




EXHIBIT
DATE 2/12/2013
HB 302

The Victory For State Sovereignty

Mack / Printz v. USA

The monumental Supreme Court case that restored the Tenth Amendment

Abridged, with foreword and summary by

Sheriff Richard Mack













"We can safely rely on the disposition of state legislatures to erect barriers against the encroachment of the national authority."

~ James Madison

"The powers not delegated to the United States by the Constitution...are reserved to the States respectively, or to the people. "

~ Tenth Article of the Bill of Rights

"Residual state sovereignty was also implicit, of course, in the constitution's conferral upon Congress of not all governmental powers but only discrete, enumerated ones."

~ United States Supreme Court (Mack/Printz v. USA)

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MACK / PRINTZ

V.

USA

The monumental Supreme Court case that restored the Tenth Amendment

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FOREWORD

On February 28, 1994, while serving as sheriff of Graham County, Arizona, I filed a lawsuit in Federal District Court against the federal government (Clinton administration) to stop the gun control and destruction of state sovereignty, associated with the Brady bill. A few weeks later, Sheriff Jay Printz, from Ravalli County filed a similar lawsuit in Montana. Ultimately, five other sheriffs from Texas, Louisiana, Mississippi, Vermont and Wyoming, joined this action. Seven sheriffs, out of nearly 3100 nation wide, stood and fought the United States goliath Clinton administration. Why would seven small-town sheriffs do such a thing against their own government? On the other hand, if it was the right thing to do, why were there only seven sheriffs who took such a stand?

To put it succinctly, the Brady bill was more gun control and more federal intervention. Furthermore, the Brady bill was an unfunded and unconstitutional mandate accompanied with a threat to arrest us if we failed to comply. Yes, the U.S. Congress threatened to arrest us if we did not go along! Accordingly, in the first case filed in Federal District Court, I sought and obtained an injunction prohibiting the federal government from arresting me.

So, precisely what did the Brady bill do? It amended the Gun Control Act of 1968 and required all CLEOs (Chief Law Enforcement Officers) to conduct background checks on

all citizens purchasing handguns at local gun shops.

Perhaps this entire issue was best described by Federal District Judge John Roll.

"Mack is thus forced to choose between keeping his oath or obeying the act, subjecting himself to possible sanctions."

Imagine that; a federal judge actually addressing the oath all sheriffs (CLEOs) take to uphold and defend the United States Constitution.

Sheriff Printz and I appeared together at the U.S. Supreme Court in December of 1996 and on June 27, 1997, the Brady bill was ruled to be unconstitutional. This booklet is the abridged form of that monumental ruling; perhaps the most powerful and definitive Tenth Amendment decision throughout American history. This ruling proves that the states are sovereign, that the states must keep the federal government in check and that the federal government is not our boss!

Who then, is responsible to determine how far the authority of the federal government extends? Who is responsible to enforce state sovereignty and the Tenth Amendment? These questions are answered in the Mack/Printz victory.

SUPREME COURT OF THE UNITED STATES

No. 95-1478 (Printz) & 95-1503 (Mack)

Justice Scalia delivered the opinion of the Court.

THE ISSUE

The question presented in these cases is whether certain interim provisions of the Brady Handgun Violence Prevention Act, Pub. L. 103-159, 107 Stat. 1536, commanding state and local law enforcement officers to conduct background checks on prospective handgun purchasers and to perform certain related tasks, violate the Constitution.

It is apparent that the Brady Act purports to direct state law enforcement officers to participate, albeit only temporarily, in the administration of a federally enacted regulatory scheme.

The petitioners here object to being pressed into federal service, and contend that congressional action compelling state officers to execute federal laws is unconstitutional. Because there is no constitutional text speaking to this precise

question, the answer to the CLEOs' challenge must be sought in historical understanding and practice, in the structure of the Constitution, and in the jurisprudence of this Court.

Not only do the enactments of the early Congresses, as far as we are aware, contain no evidence of an assumption that the Federal Government may command the States' executive power in the absence of a particularized constitutional authorization, they contain some indication of precisely the opposite assumption.

THREAT OF ARREST

Under a separate provision of the GCA, any person who "knowingly violates [the section of the GCA amended by the Brady Act] shall be fined under this title, imprisoned for no more than 1 year, or both." §924(a)(5).

FOUNDERS ON TAXATION

In addition to early legislation, the Government also appeals to other sources we have usually regarded as indicative of the original understanding of the Constitution. It points to portions of The Federalist which reply to criticisms that

Congress's power to tax will produce two sets of revenue officers--for example, "Brutus's" assertion in his letter to the New York Journal of December 13, 1787, that the Constitution "opens a door to the appointment of a swarm of revenue and excise officers to prey upon the honest and industrious part of the community, eat up their substance, and riot on the spoils of the country." "Publius" responded that Congress will probably "make use of the State officers and State regulations, for collecting" federal taxes. *(Publius and Brutus were names some of the founding fathers used to protect their anonymity)*

NEW YORK V. UNITED STATES

We have held, however, that state legislatures are *not* subject to federal direction. *New York* v. *United States,* 505 U.S. 144 (1992).

When we were at last confronted squarely with a federal statute that unambiguously required the States to enact or administer a federal regulatory program, our decision should have come as no surprise. At issue in *New York* v. *United States,* 505 U.S. 144 (1992), were the so called "take title" provisions of the Low Level Radioactive

Waste Policy Amendments Act of 1985, which required States either to enact legislation providing for the disposal of radioactive waste generated within their borders, or to take title to, and possession of the waste--effectively requiring the States either to legislate pursuant to Congress's directions, or to implement an administrative solution. *Id.,* at 175-176. We concluded that Congress could constitutionally require the States to do neither. *Id.,* at 176. **"The Federal Government," we held, "may not compel the States to enact or administer a federal regulatory program."** *Id.,* at 188.

FEDERAL GRANTS

The Government points to a number of federal statutes enacted within the past few decades that require the participation of state or local officials in implementing federal regulatory schemes. Some of these are connected to federal funding measures, and can perhaps be more accurately described as conditions upon the grant of federal funding than as mandates to the States.

STATE SOVEREIGNTY

It is incontestable that the Constitution established a system of "dual sovereignty." *Gregory* v. *Ashcroft,* 501 U.S. 452, 457 (1991); *Tafflin* v. *Levitt,* 493 U.S. 455, 458 (1990). Although the States surrendered many of their powers to the new Federal Government, they retained "a residuary and inviolable sovereignty," The Federalist No. 39, at 245 (J. Madison).

Residual state sovereignty was also implicit, of course, in the Constitution's conferral upon Congress **of not all governmental powers, but only discrete, enumerated ones**, Art. I, §8, which implication was rendered express by the Tenth Amendment's assertion that "[t]he 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."

The Framers' experience under the Articles of Confederation had persuaded them that using the States as the instruments of federal governance was both ineffectual and provocative of federal state conflict.

The Framers rejected the concept of a central government that would act upon and through the States, and instead designed a

system in which the state and federal governments would exercise concurrent authority over the people.

The great innovation of this design was that-our citizens would have two political capacities, one state and one federal, each protected from incursion by the other"--"a legal system unprecedented in form and design, establishing two orders of government, each with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it." *U. S. Term Limits, Inc.* v. *Thornton,* 514 U.S. 779, 838 (1995) (Kennedy, J., concurring). The Constitution thus contemplates that a State's government will represent and remain accountable to its own citizens.

As Madison expressed it: "[T]he local or municipal authorities form distinct and independent portions of the supremacy, no more subject, within their respective spheres, to the general authority than the general authority is subject to them, within its own sphere." The Federalist No. 39, at 245.

This separation of the two spheres is one of the Constitution's **structural protections of liberty**. "Just as the separation a

independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch, a healthy balance of power between the States and the Federal Government will reduce the risk of tyranny and abuse from either front."

Hence a double security arises to the rights of the people. **The different governments will control each other**, at the same time that each will be controlled by itself." The Federalist No. 51, at 323.

The power of the Federal Government would be augmented immeasurably if it were able to impress into its service--and at no cost to itself--the police officers of the 50 States.

COMMERCE CLAUSE

When a "La[w] . . . for carrying into Execution" the Commerce Clause violates the principle of state sovereignty reflected in the various constitutional provisions we mentioned earlier, *supra,* at 19-20, it is not a "La[w] . . . *proper* for carrying into Execution the Commerce Clause," and is thus, in the words of The Federalist, "merely [an] ac[t] of usurpation" which

"deserve[s] to be treated as such."

[T]he Commerce Clause, for example, authorizes Congress to regulate interstate commerce directly; it does not authorize Congress to regulate state governments' regulation of interstate commerce." 505 U. S., at 166.

SUPREMACY CLAUSE

The dissent perceives a simple answer in that portion of Article VI which requires that "all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution," arguing that by virtue of the Supremacy Clause this makes "not only the Constitution, but every law enacted by Congress as well," binding on state officers, including laws requiring state officer enforcement. Post, at 6.

The Supremacy Clause, however, makes "Law of the Land" **ONLY** "Laws of the United States which shall be made in Pursuance [of the Constitution]"; so the Supremacy Clause merely brings us back to the question discussed earlier, whether laws conscripting state officers violate state

sovereignty and are thus not in accord with the Constitution.

THE EPA

Finally, and most conclusively in the present litigation, we turn to the prior jurisprudence of this Court. Federal commandeering of state governments is such a novel phenomenon that this Court's first experience with it did not occur until the 1970's, when the Environmental Protection Agency promulgated regulations requiring States to prescribe auto emissions testing, monitoring and retrofit programs, and to designate preferential bus and carpool lanes. The Courts of Appeals for the Fourth and Ninth Circuits invalidated the regulations on statutory grounds in order to avoid what they perceived to be grave constitutional issues, see *Maryland* v. *EPA,* 530 F. 2d 215, 226 (CA4 1975); *Brown* v. *EPA,* 521 F. 2d 827, 838-842 (CA9 1975); and the District of Columbia Circuit invalidated the regulations on both constitutional and statutory grounds, see *District of Columbia* v. *Train,* 521 F. 2d 971, 994 (CADC 1975). After we granted certiorari to review the statutory and constitutional validity of the regulations, **the Government declined even to defend them**, and instead rescinded some

and **conceded the invalidity of those that remained**, leading us to vacate the opinions below and remand for consideration of mootness. *EPA* v. *Brown,* 431 U.S. 99 (1977).

Although we had no occasion to pass upon the subject in *Brown,* later opinions of ours have made clear that the Federal Government may not compel the States to implement, by legislation or executive action, federal regulatory programs.

STATES ARE NOT PUPPETS

Preservation of the States as independent and autonomous political entities is arguably less undermined by requiring them to make policy in certain fields than (as Judge Sneed aptly described it over two decades ago) by "reduc[ing] [them] to puppets of a ventriloquist Congress," *Brown* v. *EPA,* 521 F. 2d, at 839. It is an essential attribute of the States' retained sovereignty that they remain independent and autonomous within their proper sphere of authority.

To say that the Federal Government cannot control the State, but can control all of its officers, is to say nothing of significance. Indeed, it merits the description "empty

formalistic reasoning of the highest order," *post*, at 15. By resorting to this, the dissent not so much distinguishes *New York* as disembowels it.

THE CONSTITUTION PROTECTS US

"But the Constitution protects us from our own best intentions: It divides power among sovereigns and among branches of government precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day."

We adhere to that principle today, and conclude categorically, as we concluded categorically in *New York:* **"The Federal Government may not compel the States to enact or administer a federal regulatory program."**

THE ORDER OF THE COURT

We held in *New York* that Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the State's officers directly. The Federal Government

may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program. It matters not whether policy making 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.

JUSTICE STEVENS' DISSENTING OPINION

If Congress believes that such a statute will benefit the people of the Nation, and serve the interests of cooperative federalism better than an enlarged federal bureaucracy, we should respect both its policy judgment and its appraisal of its constitutional power.

(Note: Justice Scalia refers to this as "empty formalistic reasoning of the highest order" -RM)

SUMMARY

Which decision do you support; Scalia's or Stevens'? Which one is based on the principles of freedom and our constitution?

The states formed the federal government with very limited and discreet powers. The purpose of the constitution was to LIMIT government and to establish very strict parameters for its authority and power.

The Mack/Printz lawsuit and subsequent U.S. Supreme Court ruling make this very clear. Now, the question is; who will enforce the Tenth Amendment and the principle of state sovereignty? It will never be the federal government! It will be up to us, The People, and state and local officials with the courage and dedication to stand for the Bill of Rights, local autonomy and American liberty.

"But the Constitution protects us from our own best intentions..."

~ United States Supreme Court (Mack/Printz v. USA)

"Hence a double security arises to the rights of the people."

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