf of the defendant”
Id. at 222 n.3 (quoting FED. R. CRIM. P. 37(a)(2)). The government relied on Rule 45(b), which provided that a court could not extend the filing period unless specifically allowed by the rule. *See id.* at 222-23. Rule 45(b) states:

“*Enlargement.* When an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice, order the period enlarged if application therefore is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion permit the act to be done after the expiration of the specified period if the failure to act was the result of excusable neglect; but the court may not enlarge the period for taking any action under Rules 33, 34 and 35, except as otherwise provided in those rules, or the period for taking an appeal.”

Id. at 223 (quoting FED. R. CRIM. P. 45(b)).

38. *Id.* at 224.

39. Poor, *supra* note 28, at 195.

40. *See* *Browder v. Dir., Dep’t of Corrs. of Ill.*, 434 U.S. 257, 271-72 (1978).

41. *Id.* at 264. *Browder* petitioned for a writ of habeas corpus at the district court level. *Id.* The district court granted an order directing the State to discharge him unless it retried him within sixty days. *Id.* at 265.

42. *See id.* at 261. The ten-day deadline was under Rule 59(e), which provided, “[A] motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment.” *Id.* at 262 n.5 (quoting FED. R. CRIM. P. 59(e)). Rule 59(b) states that a motion for a new trial “shall be served no later than 10 days after the entry of the judgment.” *Id.* at 261 n.5 (quoting FED. R. CRIM. P. 59(b)). The Court noted that since the respondent did not label the motion, it was not possible to determine under which rule he filed. *Id.* at 262 n.5. The ten-day time limit applies to both rules. *See id.*

43. *Id.* at 264 (citing *United States v. Robinson*, 361 U.S. 220, 229 (1960)).

44. 540 U.S. 443 (2004).

45. *Id.* at 446. The applicable rules are 4004(a), 4004(b), and 9006(b)(3) of the Federal Rules of Bankruptcy Procedure. *Id.* at 448. Rule 4004(a) allows a creditor to file an objection to a debtor’s discharge within “60 days after the first date set for the meeting of creditors.” *Id.* (quoting FED. R. BANKR. P. 4004(a)). Rule 4004(b) governs extensions and permits them if one files the motion before the 60 days. *Id.* Rule 9006(b)(3) limits the ability of bankruptcy courts to extend the deadline to “the extent and under the conditions stated in [that rule].” *Id.*

46. *Id.* at 454. One commentator noted that *Kontrick* provided that courts should limit the term

Accordingly, the Court found that procedural rules did not limit a court's subject-matter jurisdiction and the Federal Rules of Bankruptcy Procedure were "claim-processing" rules not affecting jurisdictional requirements.⁴⁷

Less than a year later in *Scarborough v. Principi*,⁴⁸ the Court stated that it has "[mis]used the term 'jurisdictional' to describe emphatic time prescriptions in [claim processing] rules Classifying time prescriptions, even rigid ones, under the heading 'subject-matter jurisdiction' can be confounding."⁴⁹ Because the petitioner filed an untimely amendment to its application requesting attorney fees, the government moved to dismiss for lack of subject-matter jurisdiction.⁵⁰ In rejecting the government's motion, Justice Ginsburg stressed that courts should limit the "jurisdictional" label to statutory time restrictions that define classes of cases, such as subject-matter and personal jurisdiction.⁵¹

Eighteen months later the Supreme Court followed this precedent in *Eberhart v. United States*.⁵² In *Eberhart*, the issue was whether the seven-day deadline to file a motion for a new trial under Rule 33 of the Federal Rules of Criminal Procedure was jurisdictional.⁵³ Even though the Court made a conscious decision not to overrule *Robinson*, it did find that the deadline was not subject to jurisdictional restraints.⁵⁴ In fact, it concluded that *Robinson* did not address the issue of whether the timeliness of filing a notice of appeal affected a court's subject-matter jurisdiction, but that its holding was limited to the mandatory nature of the Federal Rules.⁵⁵ The Court relied on its opinion in *Kontrick* by stating, "Clarity would be facilitated . . . if courts and litigants used the label 'jurisdictional' not for claim-processing rules, but only for prescriptions

"jurisdictional" to describe subject-matter and personal jurisdiction. Poor, *supra* note 28, at 206-07 (citing *Kontrick*, 540 U.S. at 455).

47. See *Kontrick*, 540 U.S. at 454.

48. 541 U.S. 401 (2004).

49. *Id.* at 413. In *Scarborough v. Principi*, the petitioner invoked a section of the Equal Access to Justice Act (EAJA) that allowed prevailing parties in government claims to receive attorney fees if the party filled out an application within thirty days of the final judgment and met certain other requirements. *Id.* at 405. The EAJA also required the party to include a sentence on the application alleging that the government's position "was not substantially justified." *Id.* The petitioner's counsel failed to include the required sentence on the application and filed an amended application after the thirty-day timeline. *Id.*

50. See *id.* at 405-06. The relevant statutes are found under 28 U.S.C. § 2412(d)(1)(A), (d)(1)(B), and (d)(2)(B). *Id.* at 405. The rule requires that the application show that the litigant was the prevailing party, that she meets the financial requirements (net worth below \$2,000,000 in this case), that she files the action, and includes a statement alleging that her the government's position "was not substantially justified." *Id.*

51. *Id.* at 413-14.

52. 546 U.S. 12 (2005).

53. *Id.* at 13. Before the case reached the Supreme Court, the United States Court of Appeals for the Seventh Circuit relied on *Robinson* by holding that Rule 45(b)'s restriction on extending time limits made them "mandatory and jurisdictional." *Id.* at 14.

54. *Id.* at 16.

55. See *id.* at 17. The Court acknowledged that *Robinson* had created confusion concerning the jurisdictional nature of time limits contained in the Federal Rules because it referred to them as "mandatory and jurisdictional." See *id.*

delineating the classes of cases (subject-matter jurisdiction) and the persons (personal jurisdiction)”⁵⁶

The Supreme Court clarified how lower courts should interpret statutory deadlines just months later in *Arbaugh v. Y&H Corp.*⁵⁷ Although the issue in *Arbaugh* did not present a question of time restrictions, it did present a question regarding the jurisdictional nature of a statutory requirement under Title VII of the Civil Rights Act of 1964.⁵⁸ In a unanimous decision, the Court held that the statutory requirement to bring a claim under Title VII does not affect a court’s subject-matter jurisdiction.⁵⁹ Justice Ginsburg clarified the Court’s stance on what statutory restrictions affect jurisdiction.⁶⁰ She compared the diverging lines of precedent by showing that the Court had at one time found that statutory deadlines were “mandatory and jurisdictional.”⁶¹ She noted, nevertheless, that its recent decisions have clarified that these time limits, “however emphatic,” are not jurisdictional.⁶² She provided a bright-line test in reading procedural statutory limitations by asserting that it is better to “leave the ball in Congress’[s] court” by not treating a statutory restriction as jurisdictional if Congress does not expressly label it as such.⁶³ Indeed, she wrote that if there is no jurisdictional label, “courts

56. *Id.* at 16 (citing *Kontrick v. Ryan*, 540 U.S. 443, 455 (2004)).

57. 546 U.S. 500 (2006).

58. *Id.* at 503. The controversy in *Arbaugh v. Y&H Corp.* involved whether the defendant qualified as an “employer” under Title VII of the Civil Rights Act of 1964 because he employed less than the fifteen-person threshold required by the statute. *Id.* *Arbaugh* filed suit against her employer for sexual harassment under Title VII. *Id.* at 503-04. The defendant argued that it was not an “employer” under the definition of the statute, which defined “employer” as having fifteen or more employees. *Id.* at 504. The applicable statute is 42 U.S.C. § 2000e(b), which defines employer as “a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person.” *Id.* at 504-05.

59. *Id.* at 516. Justice Alito took no part in the case. *Id.*

60. *See id.* at 510.

61. *See id.*

62. *Id.*; compare *United States v. Robinson*, 361 U.S. 220, 229 (1960), with *Scarborough v. Principi*, 541 U.S. 401, 414 (2004), and *Eberhart v. United States*, 546 U.S. 12, 15-20 (2005), and *Kontrick v. Ryan*, 540 U.S. 443, 454-55 (2004). Justice Ginsburg described some of its holdings regarding this matter as “drive-by jurisdictional rulings” without precedential value. *Id.* at 511 (citing *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 91 (1998)).

63. *See Arbaugh*, 546 U.S. at 515. Justice Ginsburg outlined the statutory grants of subject-matter jurisdiction provided in 28 U.S.C. §§ 1331 and 1332, which grant jurisdiction for federal questions and diversity of citizenship respectively. *Id.* at 513. 28 U.S.C. §§ 1331 and 1332(a) provide:

§ 1331: The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

§ 1332(a): The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between--

- (1) citizens of different States;
- (2) citizens of a State and citizens or subjects of a foreign state;
- (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
- (4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States.

28 U.S.C. §§ 1331, 1332(a) (2000).

should treat the restriction as nonjurisdictional in character.”⁶⁴

C. The Excusable Neglect Doctrine

The excusable neglect doctrine allows courts to grant exceptions to untimely filings of motions or notices of appeal.⁶⁵ It stems from considerations of fairness and equity in the face of procedural statutory restrictions.⁶⁶ The Supreme Court established the use of this doctrine in *Harris Truck Lines, Inc. v. Cherry Meat Packers, Inc.*⁶⁷ In *Harris*, the district court extended the time to file a notice of appeal based on a finding of excusable neglect.⁶⁸ After the United States Court of Appeals for the Seventh Circuit reversed for lack of jurisdiction, the Supreme Court vacated the reversal stating that “in view of the . . . great hardship to a party who relies upon the trial judge’s finding of ‘excusable neglect’ . . . it should be given great deference by the reviewing court.”⁶⁹

The Court faced a similar controversy in *Thompson v. INS*,⁷⁰ in which the petitioner filed untimely motions both for a new trial and to amend factual findings.⁷¹ The Seventh Circuit dismissed for lack of jurisdiction, holding that the district court erred in granting an exception.⁷² The Supreme Court reversed because Thompson reasonably relied on the district court’s statement that he filed in a timely manner.⁷³ Consequently, it was a sufficiently “unique circumstance” to warrant an

64. *Id.* at 516.

65. *See* *Alley v. Dodge Hotel*, 501 F.2d 880, 884 (D.C. Cir. 1974).

66. *See id.*

67. 371 U.S. 215 (1962).

68. *Id.* at 217. The petitioner’s general counsel was responsible for all decisions regarding litigation and was on vacation at the time. *Id.* at 216. The general counsel would not return until eight days before the thirty-day appeal filing deadline. *See id.* Because the trial counsel was unable to contact general counsel to ask whether to appeal, he instead petitioned the court to extend the time for appeal, which the court granted. *Id.*

69. *Id.* at 217.

70. 375 U.S. 384 (1964). The district court denied the petitioner’s request for naturalization. *Id.* at 384. Twelve days later, he notified the Immigration & Naturalization Service that he would file motions to amend some factual findings and for a new trial, to which the government raised no objection. *Id.* The motions were untimely according to Rule 73(a) of the Federal Rules of Civil Procedure. *Id.* at 385. The district court denied the motions on the merits, but in dictum, stated that Thompson filed them “in ample time.” *Id.* at 384. Although it is not entirely clear why the district court judge wrote that on the order, Thompson argued before the Seventh Circuit that it was timely because he served the motions ten days from the receipt of the judgment notice. *See id.* at 386.

71. *Id.* at 384-85.

72. *Id.* Rule 73(a) states that an appellant has sixty days to file a notice of appeal for both motions to amend findings of fact under Rule 52 and for a new trial under Rule 59. *Id.* at 385. Regarding the starting point of the sixty days, the Rule declared,

[T]he full time for appeal fixed in this subdivision commences to run and is to be computed from the entry of any of the following orders made upon a *timely* motion under such rules: . . . granting or denying a motion under Rule 52(b) to amend or make additional findings of fact . . . ; or granting or denying a motion under Rule 59 to alter or amend the judgment; or denying a motion for a new trial under Rule 59.

Id.

73. Brief for the Petitioner, *supra* note 11, at 17 (citing *Thompson*, 375 U.S. at 387).

equitable exception.⁷⁴

D. *The Requirement of Unmistakably Clear Language*

The Supreme Court has required unmistakably clear statutory language when enforcing certain statutory restrictions. For example, since the early 1970s, several Court decisions have restricted the scope of federal jurisdiction.⁷⁵ This restriction may have been partly due to the Burger and Rehnquist Courts' federalist approach of limiting access to federal courts.⁷⁶ In 1996, the Court modified this course in *Seminole Tribe of Florida v. Florida*.⁷⁷ The issue in *Seminole* was Congress's enactment of the Indian Gaming Regulatory Act (IGRA), which required states to negotiate with Indian tribes in good faith when entering into gaming compacts.⁷⁸ The IGRA abrogated the states' Eleventh Amendment of the United States Constitution immunity right by codifying a scheme to resolve potential disputes.⁷⁹ After alleging that the State did not act in good faith, the Court held that Congress had the authority to abrogate this right under the Enforcement Clause of the Fourteenth Amendment.⁸⁰ The majority stated, however, that Congress could only abrogate this right by "making its intention unmistakably clear in the lan-

74. *Thompson*, 375 U.S. at 387.

75. Suzanna Sherry, *Logic Without Experience: The Problem of Federal Appellate Courts*, 82 NOTRE DAME L. REV. 97, 99 (2006); see, e.g., *Warth v. Seldin*, 422 U.S. 490, 517-18 (1975) (finding that standing requires a litigant to establish a case on its merits); *Younger v. Harris*, 401 U.S. 37, 41 (1971) (barring suits in federal court for procurement of relief from unconstitutional state criminal prosecution).

76. Sherry, *supra* note 75, at 99. The Burger and Rehnquist Courts revived anti-federalist notions of state authority by limiting access to federal courts. See *id.*

77. 517 U.S. 44 (1996); Sherry, *supra* note 75, at 108.

78. *Seminole Tribe of Fla.*, 517 U.S. at 49. The statute is 25 U.S.C. § 2710(d)(7)(A)(i) and (B)(i), which states:

(A) The United States district courts shall have jurisdiction over—
 (i) any cause of action initiated by an Indian tribe arising from the failure of a State to enter into negotiations with the Indian tribe for the purpose of entering into a Tribal-State compact under paragraph (3) or to conduct such negotiations in good faith
 (B)(i) An Indian tribe may initiate a cause of action described in subparagraph (A)(i) only after the close of the 180-day period beginning on the date on which the Indian tribe requested the State to enter into negotiations under paragraph (3)(A).

Id. at 49-50.

79. See *id.* at 50. The Eleventh Amendment provides, "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State." U.S. CONST. amend. XI, § 1. Congress designed the scheme with the idea of promoting the formation and maintenance of Tribal-State compacts when disputes arise. *Seminole Tribe of Fla.*, 517 U.S. at 50. To bring an action under this statute, the tribe must first show that there is no Tribal-State compact yet and that the state failed to negotiate one in good faith. *Id.* If the state lacks good faith, the tribe and the state must agree on a gaming compact within sixty days. *Id.* If the parties do not agree to a compact within that time, a mediator chooses the best proposal from one those offered by the parties and submits it to the state to get its consent. *Id.* If the state fails to consent to the compact, then the mediator notifies the state's Secretary of the Interior and the Secretary delineates procedures by which the Tribe can conduct gaming in the state. *Id.*

80. See Sherry, *supra* note 75, at 108 (citing *Seminole Tribe of Fla.*, 517 U.S. at 59-66). The Enforcement Clause of the Fourteenth Amendment gives Congress the power to enforce the provisions of the amendment. U.S. CONST. amend. XIV, § 5.

guage of the statute.”⁸¹ Because the IGRA’s clear language expressly demonstrated Congress’s intent, the Court concluded that Congress effectively abrogated the states’ immunity right.⁸²

The Court faced a similar issue in *Florida Prepaid Postsecondary Education Expense Board v. College Savings Bank*.⁸³ Congress abrogated the states’ Eleventh Amendment immunity right from federal copyright infringement claims.⁸⁴ In its analysis, the Court first addressed whether Congress made its intent to abrogate the immunity right clear in the statute.⁸⁵ The statute stated, “Any State . . . shall not be immune, under the eleventh amendment of the Constitution of the United States . . . from suit in Federal court . . . for infringement of a patent”⁸⁶ On this note, the Court found that “Congress’[s] intent to abrogate could not have been any clearer.”⁸⁷

In contrast, the Court has also found statutes in the same vein that did not clearly abrogate the states’ immunity right.⁸⁸ For example, in *Atascadero State Hospital v. Scanlon*,⁸⁹ the Court decided whether Congress abrogated this Eleventh Amendment right in the Rehabilitation Act of 1973.⁹⁰ In finding that Congress had not effectively abrogated this right, Justice Powell wrote, “[I]t is incumbent upon the federal courts to be certain of Congress’[s] intent before finding that federal law overrides the guarantees of the Eleventh Amendment.”⁹¹

81. *Seminole Tribe of Fla.*, 517 U.S. at 56 (citing *Dellmuth v. Muth*, 491 U.S. 223, 227-28 (1989)).

82. *Id.* at 57.

83. 527 U.S. 627 (1999). The dispute concerned patent infringement of an investment program that assists people in saving money for college tuition. *Id.* at 630-31. College Savings Bank claimed that the petitioner, a state-created entity, infringed upon their patented method. *Id.* at 631.

84. *Id.* at 630.

85. *Id.* at 635.

86. 35 U.S.C. § 296(a) (2000).

87. *Florida Prepaid*, 527 U.S. at 635. The Court has held that because the Fourteenth Amendment follows the Eleventh, it modifies it and, therefore, Congress can use the Enforcement Clause of the Fourteenth Amendment to assert its authority in abrogating state immunity. ERWIN CHEMERINSKY, *CONSTITUTIONAL LAWS PRINCIPLES & POLITICS* 301-02 (3d ed. 2006). Indeed, the purpose of the Fourteenth Amendment was to limit state power. *Id.*

88. See *infra* notes 89-92 and accompanying text; *Dellmuth v. Muth*, 491 U.S. 223, 232 (1989). In *Dellmuth*, the Supreme Court concluded that the Education of the Handicapped Act (EHA) did not contain language that expressly abrogated the same Eleventh Amendment right. *Id.* It overturned the United States Court of Appeals for the Third Circuit, which rested on textual provisions of the statute that merely inferred such abrogation. See *id.* at 228. Justice Kennedy, however, pointed out that the EHA “makes no reference . . . to either the Eleventh Amendment or the States’ sovereign immunity.” *Id.* at 231. Justice Kennedy compared the EHA with the amendments of the Rehabilitation Act after *Atascadero State Hospital v. Scanlon*, 473 U.S. 234 (1985). See *id.* at 229-30. That amendment read, “A State shall not be immune under the Eleventh Amendment of the Constitution of the United States” *Id.* at 229. With that benchmark, he concluded the EHA ambiguous. *Id.* at 230.

89. 473 U.S. 234 (1985).

90. *Id.* at 235.

91. *Id.* at 243. The United States Court of Appeals for the Ninth Circuit found that, although Congress did not expressly abrogate this immunity in the statute, one could infer abrogation. *Id.* at 237. It reasoned that the EHA provided various remedies and procedures for those receiving Federal assistance, including the states. *Id.* Therefore, if the states accepted such assistance, they consented to suit under the EHA. *Id.*

He further noted, “Congress must express its intention to abrogate the Eleventh Amendment in unmistakable language in the statute itself.”⁹²

E. The Due Process Clause and Fundamental Fairness

The Fifth Amendment of the Constitution guarantees that no citizen shall be “deprived of life, liberty, or property, without due process of law.”⁹³ Due process provides procedural safeguards to protect individuals from arbitrary government action.⁹⁴ The United States constitutional version of this concept comes from English law.⁹⁵ One source was Article 39 of the Magna Carta, which granted liberties to the English people.⁹⁶ It provided, “No free man shall be taken . . . except by the lawful judgment of his peers and by the law of the land.”⁹⁷

By 1868, procedural due process in the United States had grown a core meaning of procedural fairness of an individual’s fundamental rights against the government.⁹⁸ It guaranteed a “fair and settled course” through the judicial system.⁹⁹ The phrase itself required a showing of fundamental fairness within a due process claim against the government.¹⁰⁰

Today, the Due Process Clause operates in a similar manner. In *Davidson v. Cannon*,¹⁰¹ Chief Justice Rehnquist stated that “due process functions only to curb governmental abuse, unfairness, or oppression.”¹⁰² The Court has interpreted due process to require more than negligence by a government official, but rather a lack of reasonable conduct.¹⁰³ It has balanced the significance of one’s due process rights

92. *Id.* at 243. Congress responded to this decision by amending the statute to make its intention to abrogate the states’ immunity rights under the EHA. *See* Lesage v. Texas, 158 F.3d 213, 216 (5th Cir. 1998). The statute now reads:

A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 . . . , title IX of the Education Amendments of 1972 . . . , the Age Discrimination Act of 1975 . . . , title VI of the Civil Rights Act of 1964 . . . , or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.

42 U.S.C. § 2000d-7(a)(1) (2000).

93. U.S. CONST. amend. V.

94. LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW 664 (2d ed. 1988).

95. Edward J. Eberle, *Procedural Due Process: The Original Understanding*, 4 CONST. COMMENT. 339, 340 (1987).

96. RODNEY L. MOTT, DUE PROCESS OF LAW 9 (1926).

97. A.E. DICK HOWARD, MAGNA CARTA: TEXT & COMMENTARY 45 (rev. ed. 1998). The thirty-ninth article of the Magna Carta provided in full: “No free man shall be taken, imprisoned, disseised, outlawed, banished, or in any way destroyed, nor will We proceed against or prosecute him, except by the lawful judgment of his peers and by the law of the land.” *Id.*

98. Eberle, *supra* note 95, at 339.

99. *Id.*

100. *See* Lassiter v. Dep’t of Soc. Servs., 452 U.S. 18, 24-25 (1981).

101. 474 U.S. 344 (1986).

102. TRIBE, *supra* note 94, at 664-65 (citing *Davidson*, 474 U.S. at 347-48).

103. *Id.* at 665 (citing *Daniels v. Williams*, 474 U.S. 327, 329-32 (1986); *Parratt v. Taylor*, 451 U.S. 527, 548-49 (1981)).

by weighing the government's interest against an individual's loss.¹⁰⁴

The Court has implied on several occasions that fairness is essential to due process. In *Mullane v. Central Hanover Bank & Trust, Co.*,¹⁰⁵ the Court faced the issue of whether notice by publication was sufficient when the serving party knew the addresses of the adverse parties.¹⁰⁶ The Court held that service by publication is not enough if the party knows or has reasonable access to the parties' contact information.¹⁰⁷ Justice Jackson implied that fairness was an integral part of due process in writing that notice had to be "reasonably calculated" under the circumstances.¹⁰⁸

Courts have invoked due process in cases where a party relied on a court's statement or that of a governmental agent.¹⁰⁹ In *United States v. Brady*,¹¹⁰ a state court put the defendant on probation for an offense, but it allowed him to possess a firearm in connection with his work.¹¹¹ This allowance, however, violated federal law because the defendant had two prior felonies.¹¹² He possessed the firearm when officers later arrested him on a separate matter.¹¹³ Ruling in the defendant's favor on the illegal possession of a firearm, the district court reasoned that the defendant acted pursuant to the judge's advice.¹¹⁴ More importantly, the court stated that "it would violate due process to convict [him] of this offense in light of the fact that [his] conduct conformed to the judge's statement of law."¹¹⁵

In support of its decision, the *Brady* court looked to the Supreme Court case, *Raley v. Ohio*,¹¹⁶ in which the defendants refused to answer questions for the Ohio State Legislature because a legislative commission told the defendants that the state constitution protected them.¹¹⁷ The Ohio Supreme Court later held that by doing this, the defendants had committed an offense.¹¹⁸ The court reasoned that the defendants should have known the Ohio law, despite erroneous advice from the State.¹¹⁹ In reversing this part of the decision, Justice Brennan wrote,

104. *Id.* at 706 (citing *Cafeteria & Rest. Workers Union v. McElroy*, 367 U.S. 886, 895 (1961)).

105. 339 U.S. 306 (1950).

106. *See id.* at 307.

107. *Id.* at 320.

108. *Id.* at 314.

109. *See, e.g.*, *Raley v. Ohio*, 360 U.S. 423, 425 (1959); *United States v. Brady*, 710 F. Supp. 290, 294 (D. Colo. 1989).

110. 710 F. Supp. 290 (D. Colo. 1989).

111. *Id.* at 291-92 (D. Colo. 1989). The defendant trapped coyotes as part of his living. *Id.*

112. *Id.* at 292.

113. *Id.* The state charged him with possession of a firearm because he was a convicted felon. *Id.* at 293.

114. *Id.* at 294.

115. *Id.*

116. 360 U.S. 423 (1959).

117. *See Brady*, 710 F. Supp. at 294.

118. *Raley*, 360 U.S. at 425.

119. *Id.* The self-incrimination privilege is found in Article I, § 10 of the Ohio State Constitution. *Id.*

“[T]he judgments of the Ohio Supreme Court affirming the convictions violated the Due Process Clause of the Fourteenth Amendment”¹²⁰

F. *The Collateral Bar Rule*

The collateral bar rule provides that litigants must comply with a court order even if it is unconstitutional or erroneous until another court amends or vacates the order.¹²¹ It forces litigants to obey an invalid court order or incur the relevant penalty.¹²² The Supreme Court has declared that the recipient of a court order must obey it no matter how erroneous.¹²³ Its purpose is to “preserve respect for the courts.”¹²⁴ Although critics view this rule as a grant of virtually infinite power, proponents argue that without this authority court orders would become mere requests.¹²⁵ Litigants cannot use the unconstitutionality of court orders as a defense in disobeying them.¹²⁶

The Supreme Court addressed the collateral bar rule in *United States v. United Mine Workers*,¹²⁷ in which the miners disregarded a court-ordered injunction from striking.¹²⁸ The district court found the miners in contempt of the court for having disobeyed the injunction.¹²⁹ After reaching the Supreme Court, Chief Justice Vinson wrote that “an order issued by a court with jurisdiction over the subject-matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings.”¹³⁰

The Supreme Court addressed this issue again during the apex of the civil rights movement of the 1960s. In *Walker v. City of Birmingham*,¹³¹ the Court upheld the contempt convictions of several civil rights protesters, including Martin Luther King, Jr., for defying a restraining order enjoining them from having a public parade.¹³² The Court recog-

120. *Id.*

121. Richard E. Labunski, *The ‘Collateral Bar’ Rule and the First Amendment: The Constitutionality of Enforcing Unconstitutional Orders*, 37 AM. U. L. REV. 323, 327 (1987).

122. John R.B. Palmer, Note, *Collateral Bar and Contempt: Challenging a Court Order After Disobeying It*, 88 CORNELL L. REV. 215, 216 (2002).

123. *Howat v. Kansas*, 258 U.S. 181, 189-90 (1922).

124. Doug Rendleman, *More on Void Orders*, 7 GA. L. REV. 246, 247 (1972).

125. See Labunski, *supra* note 121, at 324.

126. See *Land v. Dollar*, 190 F.2d 366, 377 (D.C. Cir. 1951) (quoting *Howat*, 258 U.S. at 189-90); *Bhd. of Ry. & S.S. Clerks v. Texas*, 24 F.2d 426, 427 (S.D. Tex. 1928) (quoting *Broughan v. Oceanic Steam Navigation*, 205 F. 857, 860 (2d Cir. 1913)); *Weidner v. State*, 764 P.2d 717, 721 (Alaska Ct. App. 1988).

127. 330 U.S. 258 (1947). The federal government seized the country’s coalmines by executive order. *Id.* at 264 n.1. Shortly after a breakdown in employment negotiations, the Union threatened to strike and the government sought an injunction. *Id.* at 264-66. The district court enjoined the miners from striking. *Id.* at 266-67.

128. *Id.* at 267.

129. 13A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3537, at 542 (2d ed. 1984).

130. *United Mine Workers*, 330 U.S. at 293.

131. 388 U.S. 307 (1967).

132. 13A WRIGHT ET AL., *supra* note 129, at 545. The defendants argued that they had the First Amendment right to hold this parade. *Id.* They also argued that the order was “arbitrary and dis-

nized that this order was constitutionally questionable.¹³³ Even though the majority sympathized with the petitioners, the Court stood by the collateral bar rule and stated that it was necessary to preserve respect for the judicial process.¹³⁴

IV. COURT'S DECISION

Bowles is the latest in a string of Supreme Court decisions regarding jurisdictional deadlines.¹³⁵ Specifically, the Court contemplated the jurisdictional nature of notices to appeal as related to Rule 4(a)(6) of the Federal Rules of Appellate Procedure.¹³⁶ The majority wasted no time outlining its precedent, finding that the time limits for notices of appeal are jurisdictional.¹³⁷ It ultimately held that statutory timelines limit a court's subject-matter jurisdiction.¹³⁸

Bowles argued that the Rule 4(a)(6) was a claim-processing rule, not a jurisdictional rule.¹³⁹ He compared his case to *Houston v. Lack*,¹⁴⁰ which involved a pro se litigant who drafted an appeal notice and left it with the prison authorities to mail.¹⁴¹ The notice did not arrive at the court until one day after the time limit for filing a notice of appeal.¹⁴² After the Sixth Circuit dismissed on jurisdictional grounds, the Supreme Court reversed, finding that Houston filed the notice of appeal when he left it with the prison authorities.¹⁴³ In the opinion, Justice Brennan wrote that Mr. Houston "did all he could."¹⁴⁴

The government countered by analyzing the appellate jurisdiction of untimely appeals.¹⁴⁵ It stated that the courts have declared the time limits for appeals as jurisdictional for more than 150 years.¹⁴⁶ The government suggested that *Kontrick* and *Eberhart* did not support *Bowles*'s argument because the cases did not address the jurisdictional nature of

criminary." *Walker*, 388 U.S. at 317.

133. *Walker*, 388 U.S. at 317.

134. *Id.* at 321.

135. See *supra* notes 27-64 and accompanying text.

136. *Bowles v. Russell*, 127 S. Ct. 2360, 2362 (2007). Rule 4(a)(6) is also found in the federal statutory code under 28 U.S.C. § 2107(c). See *supra* note 15.

137. *Bowles*, 127 S. Ct. at 2362.

138. See *id.* at 2366.

139. See Brief for the Petitioner, *supra* note 11, at 11.

140. 487 U.S. 266 (1988).

141. Brief for the Petitioner, *supra* note 11, at 12-13 (citing *Houston*, 487 U.S. at 266).

142. *Id.* at 13 (citing *Houston*, 487 U.S. at 266). The issue involved the definition of "filed" for a notice of appeal. *Houston*, 487 U.S. at 272.

143. *Houston*, 487 U.S. at 276. Because the Court defined filing in this manner, the failure of the prison authorities to mail the notice did not divest the appellate court's jurisdiction. Brief for the Petitioner, *supra* note 11, at 13 (citing *Houston*, 487 U.S. at 276).

144. *Houston*, 487 U.S. at 276 n.4 (quoting *Fallen v. United States*, 378 U.S. 139, 144 (1964)).

145. See Brief for the Respondent at 11-18, *Bowles v. Russell*, 127 S. Ct. 2360 (2007) (No. 06-5306).

146. *Id.* at 11-12. The respondent cited *United States v. Curry* as part of this analysis, which the Court decided in 1848. *Id.* at 12.

filing notices of appeal.¹⁴⁷ The Court agreed with this distinction, stating that in *Kontrick* the deadlines for Bankruptcy Rules were not jurisdictional, but were procedurally “adopted . . . for the orderly transaction of . . . business.”¹⁴⁸ It briefly reconciled *Eberhart* to support its contrast of procedural rules with the statutory requirements of filing notices of appeal.¹⁴⁹

The Court’s reasoning relied heavily on the separation of powers doctrine.¹⁵⁰ Justice Thomas, writing for the majority, stated that “Congress specifically limited the amount of time by which district courts can extend the notice-of-appeal period.”¹⁵¹ Because Congress limited the time for filing a notice of appeal according to the statute, he reasoned that the Court is without power to grant equitable exceptions.¹⁵²

Bowles also argued that *Harris Truck Lines* and *Thompson* controlled and that he reasonably relied on the judge’s court order, warranting an equitable exception.¹⁵³ The government, in turn, argued that the equitable exception doctrine is on “shaky grounds,” as recent courts have questioned *Thompson*.¹⁵⁴ The government also pointed out that this exception does not apply to untimely notices of appeal because those deadlines are jurisdictional.¹⁵⁵ The majority responded by expressly overruling *Harris Truck Lines* and *Thompson*, declaring the excusable neglect doctrine “illegitimate.”¹⁵⁶ Justice Thomas reasoned that the timelines for notices of appeal are jurisdictional.¹⁵⁷ Therefore, the Court did not have congressional authority to create equitable exceptions.¹⁵⁸ He further reasoned that Congress has the power to allow the courts more flexibility in allowing equitable exceptions to statutory time limits if they so choose.¹⁵⁹

Justice Souter’s dissent relied heavily on recent decisions involving jurisdictional labels of statutory time prescriptions. In his opening

147. *Id.* at 18.

148. *Bowles*, 127 S. Ct. at 2364 (citing *Kontrick v. Ryan*, 540 U.S. 443, 454 (2004)).

149. *See id.* at 2364-65. The Court noted that in *Eberhart* it pointed out the impropriety of labeling time prescription of court rules as jurisdictional, but also noted that in *Kontrick* it stated that 28 U.S.C. § 2107 contained jurisdictional time limits. *Id.*

150. *See id.* at 2365.

151. *Id.* at 2366.

152. *Id.*

153. *See* Brief for the Petitioner, *supra* note 11, at 16. For a discussion on *Harris Truck Lines* and *Thompson* and the excusable neglect doctrine, see *supra* notes 66-74 and accompanying text.

154. Brief for Respondent, *supra* note 145, at 38.

155. *See id.* at 43. The government also argued that Bowles presented a poor argument for equitable relief. *Id.* at 39. It argued that Bowles should have realized that the court order opened the period for seventeen days as opposed to fourteen days. *Id.* at 40. It also argued that Bowles failed to meet the equitable exception test from *Osterneck v. Ernst & Whinney*, which states that this exception only applies “where a party has performed an act which, if properly done, would postpone the deadline for filing his appeal and has received specific assurance by a judicial officer that this act has been properly done.” *Id.* at 41 (quoting *Osterneck v. Ernst & Whinney*, 489 U.S. 169, 179 (1989)).

156. *Bowles*, 127 S. Ct. at 2366.

157. *Id.*

158. *Id.*

159. *Id.* at 2367.

statement, he noted, “It is intolerable for the judicial system to treat people this way, and there is not even a technical justification for condoning this bait and switch.”¹⁶⁰ In fact, Justice Souter wrote that the Court had redirected its holdings in this matter through *Kontrick*, *Eberhart*, and *Arbaugh*.¹⁶¹

The dissent also stressed that federal statutes are jurisdictional only if Congress labels them as such.¹⁶² It relied on part of the *Arbaugh* Court’s reasoning by stating that “time prescriptions, however emphatic, are not properly typed jurisdictional.”¹⁶³ Justice Souter reasoned that Rule 4(a)(6) is merely a claim-processing rule because Congress did not attach a jurisdictional label to it.¹⁶⁴ As a result, the dissent accused the majority of overlooking the post-*Kontrick* cases, which should have led to the logical conclusion that this statute was not jurisdictional.¹⁶⁵ Indeed, in what Justice Souter called the “doctrinal underpinning” of this case, unless otherwise told by Congress via statute, the Court should only reserve the jurisdictional label to “classes of cases (subject-matter jurisdiction) and the persons (personal jurisdiction).”¹⁶⁶

The dissent also analyzed how the majority overruled the excusable neglect doctrine.¹⁶⁷ Justice Souter contended that the majority opinion manifests that *Bowles* cannot even rely on the Supreme Court’s own statements in this very case.¹⁶⁸ In a footnote, Justice Souter quoted Oliver Wendell Holmes—“I cannot help but think that reliance on our orders is reasonable.”¹⁶⁹ Justice Souter reasoned that the Court does have the power to grant equitable exceptions to these time prescriptions and compared this case to their decision in *Thompson* and *Harris*.¹⁷⁰ The only difference between the litigant’s reliance in *Thompson* and that in *Bowles* is that *Bowles* was not responsible for the mistake.¹⁷¹ It was the district court judge that made the mistake and, the dissent noted, the majority “rewarded *Thompson*, who introduced the error, but . . . punish[ed] *Bowles*, who merely trusted the District Court’s statement.”¹⁷²

Finally, the dissent addressed the issue of reasonableness in terms

160. *Id.* (5-4 decision) (Souter, J., dissenting).

161. *Id.*

162. *Id.* at 2368.

163. *Id.* (quoting *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 510 (2006)). The dissent took this quotation from the majority opinion of *Scarborough v. Principi*, 541 U.S. 401, 414 (2004).

164. *Bowles*, 127 S. Ct. at 2368.

165. *Id.* at 2368 n.3.

166. *Id.* at 2369.

167. *See id.* at 2369-70.

168. *Id.* at 2370.

169. *Id.* at 2370 n.7 (quoting OLIVER WENDELL HOLMES, *Natural Law*, in COLLECTED LEGAL PAPERS 310, 311 (1920)).

170. *Id.* at 2369-70.

171. *See id.* at 2371. For the background information of *Thompson*, see *supra* notes 70-74 and accompanying text.

172. *Id.*

of relying on the court order. Justice Souter opined that the court order was reasonably valid because the judge wrote a plausible date.¹⁷³ The outcome would be different if the government had pointed out the error or if the date discrepancy was unreasonably large.¹⁷⁴ He believed it was reasonable to rely on a date that was so close to the correct one and, therefore, the Court should have granted an equitable exception.¹⁷⁵

V. COMMENTARY

A. *Labeling Statutory Timelines “Jurisdictional” Is Improper*

1. Courts Should Not Label the Timeline for Filing a Notice of Appeal As Jurisdictional

Congress has the power to grant and limit federal courts’ jurisdictional boundaries, which includes the power to create and repeal procedural steps for litigants to obtain relief.¹⁷⁶ Congress, however, must make its intent known if limiting federal jurisdiction.¹⁷⁷ The *Bowles* majority has sacrificed one bright-line test that it has explicitly advocated for a blanket holding covering all statutory time prescriptions.¹⁷⁸

There are several flaws in the *Bowles* majority’s analysis. First, this holding circumvented recent Supreme Court opinions and ignored cases in which it stated that similar deadlines are arbitrary. Second, past Supreme Court decisions have indicated the requirement of unmistakably clear language in other statutory schemes of comparable importance to discern Congress’s intent. Finally, the Court has recognized that statutory deadlines are inherently arbitrary subject to equitable exceptions.

In *Bowles*, the majority gave no deference to its opinion in *Arbaugh*.¹⁷⁹ Justice Thomas distinguished *Bowles* from *Arbaugh* only by indicating that *Arbaugh* dealt with “an employee-numerosity requirement, not a time limit.”¹⁸⁰ Justice Thomas reasoned that statutory timelines are jurisdictional because Congress decides what classes of cases federal courts can hear.¹⁸¹ He stated that Congress utilized this power

173. *See id.* at 2372.

174. *Id.* Justice Souter thought that it would be unreasonable, for example, if the year was incorrect. *Id.*

175. *See id.* at 2371-72.

176. 15 JAMES WM. MOORE, MOORE’S FEDERAL PRACTICE § 100.20[4], at 100-45 (3d ed. 2007).

177. *Id.* § 100.20[5], at 100-46 (citing *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 504 (2006)).

178. *See Bowles v. Russell*, 127 S. Ct. 2360, 2367 (2007) (majority opinion). The majority opinion arguably did not limit its holding to certain time limits, but covered all statutory time limits. *See id.* at 2365.

179. *See id.* at 2365.

180. *Id.* *See supra* text accompanying note 58 for an overview of the statutory restriction at issue in *Arbaugh*.

181. *See id.* at 2366.

by limiting the timeframe in which a federal court can extend a notice of appeal pursuant to the relevant statute.¹⁸² Justice Thomas, however, failed to address why this analysis only applies to statutory timelines and not to other statutory requirements.¹⁸³

Applying Justice Thomas's analytical framework to *Arbaugh* may have produced a contrary outcome. Justice Thomas based his conclusion in *Bowles* on the idea that Congress only gave the judiciary authority to hear cases within the confines of the statutory restriction.¹⁸⁴ However, he joined an almost unanimous Court in *Arbaugh*, which decided that Congress, if they intended a jurisdictional interpretation of the restriction, should have explicitly included a jurisdictional label to the Title VII statute.¹⁸⁵ In *Bowles*, he ignored the bright-line test that Justice Ginsburg set forth in *Arbaugh*.¹⁸⁶

Unless Congress expressly labels time limits as jurisdictional, courts should not view them as jurisdictional.¹⁸⁷ In *Zipes v. Trans World Airlines, Inc.*,¹⁸⁸ the Court held that a statutory deadline was not jurisdictional.¹⁸⁹ In so holding, it reasoned that the governing statute did not "speak in jurisdictional terms."¹⁹⁰ Recent Supreme Court cases fully support this reasoning. Indeed, the *Arbaugh* opinion cited both *Kontrick* and *Eberhart*, stating, "[I]n recent decisions, we have clarified that time prescriptions, *however emphatic*, 'are not properly typed as jurisdictional.'"¹⁹¹ The Court could not have written words any clearer than

182. *Id.* The relevant statute is 28 U.S.C. § 2107(c), which allows the court to reopen the time to file a notice of appeal for fourteen days. *See supra* note 16.

183. *See Bowles*, 127 S. Ct. at 2365.

184. *See supra* note 151 and accompanying text.

185. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 502, 516 (2006). All members of the Court joined the *Arbaugh* decision except Justice Alito who took no part in the decision. *See id.* at 502.

186. *See Bowles*, 127 S. Ct. at 2366. One commentator suggested that courts should not interpret these statutory deadlines as jurisdictional because doing so only includes the interests of the parties involved in the suit, not the interests of society as a whole. Mark A. Hall, *The Jurisdictional Nature of the Time to Appeal*, 21 GA. L. REV. 399, 399-400 (1986). Consequently, courts should allow parties to waive deadlines as well as allow courts to grant equitable exceptions. *See id.* at 400. He further stated that courts habitually mischaracterize the timelines of Rule 4 of the Federal Rules of Appellate Procedure as dictating an appellate court's jurisdiction. *Id.* at 409. Courts should read such deadlines as mandatory and of "jurisdictional significance," but not limiting an appellate court's actual jurisdictional authority. *Id.* at 409 (citing *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982)). Indeed, inconsistent jurisdictional labels in court decisions create unfavorable consequences. 15A CHARLES ALAN WRIGHT, ARTHUR R. MILLER & EDWARD H. COOPER, FEDERAL PRACTICE AND PROCEDURE § 3901, at 6 (2d ed. 1984). Many appeals are lost because litigants are generally unaware of the complex rules that govern the time to file a notice of appeal. *Id.* Many others, such as *Bowles*, may miss a mandatory deadline because they did not receive their notice of judgment that begins the time for filing a notice of appeal. *See id.*

187. *See* Alex Lees, Note, *The Jurisdictional Label: Use and Misuse*, 58 STAN. L. REV. 1457, 1462 (2006).

188. 455 U.S. 385 (1982).

189. *Id.* at 393. The Court decided whether a deadline contained in a Title VII statute was jurisdictional or subject to equitable exceptions. *Id.* at 387. The statute in dispute was 42 U.S.C. § 2000e-5(d). *Id.* at 390 n.2. At the time, it required an employee to file charges against an employer with the Equal Employment Opportunity Commission (EEOC) within ninety days. *Id.*

190. *Id.* at 394.

191. Poor, *supra* note 28, at 216 (citing *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 510 (2006)) (emphasis added).

its bright-line test in *Arbaugh* to indicate its intent to find that Congress must label statutes as jurisdictional if courts are to treat them as such.¹⁹²

2. The Supreme Court Has Recognized the Arbitrary Nature of Statutory Timelines Subject to Equitable Exceptions

The *Bowles* majority ignored prior Supreme Court decisions that found statutory timelines to be inherently arbitrary.¹⁹³ In *Zipes*, the issue before the Court was whether filing an untimely complaint with the Equal Employment Opportunity Commission stripped the federal court of its jurisdiction to hear a Title VII claim.¹⁹⁴ Before this decision, federal courts generally disagreed on whether these limitation periods were jurisdictional.¹⁹⁵ The Supreme Court found that this time limit was not jurisdictional because the statute did not expressly label it as such.¹⁹⁶ Indeed, it specifically stated that the statutory time prescription was subject to equitable exceptions.¹⁹⁷

The issue in *Bowles* was similar to that in *Zipes*. Both cases dealt with the jurisdictional nature of statutory restrictions. Indeed, *Bowles* had a strong argument for receiving an equitable exception based on his reasonable reliance on a court error. Unfortunately, the Court stripped his equitable claim by overruling the long-established excusable neglect theory.¹⁹⁸

3. The Supreme Court Has Required Unmistakably Clear Language by Congress in Other Statutory Contexts

The Supreme Court has faced analogous issues by requiring Congress to insert unmistakable language into a statute to discern intent.¹⁹⁹ The Court has repeatedly applied this requirement in cases where Congress attempts to abrogate the states' Eleventh Amendment immunity right.²⁰⁰ The Court requires unmistakable language because of the

192. See *Arbaugh*, 546 U.S. at 516.

193. See, e.g., *United States v. Locke*, 471 U.S. 84, 94 (1985) (citing *United States v. Boyle*, 469 U.S. 241, 249 (1984)).

194. *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 392 (1982). The Air Line Stewards and Stewardesses Association (ALSSA) brought a class action sex discrimination suit against Trans World Airlines (TWA) in 1970 on behalf of all female cabin attendants who, while employed in this capacity, became mothers. *Id.* at 388. The suit accused TWA of sex discrimination under Title VII because of its policy to ground their mother-employees, while allowing father-employees to fly without interruption. *Id.* TWA filed a motion to amend its answer to include that the class members failed to file their claim with the EEOC within the deadline required by statute. *Id.* at 388-89. The motion came after the Seventh Circuit remanded the case to the district court because it found that the ALSSA was not a suitable class representative. *Id.* at 388.

195. *Hall*, *supra* note 186, at 416.

196. See *Zipes*, 455 U.S. at 394. Justice Stevens took no part in the case. *Id.* at 401. Justices Powell and Rehnquist offered a concurring opinion and concurred in the judgment. *Id.*

197. *Id.* at 393.

198. *Bowles v. Russell*, 127 S. Ct. 2360, 2366 (2007).

199. See *supra* notes 75-92 and accompanying text.

200. See *Nev. Dep't of Human Res. v. Hibbs*, 538 U.S. 721, 726 (2003) (using the same analysis

Eleventh Amendment's important constitutional role in preserving this right.²⁰¹ Just as it required this language in *Seminole Tribe, Florida Prepaid*, and *Atascadero*, the Court should require equally unmistakable language for statutory deadlines.²⁰² A court's jurisdiction is arguably as important as the states' immunity right. For example, courts have no discretion to alter jurisdictional rules for equitable purposes.²⁰³ Indeed, both the Constitution and in federal law embody the concept of jurisdiction.²⁰⁴

When the Court concluded in *Arbaugh* that Congress had to label a statute as "jurisdictional" for it to have that effect, it should have come as no surprise. Indeed *Arbaugh*, along with *Seminole Tribe, Florida Prepaid*, and *Atascadero*, are perfect examples of the Court's philosophy on how to interpret statutes and determine congressional intent. In the Eleventh Amendment cases, the Court first looked for statutory language demonstrating that Congress unequivocally intended to abrogate the states' immunity right.²⁰⁵ Similarly, in *Arbaugh*, the Court analyzed whether the statute reflected that Congress intended to deem the statute jurisdictional.²⁰⁶ Because Congress did not include a jurisdictional label in that Title VII statute, the Court determined it was not jurisdictional.²⁰⁷ Therefore, if it makes sense to require clear labeling of statutes in the context of abrogating Eleventh Amendment immunity, then it makes sense to require equally clear labeling of statutory limitations as jurisdictional. The *Bowles* majority abandoned the reasoning used in the Eleventh Amendment cases. Instead of following this well-established philosophy in interpreting statutes, the majority inferred that Congress naturally intended a jurisdictional label to any statute in

to find that Congress unequivocally allowed suits under the Family Medical Leave Act); *Univ. of Ala. v. Garrett*, 531 U.S. 356, 363-64 (2001) (finding that Congress made its intent clear in abrogating the states' immunity rights under the Eleventh Amendment in the Americans with Disabilities Act).

201. See *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 55-56 (1996) (citing *Atascadero St. Hosp. v. Scanlon*, 473 U.S. 234, 238-39 (1985)).

202. See *supra* notes 75-92 and accompanying text on a background of the Supreme Court's holdings related to the requirement of unmistakably clear statutory language of Congress's intent when it enacts legislation that abrogates states' Eleventh Amendment immunity right.

203. Lees, *supra* note 184, at 1462.

204. See *supra* text accompanying note 63; U.S. CONST. art. III, § 2, cl. 1, which provides:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

U.S. CONST. art. III, § 2, cl. 1.

205. See, e.g., *Fla. Prepaid Postsecondary Educ. Expense Bd. v. Coll. Savs. Bank*, 527 U.S. 627, 635 (1999); *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 55 (1996); *Dellmuth v. Muth*, 491 U.S. 223, 227-28 (1989); *Atascadero*, 473 U.S. at 242.

206. See *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514-15 (2006).

207. *Id.* at 515.

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which it attaches a deadline.²⁰⁸ A better approach is to require Congress to attach this type of label.²⁰⁹ This way, Congress's intent is clear as to whether courts may grant equitable exceptions or whether it intends to extend subject-matter jurisdiction to cover statutory limitations, such as time prescriptions.

B. The Bowles Holding Violates His Constitutional Right to Due Process

The *Bowles* majority stripped Bowles of his procedural due process rights. This decision deprived him of his liberty and right to a hearing because of his reasonable reliance on the district court order.²¹⁰ Bowles relied on the court order much like the petitioners did in both *Brady* and *Raley*.²¹¹ The *Bowles* dissent reasoned that Bowles's attorney probably trusted that the date on the court order was correct, "and there was nothing unreasonable in so trusting."²¹² The dissent also noted that the State failed to mention anything about the incorrect date, either because the State did not think the discrepancy was significant or failed to notice it.²¹³ In other words, courts cannot expect every individual to verify all the information on a court order to ensure its accuracy. Justice Souter wrote that his opinion in *Bowles* would change if the year on the court order were wrong or if the opposing counsel had noticed the error and notified Bowles.²¹⁴ He noted, however, that it is reasonable that anyone would rely on a discrepancy of only two days.²¹⁵

1. The Supreme Court Has Circumvented Statutory Requirements in the Name of Justice and Equity

The *Bowles* majority ignored the fact that it has historically circumvented certain statutory rules when it would be fair or efficient to do so. One example is in *Caterpillar Inc. v. Lewis*,²¹⁶ in which the issue was whether the federal court had jurisdiction over a personal injury matter in the absence of complete diversity.²¹⁷ The case made its way

208. See *Bowles v. Russell*, 127 S. Ct. 2360, 2365-66 (2007).

209. See *Arbaugh*, 546 U.S. at 515.

210. See *Bowles*, 127 S. Ct. at 2372 (Souter, J., dissenting).

211. See *supra* notes 109-120 and accompanying text. In *Brady*, the petitioner cited a judge's court order allowing him to possess a firearm for his occupation despite being a convicted felon. *United States v. Brady*, 710 F. Supp. 290, 291-92 (D. Colo. 1989); see *supra* notes 110-112 and accompanying text. In *Raley*, the petitioners relied on a legislative commission's statement that they could refuse to answer questions under the Ohio State Constitution. *Raley v. Ohio*, 360 U.S. 423, 425 (1959); see *supra* notes 117-119 and accompanying text.

212. *Bowles*, 127 S. Ct. at 2372.

213. *Id.*

214. *Id.*

215. See *id.* Justice Souter did not address where he thought the courts should draw the line regarding what is reasonable versus unreasonable reliance. See *id.*

216. 519 U.S. 61 (1996).

217. *Id.* at 64. Diversity is a statutory requirement for federal jurisdiction if the controversy does

through the federal court system because a judge failed to recognize the absence of complete diversity within the one-year removal deadline.²¹⁸ Justice Ginsburg, however, wrote that returning the case to state court would “impose an exorbitant cost on our dual court system, a cost incompatible with the fair and unprotracted administration of justice.”²¹⁹

Caterpillar represents the fairness, justice, and equity that are the fundamental principles of due process.²²⁰ It portrays a scenario in which the court ruled in favor of a litigant based on an equitable exception as opposed to what the black-letter rule required. Just as in *Bowles*, the issue in *Caterpillar* originated from a district court judge’s mistake.²²¹ The Court arguably would have been more justified in a contrary holding in *Caterpillar* than its decision in *Bowles*. The matter in *Caterpillar* involved multiple statutes that Congress explicitly labeled as jurisdictional.²²² On the other hand, the matter in *Bowles* involved a statutory deadline for filing a notice of appeal.²²³ Nowhere in 28 U.S.C. § 2107(c)—the disputed statute in *Bowles*—does it mention that courts are to interpret it as jurisdictional.²²⁴ The *Bowles* majority ignored traditional concepts of due process, fairness, and reasonable reliance and hid behind the idea that statutory deadlines are implicitly jurisdictional when not expressly labeled.

not give rise to a federal question. See 28 U.S.C. § 1332 (2000) (requiring diversity jurisdiction for cases before federal courts); 28 U.S.C. § 1331 (2000) (requiring a claim giving rise to a federal question for federal jurisdiction). For full statutory text, see *supra* text accompanying note 63.

218. See *Caterpillar Inc.*, 519 U.S. at 65. The plaintiff made a personal injury claim in state court against multiple defendants. *Id.* at 64-65. The defendants removed to federal court based on diversity jurisdiction. *Id.* at 65. The defendant filed the removal notice the day before the one-year statutory deadline. *Id.* The relevant statute is 28 U.S.C. § 1446(b). *Id.* The statute provides that “a case may not be removed on the basis of jurisdiction conferred by [diversity jurisdiction] more than 1 year after commencement of the action.” 28 U.S.C. § 1446(b) (2000). The plaintiff moved to remand to state court because the parties were not completely diverse at that time. *Caterpillar Inc.*, 519 U.S. at 65-66. The district court judge mistakenly denied the motion to remand the case and, after trial, the Sixth Circuit vacated the judgment because the district court lacked subject-matter jurisdiction. *Id.* at 66-67.

219. *Caterpillar Inc.*, 519 U.S. at 77. Two decades before *Caterpillar*, the Second Circuit decided whether the government should deport an alien because she failed to fulfill a statutory requirement of the Immigration & Nationality Act based on an affirmative misrepresentation of an administrative agent. *Corniel-Rodriguez v. INS*, 532 F.2d 301, 302 (2d Cir. 1976). In 1967, the agent failed to inform the alien that her visa would become invalid if she married before arrival in the United States. *Id.* She married three days before leaving her country. *Id.* In relying on notions of fairness and justice, the Second Circuit held that the government could not deport her due to the agent’s dereliction. *Id.* Chief Judge Kaufman opined, “To permit [her] to be deported, under these circumstances, would be to sanction a manifest injustice occasioned by the Government’s own failures.” *Id.* at 307.

220. See *supra* notes 93-120 and accompanying text for a brief background on the fundamental principles of procedural due process.

221. See *Bowles v. Russell*, 127 S. Ct. 2360, 2362 (2007); *Caterpillar Inc.*, 519 U.S. at 67.

222. See *Caterpillar Inc.*, 519 U.S. at 65. The case involved diversity jurisdiction statute 28 U.S.C. § 1332 and the statute governing the one-year removal limit in 28 U.S.C. § 1446(b). *Id.* For the full text of § 1332, see *supra* text accompanying note 63. Section 1446(b) refers to § 1332 by stating that “a case may not be removed on the basis of jurisdiction conferred by [§] 1332 of this title more than 1 year after commencement of the action.” 28 U.S.C. § 1446(b).

223. See *Bowles*, 127 S. Ct. at 2362.

224. See 28 U.S.C. § 2107(c) (2000).

2. The Potentially Harsh Impact of *Bowles*

The impact of *Bowles* will depend on how courts interpret it. For example, *In re American Safety Indemnity Co. v. Official Committee of Unsecured Creditors*²²⁵ was a post-*Bowles* case in which the United States Court of Appeals for the Second Circuit faced an issue of an untimely notice of appeal due to erroneous information given by the judge's clerk to the petitioner's attorney.²²⁶ In dismissing the case on jurisdictional grounds, the Second Circuit looked to *Bowles* and stated, "Litigants should not seek legal advice from judges or judicial staff, and in any case, attorneys should know better than to rely on such advice."²²⁷ This reasoning demonstrates the flaws in the *Bowles* majority's analysis because *Bowles* did not seek legal advice from a judge, he reasonably relied on a judge-issued court order.²²⁸ The *Bowles* majority ignored its precedent of favoring fairness and equity when the circumstances so dictated.

Bowles will have a detrimental impact on all litigants, especially pro se petitioners without any formal training in the law. The majority rejected any flexibility for pro se litigants who may not understand the intricacies of the Federal Rules of Appellate Procedure. Pro se litigants are unlikely to question a judge's court order. *Bowles* overruled any possible chance of granting an equitable exception and shut the door on future petitioners that may fall in this scenario, thus establishing an infringement on due process rights.

To understand this decision's impact, consider the sheer number of pro se litigants. In 1995, the Department of Justice stated that ninety-three percent of habeas petitioners acted pro se.²²⁹ Based on the Court's more lenient treatment of pro se litigants, the outcome in *Bowles* may have been different had he not had representation.²³⁰

Courts have historically been more lenient with pro se litigants. In *Alley v. Dodge Hotel*,²³¹ the United States Court of Appeals for the

225. 502 F.3d 70 (2d Cir. 2007).

226. *Id.* at 71-72. The Bankruptcy Court dismissed claims against a defendant in a decision memorandum that it dated July 20, 2005. *Id.* at 71. That court's clerk dated the judgment as August 31, 2005 and, shortly after, the plaintiff appealed to the district court. *Id.* at 71-72. The district court wrote a judgment that stated, "July 20, 2005 order and judgment of the Bankruptcy Court [is] affirmed in all respects." *Id.* at 71. The court later amended the date to August 31. *Id.* The plaintiff called the district judge's office to ask whether the time to appeal ran from July 20 or August 31. *Id.* at 72. The clerk incorrectly informed the attorney that it ran from the amended date and, as a result, the plaintiff's notice of appeal was untimely. *Id.* at 72.

227. *Id.* at 73.

228. *See Bowles*, 127 S. Ct. at 2362.

229. Limin Zheng, Comment, *Actual Innocence As a Gateway Through the Statute-of-Limitations Bar on the Filing of Federal Habeas Petitions*, 90 CAL. L. REV. 2101, 2128-29 (2002).

230. *Bowles* was decided on a five to four vote. *Bowles*, 127 S. Ct. at 2361-62. Because the Court has been more lenient to pro se litigants, one could argue that at least one justice in the *Bowles* majority would have voted differently in light of this hypothetical fact. *See infra* text accompanying notes 231-237.

231. 501 F.2d 880 (D.C. Cir. 1974).

District of Columbia Circuit addressed a pro se petitioner's request for an extension of his notice of appeal for excusable neglect.²³² The court stated that "the endeavors of lay litigants are not to be scrutinized for the precision expected of members of the bar."²³³ In *Houston v. Lack*, the Supreme Court concluded that a pro se prisoner could file a notice of appeal simply by delivering it to the prison authorities for purposes of timeliness.²³⁴ It mentioned that Houston, who was in prison, could not take the time to travel to the courthouse to ensure that the court properly filed his petition within the given deadline.²³⁵ Recently, in *Erickson v. Pardus*,²³⁶ the Supreme Court even implied that courts should read procedural rules more liberally for pro se litigants.²³⁷ What is most important about these cases is that the Court draws a distinction for pro se litigants and will allow flexibility in the law for them in the name of fairness.

In labeling statutory deadlines as jurisdictional, without the possibility of equitable exceptions, the Supreme Court has restricted federal courts from being more lenient when a pro se case does arise. The *Bowles* majority premised its decision on the idea that Congress has given the courts limited authority to hear cases by means of the statutory restrictions.²³⁸ Therefore, courts have no power to grant equitable exceptions unless Congress expressly provides that power.²³⁹ This strict interpretation gives no room for those who represent themselves and have little choice beyond reasonably relying on a court order. The impact of *Bowles* will lead to an unfair reality for any pro se litigant who may not have access to competent legal resources.

C. The Collateral Bar Rule Paradox

The collateral bar rule's underlying principle is that a litigant must follow a court order even if it is unconstitutional or facially erroneous.²⁴⁰ Because the collateral bar rule applies only to criminal contempt cases, I am not suggesting that the *Bowles* majority should have applied it in its analysis.²⁴¹ Nor am I suggesting that this line of precedent supports *Bowles*'s case. When one pairs this rule with the issue in *Bowles*, it creates a minor paradox. On one hand, the collateral bar rule demands

232. See *id.* at 881.

233. *Id.* at 885.

234. *Houston v. Lack*, 487 U.S. 266, 270-71 (1988).

235. *Id.* at 271.

236. 127 S. Ct. 2197 (2007).

237. See *id.* at 2200 (citing *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)).

238. See *Bowles v. Russell*, 127 S. Ct. 2360, 2366 (2007).

239. *Id.*

240. See *supra* notes 121-134 and accompanying text for a background of the collateral bar rule and its purpose.

241. See *In re Establishment Inspection of Hern Iron Works, Inc.*, 881 F.2d 722, 727 n.11 (9th Cir. 1989) (citing *United States v. United Mine Workers*, 330 U.S. 258, 295 (1947)).

that litigants rely on court orders, even if they are unconstitutional or facially erroneous.²⁴² In fact, if one does not comply, a court has the authority to charge that individual with criminal contempt.²⁴³ On the other hand, the *Bowles* holding provides that if one relies on a court order, then it may be to the litigant's detriment.²⁴⁴

The principle of the collateral bar rule and the outcome of *Bowles*, read together, are full of irony. The purpose of the collateral bar rule is to "preserve respect for the courts."²⁴⁵ The idea behind the rule is that people should not take justice into their own hands, but that courts should resolve disputes.²⁴⁶ The *Bowles* majority, however, cannot rationally expect federal courts to maintain any level of respect if they hand down erroneous court orders and then punish litigants for reasonably relying on them. *Bowles* effectively strips the judiciary of accountability in handing down accurate court orders. It places the burden of accuracy on lay litigants. As a result, *Bowles* could arguably bring federal courts into disrepute.

VI. CONCLUSION

In holding that statutory deadlines are jurisdictional, the United States Supreme Court has denied the possibility of equitable exceptions for every potential scenario involving a litigant that may have good cause for such an exception. It is improper to hold that these statutory deadlines are jurisdictional unless the legislature expressly labels them as such. The *Bowles* majority ignored recent Supreme Court case law regarding this very issue, including the bright-line test Justice Ginsburg provided in *Arbaugh*.²⁴⁷ Simply put, the better approach is to treat statutory deadlines as non-jurisdictional unless Congress expressly indicates the contrary in the statute itself. Even though Congress has the power to limit federal court jurisdiction, the courts should not look for jurisdictional implications in statutes where the legislature did not explicitly give it that limitation.

Additionally, this decision will affect all litigants to whom a judge issues a court order. The *Bowles* majority gave no exception to *Bowles's* reliance. Because of this, the Court blatantly deprived him of his due process of liberty and an appellate hearing. The Court now expects pro se litigants to know the intricacies of the Federal Rules and the applicable statutory restrictions. Furthermore, the Court removes any accountability of other federal judges by putting the burden of the

242. See Labunski, *supra* note 121, at 327.

243. See Palmer, *supra* note 122, at 216.

244. See *Bowles*, 127 S. Ct. at 2362.

245. See Rendleman, *supra* note 124, at 247.

246. *Id.* at 258.

247. See *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 516 (2006).

mistake on litigants. The *Bowles* majority also ignored the fact that there have been cases in which the Supreme Court has granted equitable exceptions to strict jurisdictional provisions in the name of fairness or efficiency.²⁴⁸

Finally, through the collateral bar rule, the Court has stressed the importance of following court orders, even if they are erroneous or unconstitutional. Although this rule only applies to criminal contempt situations, it has taught society that it can rely on court orders until an appellate court overturns them on the merits. Unfortunately, *Bowles* trades notions of fairness, reasonable reliance, and deference to congressional intent for a rule that will unjustly affect many litigants.

248. See, e.g., *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 77 (1996); *Corniel-Rodriguez v. INS*, 532 F.2d 301, 307 (2d Cir. 1976).