

What is **Stare Decisis** and **Binding Precedent**?

The concept of *stare decisis*, Latin for “let the thing stand,” is the doctrine that court decisions generally should be bound and directed by prior decisions on similar facts and a similar set of legal issues. In practice, adherence to *stare decisis* gives parties and citizens an understanding of what the law is and what it is likely to be in the future and allows for certainty in business transactions. Entities can enter into agreements with a reasonable expectation that any potential future dispute will be settled in conformity with past court decisions. This allows businesses to calculate their risks before they commit to large investments and other financial investments and agreements. It also allows citizens to be confident in their rights.

The American Bar Association describes two different types of *stare decisis*. **Vertical stare decisis** means lower courts of a certain jurisdiction should be bound by the decisions of higher courts in the same jurisdiction. Since the Supreme Court of the United States (SCOTUS) is the highest court in the nation, it is generally accepted that SCOTUS sets binding precedent on all other federal courts and on federal issues that arise in state court cases.

The other type, **horizontal stare decisis**, means courts at the same level are generally influenced by decisions of courts at the same level, but in different jurisdictions. With horizontal *stare decisis*, one court may look to the decisions of a sister court for some guidance, but the court is generally not bound to decisions from different circuits.

Super Precedent

There are certain cases in American jurisprudence that have been considered **super precedent** cases, where the law is thought to be settled and not changeable at all, except in extraordinary circumstances. There are instances when cases have been overturned later because the super precedent was no longer considered just or applicable, under a more recent understanding or interpretation of the law.

One well-known super precedent is the Supreme Court case of *Brown v. Board of Education*, (1954), which overturned the long-standing doctrine of separate but equal. Under *Brown*, division of government resources for White and Black Americans —

specifically, for segregation in public education — was ruled unconstitutional. At the time of its ruling, the *Brown* case established new law and new standards. It invalidated the long-standing Supreme Court ruling from *Plessy v. Ferguson*, (1896), which held that state-mandated segregation laws did not violate the equal protection clause of the Fourteenth Amendment.

A more recent departure from *stare decisis* and long-standing precedent, often deemed to be super precedent, can be found in the overturning of *Roe v. Wade*, (1973), which guaranteed women the right to an abortion before fetal viability. For nearly fifty years, this legal standard remained intact, albeit with modification of its standards under *Planned Parenthood v. Casey*, (1992). In 2022, the Supreme Court decided in *Dobbs v. Jackson Women’s Health Organization* to nullify the long-standing constitutional protection and right established under *Roe* and delegated such decisions to the states. As a result, a single right under the Constitution has become a myriad of state laws, some banning abortion completely.

Today, the concept of strictly following precedent is being challenged and federal courts appear more willing to step away from strict adherence to *stare decisis*. This has led to federal courts limiting many well-established rights, such as voting rights, based on laws designed to protect the rights of historically marginalized or historically oppressed communities. In *Shelby County v. Holder*, (2013), the Supreme Court struck down Section 4b of the *Voting Rights Act*, which determined that states were required to get pre-clearance from the Department of Justice before implementing laws at the state level changing voting rights. Immediately after the decision, pre-clearance of state voting laws ended, and southern states previously subject to pre-clearance began passing laws making the process of voting more difficult. The League has been involved in litigation involving these voter suppression laws.

Principles to Consider

LWVUS positions on the Congress and the Presidency, the other two branches of government, pay little attention to specific policy approaches; instead, they focus on principles. Those principles were designed for evaluating future policy proposals and ensure a durable foundation for advocacy. Principles that pertain to this topic include the following:

● Stability of law	● Legitimacy
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SOURCES:

[Understanding Stare Decisis](#), American Bar Association, 2022.

[Hunting for ‘super precedents’ in US Supreme Court confirmations | Constitution Center](#), American Bar Association Blog, 2022

[Voting law changes raise concerns after Shelby County](#), American Bar Association, 2014.

[Shelby County v. Holder | Brennan Center for Justice](#), Brennan Center, 2013.