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TENTH AMENDMENT

RESERVED POWERS

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RESERVED POWERS

TENTH AMENDMENT

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

RESERVED POWERS

Scope and Purpose

"The Tenth Amendment was intended to confirm the understanding of the people at the time the Constitution was adopted, that powers not granted to the United States were reserved to the States or to the people. It added nothing to the instrument as originally ratified."[1] "The amendment states but a truism that all is retained which has not been surrendered. There is nothing in the history of its adoption to suggest that it was more than declaratory of the relationship between the national and state governments as it had been established by the Constitution before the amendment or that its purpose was other than to allay fears that the new national government might seek to exercise powers not granted, and that the states might not be able to exercise fully their reserved powers."[2] That this provision was not conceived to be a yardstick for measuring the powers granted to the Federal Government or reserved to the states was firmly settled by the refusal of both Houses of Congress to insert the word "expressly" before the word "delegated,"[3] and was confirmed by Madison's remarks in the course of the debate, which took place while the proposed amendment was pending, concerning Hamilton's plan to establish a national bank. "Interference with the power of the States was no constitutional criterion of the power of Congress. If the power was not given, Congress could

[1] United States v. Sprague, 282 U.S. 716, 733 (1931).

[2] United States v. Darby, 312 U.S. 100, 124 (1941). "While the Tenth Amendment has been characterized as a 'truism,' stating merely that 'all is retained which has not been surrendered,' [citing Darby], it is not without significance. The Amendment expressly declares the constitutional policy that Congress may not exercise power in a fashion that impairs the States' integrity or their ability to function effectively in a federal system." Fry v. United States, 421 U.S. 542, 547 n.7 (1975). This policy was effectuated, at least for a time, in National League of Cities v. Usery, 426 U.S. 833 (1976).

[3] Annals of Congress 767–68 (1789) (defeated in House 17 to 32); 2 B. Schwartz, The Bill of Rights: A Documentary History 1150–51 (1971) (defeated in Senate by unrecorded vote).

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not exercise it; if given, they might exercise it, although it should interfere with the laws, or even the Constitutions of the States."[4] Nevertheless, for approximately a century, from the death of Marshall until 1937, the Tenth Amendment was frequently invoked to curtail powers expressly granted to Congress, notably the powers to regulate commerce, to enforce the Fourteenth Amendment, and to lay and collect taxes.

In *McCulloch v. Maryland*,[5] Marshall rejected the proffer of a Tenth Amendment objection and offered instead an expansive interpretation of the necessary and proper clause[6] to counter the argument. The counsel for the State of Maryland cited fears of opponents of ratification of the Constitution about the possible swallowing up of states' rights and referred to the Tenth Amendment to allay these apprehensions, all in support of his claim that the power to create corporations was reserved by that amendment to the states.[7] Stressing the fact that the amendment, unlike the cognate section of the Articles of Confederation, omitted the word "expressly" as a qualification of granted powers, Marshall declared that its effect was to leave the question "whether the particular power which may become the subject of contest has been delegated to the one government, or prohibited to the other, to depend upon a fair construction of the whole instrument."[8]

Effect of Provision on Federal Powers

Federal Taxing Power.—Not until after the Civil War was the idea that the reserved powers of the states comprise an independent qualification of otherwise constitutional acts of the Federal Government actually applied to nullify, in part, an act of Congress. This result was first reached in a tax case, *Collector v. Day*.[9] Holding that a national income tax, in itself valid, could not be constitutionally levied upon the official salaries of state officers, Justice Nelson made the sweeping statement that "the States within the limits of their powers not granted, or, in the language of the Tenth Amendment, 'reserved,' are as independent of the general government as that government within its sphere is independent of the States."[10]

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[4] 2 Annals of Congress 1897 (1791).

[5] 17 U.S. (4 Wheat.) 316 (1819).

[6] *See* discussion under "Coefficient or Elastic Clause," *supra*.

[7] McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316, 372 (1819) (argument of counsel).

[8] 17 U.S. at 406. "From the beginning and for many years the amendment has been construed as not depriving the national government of authority to resort to all means for the exercise of a granted power which are appropriate and plainly adapted to the permitted end." United States v. Darby, 312 U.S. 100, 124 (1941).

[9] 78 U.S. (11 Wall.) 113 (1871).

[10] 78 U.S. at 124.

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In 1939, *Collector v. Day* was expressly overruled.[11] Nevertheless, the problem of reconciling state and national interest still confronts the Court occasionally, and was elaborately considered in *New York v. United States*,[12] where, by a vote of six-to-two, the Court upheld the right of the United States to tax the sale of mineral waters taken from property owned by a state. Speaking for four members of the Court, Chief Justice Stone justified the tax on the ground that "[t]he national taxing power would be unduly curtailed if the State, by extending its activities, could withdraw from it subjects of taxation traditionally within it."[13] Justices Frankfurter and Rutledge found in the Tenth Amendment "no restriction upon Congress to include the States in levying a tax exacted equally from private persons upon the same subject matter."[14] Justices Douglas and Black dissented, saying: "If the power of the Federal Government to tax the States is conceded, the reserved power of the States guaranteed by the Tenth Amendment does not give them the independence which they have always been assumed to have."[15]

Federal Police Power.—A year before *Collector v. Day* was decided, the Court held invalid, except as applied in the District of Columbia and other areas over which Congress has exclusive authority, a federal statute penalizing the sale of dangerous illuminating oils.[16] The Court did not refer to the Tenth Amendment. Instead, it asserted that the "express grant of power to regulate commerce among the States has always been understood as limited by its terms; and as a virtual denial of any power to interfere with the internal trade and business of the separate States; except, indeed, as a necessary and proper means for carrying into execution some other power expressly granted or vested."[17] Similarly, in the *Employers' Liability Cases*,[18] an act of Congress making every carrier engaged in interstate commerce liable to "any" employee, including those whose activities related solely to intrastate activities, for injuries caused by negligence, was held unconstitutional by a closely divided Court, without explicit reliance on the Tenth Amend-

[11] Graves v. New York ex rel. O'Keefe, 306 U.S. 466 (1939). The Internal Revenue Service is authorized to sue a state auditor personally and recover from him an amount equal to the accrued salaries which, after having been served with notice of levy, he paid to state employees delinquent in their federal income tax. Sims v. United States, 359 U.S. 108 (1959).

[12] 326 U.S. 572 (1946).

[13] 326 U.S. at 589.

[14] 326 U.S. at 584.

[15] 326 U.S. at 595. The issue was canvassed, but inconclusively, in Massachusetts v. United States, 435 U.S. 444 (1978).

[16] United States v. Dewitt, 76 U.S. (9 Wall.) 41 (1870).

[17] 76 U.S. at 44.

[18] 207 U.S. 463 (1908). *See also* Keller v. United States, 213 U.S. 138 (1909).

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ment. Not until it was confronted with the Child Labor Law, which prohibited the transportation in interstate commerce of goods produced in establishments in which child labor was employed, did the Court hold that the state police power was an obstacle to adoption of a measure which operated directly and immediately upon interstate commerce. In *Hammer v. Dagenhart*,[19] five members of the Court found in the Tenth Amendment a mandate to nullify this law as an unwarranted invasion of the reserved powers of the states. This decision was expressly overruled in *United States v. Darby*.[20]

During the twenty years following *Hammer v. Dagenhart*, a variety of measures designed to regulate economic activities, directly or indirectly, were held void on similar grounds. Excise taxes on the profits of factories in which child labor was employed,[21] on the sale of grain futures on markets which failed to comply with federal regulations,[22] on the sale of coal produced by nonmembers of a coal code established as a part of a federal regulatory scheme,[23] and a tax on the processing of agricultural products, the proceeds of which were paid to farmers who complied with production limitations imposed by the Federal Government,[24] were all found to invade the reserved powers of the states. In *Schechter Poultry Corp. v. United States*,[25] the Court, after holding that the commerce power did not extend to local sales of poultry, cited the Tenth Amendment to refute the argument that the existence of an economic emergency justified the exercise of what Chief Justice Hughes called "extraconstitutional authority."[26]

In 1941, the Court came full circle in its exposition of the Tenth Amendment. Having returned four years earlier to the position of John Marshall when it sustained the Social Security Act[27] and the National Labor Relations Act,[28] the Court explicitly restated Marshall's thesis in upholding the Fair Labor Standards Act in *United States v. Darby*.[29] Speaking for a unanimous Court, Chief Justice Stone wrote: "The power of Congress over interstate commerce 'is complete in itself, may be exercised to its utmost extent, and ac-

[19] 247 U.S. 251 (1918).

[20] 312 U.S. 100 (1941).

[21] *Child Labor Tax Case*, 259 U.S. 20, 26, 38 (1922).

[22] Hill v. Wallace, 259 U.S. 44 (1922). *See also* Trusler v. Crooks, 269 U.S. 475 (1926).

[23] Carter v. Carter Coal Co., 298 U.S. 238 (1936).

[24] United States v. Butler, 297 U.S. 1 (1936).

[25] 295 U.S. 495 (1935).

[26] 295 U.S. at 529.

[27] Steward Machine Co. v. Davis, 301 U.S. 548 (1937); Helvering v. Davis, 301 U.S. 619 (1937).

[28] NLRB v. Jones & Laughlin Steel Corp., 301 U.S. 1 (1937).

[29] 312 U.S. 100 (1941). *See also* United States v. Carolene Products Co., 304 U.S. 144, 147 (1938); Case v. Bowles, 327 U.S. 92, 101 (1946).

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knowledges no limitations other than are prescribed in the Constitution.' . . . That power can neither be enlarged nor diminished by the exercise or non-exercise of state power. . . . It is no objection to the assertion of the power to regulate interstate commerce that its exercise is attended by the same incidents which attended the exercise of the police power of the states. . . . Our conclusion is unaffected by the Tenth Amendment which . . . states but a truism that all is retained which has not been surrendered."[30]

But even prior to 1937 not all federal statutes promoting objectives which had traditionally been regarded as the responsibilities of the states had been held invalid. In *Hamilton v. Kentucky Distilleries Co.*,[31] a unanimous Court, in an opinion by Justice Brandeis, upheld "War Prohibition," saying, "That the United States lacks the police power, and that this was reserved to the States by the Tenth Amendment, is true. But it is nonetheless true that when the United States exerts any of the powers conferred upon it by the Constitution, no valid objection can be based upon the fact that such exercise may be attended by the same incidents which attend the exercise by a State of its police power."[32] And, in a series of cases that today seems irreconcilable with *Hammer v. Dagenhart*, the Court sustained federal laws penalizing the interstate transportation of lottery tickets,[33] of women for immoral purposes,[34] of stolen automobiles,[35] and of tick-infected cattle,[36] as well as a statute prohibiting the mailing of obscene matter.[37] It affirmed the power of Congress to punish the forgery of bills of lading purporting to cover interstate shipments of merchandise,[38] to subject prison-made goods moved from one state to another to the laws of the receiving state,[39] to regulate prescriptions for the medicinal use of liquor as an appropriate measure for the enforcement of the Eighteenth Amendment,[40] and to control extortionate means of collecting and attempting to collect payments on loans, even when all aspects of the credit transaction took place within one state's boundaries.[41] More recently, the Court upheld provisions of federal surface mining law

[30] 312 U.S. 100, 114, 123, 124 (1941). *See also* Fernandez v. Wiener, 326 U.S. 340, 362 (1945).
[31] 251 U.S. 146 (1919).
[32] 251 U.S. at 156.
[33] Lottery Case (Champion v. Ames), 188 U.S. 321 (1903).
[34] Hoke v. United States, 227 U.S. 308 (1913).
[35] Brooks v. United States, 267 U.S. 432 (1925).
[36] Thornton v. United States, 271 U.S. 414 (1926).
[37] Roth v. United States, 354 U.S. 476 (1957).
[38] United States v. Ferger, 250 U.S. 199 (1919).
[39] Kentucky Whip & Collar Co. v. Ill. Cent. R.R., 299 U.S. 334 (1937).
[40] Everard's Breweries v. Day, 265 U.S. 545 (1924).
[41] Perez v. United States, 402 U.S. 146 (1971).

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that could be characterized as "land use regulation" traditionally subject to state police power regulation.[42]

In 1995, reversing this trend, the Court in *United States v. Lopez*[43] struck down a statute prohibiting possession of a gun at or near a school, rejecting an argument that possession of firearms in school zones can be punished under the Commerce Clause because it impairs the functioning of the national economy. Acceptance of this rationale, the Court said, would eliminate "a[ny] distinction between what is truly national and what is truly local," would convert Congress's commerce power into "a general police power of the sort retained by the States," and would undermine the "first principle" that the Federal Government is one of enumerated and limited powers.[44] Application of the same principle led five years later to the Court's decision in *United States v. Morrison*[45] invalidating a provision of the Violence Against Women Act (VAWA) that created a federal cause of action for victims of gender-motivated violence. Congress may not regulate "non-economic, violent criminal conduct based solely on that conduct's aggregate effect on interstate commerce," the Court concluded. "[W]e can think of no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims."[46]

Notwithstanding these federal inroads into powers otherwise reserved to the states, the Court has held that Congress could not itself undertake to punish a violation of state law; in *United States v. Constantine*,[47] a grossly disproportionate excise tax imposed on retail liquor dealers carrying on business in violation of local law was held unconstitutional. However, Congress does not contravene reserved state police powers when it levies an occupation tax on all persons engaged in the business of accepting wagers regardless of

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[42] Hodel v. Virginia Surface Mining & Recl. Ass'n, 452 U.S. 264 (1981).

[43] 514 U.S. 549 (1995).

[44] 514 U.S. at 552, 567–68.

[45] 529 U.S. 598 (2000).

[46] 529 U.S. at 618.

[47] 296 U.S. 287 (1935). The Civil Rights Act of 1875, which made it a crime for one person to deprive another of equal accommodations at inns, theaters or public conveyances, was found to exceed the powers conferred on Congress by the Thirteenth and Fourteenth Amendments and hence to be an unlawful invasion of the powers reserved to the states by the Tenth Amendment. *Civil Rights Cases*, 109 U.S. 3, 15 (1883). Congress has now accomplished this end under its commerce power, Heart of Atlanta Motel v. United States, 379 U.S. 241 (1964); Katzenbach v. McClung, 379 U.S. 294 (1964), but it is clear that the rationale of the *Civil Rights Cases* has been greatly modified if not severely impaired. *Cf.* Jones v. Alfred H. Mayer Co., 392 U.S. 409 (1968) (13th Amendment); Griffin v. Breckenridge, 403 U.S. 88 (1971) (13th Amendment); United States v. Guest, 383 U.S. 745 (1966) (14th Amendment).

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whether those persons are violating state law, and imposes severe penalties for failure to register and pay the tax.[48]

Federal Regulations Affecting State Activities and Instrumentalities.—Since the mid-1970s, the Court has been closely divided over whether the Tenth Amendment or related constitutional doctrine constrains congressional authority to subject state activities and instrumentalities to generally applicable requirements enacted pursuant to the commerce power.[49] According to *Garcia v. San Antonio Metropolitan Transit Authority*,[50] the Tenth Amendment imposes practically no judicially enforceable limit on generally applicable federal legislation, and states must look to the political process for redress. *Garcia*, however, like *National League of Cities v. Usery*,[51] the case it overruled, was a 5–4 decision, and there are later indications that the Court may be ready to resurrect some form of Tenth Amendment constraint on Congress.[52]

In *National League of Cities v. Usery*, the Court conceded that the legislation under attack, which regulated the wages and hours of certain state and local governmental employees, was "undoubtedly within the scope of the Commerce Clause,"[53] but it cautioned that "there are attributes of sovereignty attaching to every state government which may not be impaired by Congress, not because Congress may lack an affirmative grant of legislative authority to reach the matter, but because the Constitution prohibits it from exercising the authority in that manner."[54] The Court approached but did not reach the conclusion that the Tenth Amendment was the prohibition here, not that it directly interdicted federal power because power which is delegated is *not* reserved, but that it implicitly embodied a policy against impairing the states' integrity or ability to function.[55] But, in the end, the Court held that the legislation was invalid, not because it violated a prohibition found in the Tenth Amendment or elsewhere, but because the law was "not within the authority granted Congress."[56] In subsequent cases applying or dis-

[48] United States v. Kahriger, 345 U.S. 22, 25–26 (1953); Lewis v. United States, 348 U.S. 419 (1955).

[49] The matter is discussed more fully under "Supremacy Clause Versus the Tenth Amendment," *supra*.

[50] 469 U.S. 528 (1985).

[51] 426 U.S. 833 (1976).

[52] "[W]e need not address the question whether general applicability [*i.e.*, applicability to individuals as well as to the states] is a constitutional requirement for federal regulation of the States . . . ." Reno v. Condon, 528 U.S. 141 (2000), discussed *infra*.

[53] 426 U.S. at 841.

[54] 426 U.S. at 845.

[55] 426 U.S. at 843.

[56] 426 U.S. at 832.

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tinguishing *National League of Cities*, the Court and dissenters wrote as if the Tenth Amendment was the prohibition.[57] Whatever the source of the constraint, it was held not to limit the exercise of power under the Reconstruction Amendments.[58]

The Court overruled *National League of Cities* in *Garcia v. San Antonio Metropolitan Transit Authority*.[59] Justice Blackmun's opinion for the Court in *Garcia* concluded that the *National League of Cities* test for "integral operations in areas of traditional governmental functions" had proven "both impractical and doctrinally barren," and that the Court in 1976 had "tried to repair what did not need repair."[60] With only passing reference to the Tenth Amendment, the Court nonetheless clearly reverted to the Madisonian view of the Amendment reflected in *United States v. Darby*.[61] States retain a significant amount of sovereign authority "only to the extent that the Constitution has not divested them of their original powers and transferred those powers to the Federal Government."[62] The principal restraints on congressional exercise of the commerce power are to be found not in the Tenth Amendment or in the Commerce Clause itself, but in the structure of the Federal Government and in the political processes.[63] "Freestanding conceptions of state sovereignty" such as the *National League of Cities* test subvert the federal system by "invit[ing] an unelected federal judiciary to make decisions about which state policies it favors and which ones it dislikes."[64] Although continuing to recognize that "Congress's authority under the Commerce Clause must reflect [the] position . . . that the States occupy a special and specific position in our constitu-

[57] *E.g.*, FERC v. Mississippi, 456 U.S. 742, 771 (1982) (Justice Powell dissenting); id. at 775 (Justice O'Connor dissenting); EEOC v. Wyoming, 460 U.S. 226 (1983). The *EEOC* Court distinguished *National League of Cities*, holding that application of the Age Discrimination in Employment Act to state fish and game wardens did not directly impair the state's ability to structure integral operations in areas of traditional governmental function, since the state remained free to assess each warden's fitness on an individualized basis and retire those found unfit for the job.

[58] Fitzpatrick v. Bitzer, 427 U.S. 445 (1976); City of Rome v. United States, 446 U.S. 156 (1980); Fullilove v. Klutznick, 448 U.S. 448, 476–78 (1980) (plurality opinion of Chief Justice Burger).

[59] 469 U.S. 528 (1985). The issue was again decided by a 5-to-4 vote, Justice Blackmun's qualified acceptance of the *National League of Cities* approach having changed to complete rejection.

[60] 469 U.S. at 557.

[61] 312 U.S. 100, 124 (1941), discussed *supra*. Madison's views were quoted by the Court in *Garcia*, 469 U.S. at 549.

[62] 469 U.S. at 549.

[63] "Apart from the limitation on federal authority inherent in the delegated nature of Congress's Article I powers, the principal means chosen by the Framers to ensure the role of the States in the federal system lies in the structure of the Federal Government itself." 469 U.S. at 550. The Court cited the role of states in selecting the President, and the equal representation of states in the Senate. Id. at 551.

[64] 469 U.S. at 550, 546.

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tional system," the Court held that application of Fair Labor Standards Act minimum wage and overtime provisions to state employment does not require identification of these "affirmative limits."[65] In sum, the Court in *Garcia* seems to have said that most but not necessarily all disputes over the effects on state sovereignty of federal commerce power legislation are to be considered political questions. What it would take for legislation to so threaten the "special and specific position" that states occupy in the constitutional system as to require judicial rather than political resolution was not delineated.

The first indication was that it would take a very unusual case indeed. In *South Carolina v. Baker*, the Court expansively interpreted *Garcia* as meaning that there must be an allegation of "some extraordinary defects in the national political process" before the Court will apply substantive judicial review standards to claims that Congress has regulated state activities in violation of the Tenth Amendment.[66] A claim that Congress acted on incomplete information would not suffice, the Court noting that South Carolina had "not even alleged that it was deprived of any right to participate in the national political process or that it was singled out in a way that left it politically isolated and powerless."[67] Thus, the general rule was that "limits on Congress's authority to regulate state activities . . . are structural, not substantive—*i.e.*, that States must find their protection from congressional regulation through the national political process, not through judicially defined spheres of unregulable state activity."[68]

Later indications were that the Court may have been looking for ways to back off from *Garcia*. One device was to apply a "clear statement" rule requiring unambiguous statement of congressional intent to displace state authority. After noting the serious constitutional issues that would be raised by interpreting the Age Discrimination in Employment Act to apply to appointed state judges, the Court in *Gregory v. Ashcroft*[69] explained that, because *Garcia* "con-

[65] 469 U.S. at 556.

[66] 485 U.S. 505, 512 (1988). Justice Scalia, in a concurring opinion, objected to this language as departing from the Court's assertion in *Garcia* that the "constitutional structure" imposes some affirmative limits on congressional action. Id. at 528.

[67] 485 U.S. at 513.

[68] 485 U.S. at 512.

[69] 501 U.S. 452 (1991). The Court left no doubt that it considered the constitutional issue serious. "[T]he authority of the people of the States to determine the qualifications of their most important government officials . . . is an authority that lies at 'the heart of representative government' [and] is a power reserved to the States under the Tenth Amendment and guaranteed them by [the Guarantee Clause]." Id. at 463. In the latter context the Court's opinion by Justice O'Connor cited Merritt, *The Guarantee Clause and State Autonomy: Federalism for a Third Century*, 88 COLUM.

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strained" consideration of "the limits that the state-federal balance places on Congress's powers," a plain statement rule was all the more necessary. "[I]nasmuch as this Court in *Garcia* has left primarily to the political process the protection of the States against intrusive exercises of Congress's Commerce Clause powers, we must be absolutely certain that Congress intended such an exercise."[70]

The Court's 1992 decision in *New York v. United States*[71] may portend a more direct retreat from *Garcia*. The holding in *New York*, that Congress may not "commandeer" state regulatory processes by ordering states to enact or administer a federal regulatory program, applied a limitation on congressional power previously recognized in dictum[72] and in no way inconsistent with the holding in *Garcia*. Language in the opinion, however, seems more reminiscent of *National League of Cities* than of *Garcia*. First, the Court's opinion by Justice O'Connor declares that it makes no difference whether federalism constraints derive from limitations inherent in the Tenth Amendment, or instead from the absence of power delegated to Congress under Article I; "the Tenth Amendment thus directs us to determine . . . whether an incident of state sovereignty is protected by a limitation on an Article I power."[73] Second, the Court, without reference to *Garcia*, thoroughly repudiated *Garcia's* "structural" approach requiring states to look primarily to the political processes for protection. In rejecting arguments that New York's sovereignty could not have been infringed because its representatives had participated in developing the compromise legislation and had consented to its enactment, the Court declared that "[t]he Constitution does not protect the sovereignty of States for the benefit of the States or State governments, [but instead] for the protection of individuals." Consequently, "State officials cannot consent to the enlargement of the powers of Congress beyond those enumerated in the Constitution."[74] The stage appears to be set, therefore, for some relaxation of *Garcia's* obstacles to federalism-based challenges to legislation enacted pursuant to the commerce power.

L. Rev. 1 (1988). *See also* McConnell, Federalism: Evaluating the Founders' Design, 54 U. Chi. L. Rev. 1484 (1987) (also cited by the Court); and Van Alystyne, *The Second Death of Federalism*, 83 Mich. L. Rev. 1709 (1985).

[70] 501 U.S. at 464.

[71] 505 U.S. 144 (1992).

[72] *See*, *e.g.*, Hodel v. Virginia Surface Mining & Recl. Ass'n, 452 U.S. 264, 288 (1981); FERC v. Mississippi, 456 U.S. 742, 765 (1982); South Carolina v. Baker, 485 U.S. 505, 513–15 (1988).

[73] 505 U.S. at 157. "If a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States. . . ." Id. at 156 (quoted with approval in Watters v. Wachovia Bank, N.A., 550 U.S. 1, 22 (2007), which held that a national bank's state-chartered subsidiary real estate lending business is subject to federal, not state, law).

[74] 505 U.S. at 181, 182.

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Extending the principle applied in *New York*, the Court in *Printz v. United States* [75] held that Congress may not "circumvent" the prohibition on commandeering a state's regulatory processes "by conscripting the State's officers directly." [76] *Printz* struck down interim provisions of the Brady Handgun Violence Protection Act that required state and local law enforcement officers to conduct background checks on prospective handgun purchasers. "The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers . . . to administer or enforce a federal regulatory program. It matters not whether policymaking is involved, and no case-by-case weighing of the burdens or benefits is necessary; such commands are fundamentally incompatible with our constitutional system of dual sovereignty." [77]

In *Reno v. Condon*,[78] the Court distinguished *New York* and *Printz* in upholding the Driver's Privacy Protection Act of 1994 (DPPA), a federal law that restricts the disclosure and resale of personal information contained in the records of state motor vehicles departments. The Court returned to a principle articulated in *South Carolina v. Baker* that distinguishes between laws that improperly seek to control the manner in which states regulate private parties, and those that merely regulate state activities directly.[79] Here, the Court found that the DPPA "does not require the States in their sovereign capacities to regulate their own citizens," but rather "regulates the States as the owners of databases." [80] The Court saw no need to decide whether a federal law may regulate the states exclusively, because the DPPA is a law of general applicability that regulates private resellers of information as well as states.[81]

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[75] 521 U.S. 898 (1997).
[76] 521 U.S. at 935.
[77] 521 U.S. at 935.
[78] 528 U.S. 141 (2000).
[79] 485 U.S. 505, 514–15 (1988).
[80] 528 U.S. at 151.
[81] 528 U.S. at 151.

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