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-

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[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.