tional League of Cities "will . . . in time again command the support of a majority of the Court." [175] As the membership of the Court changed, it appeared that the prediction was proving true.[176] Confronted with the opportunity in *New York v. United States*,[177] to reexamine *Garcia*, the Court instead distinguished it,[178] striking down a federal law on the basis that Congress could not "commandeer" the legislative and administrative processes of state government to compel the administration of federal programs.[179] The line of analysis pursued by the Court makes clear, however, what the result will be when a *Garcia* kind of federal law is reviewed.

That is, because the dispute involved the division of authority between federal and state governments, Justice O'Connor wrote for the Court in *New York*, one could inquire whether Congress acted under a delegated power or one could ask whether Congress had invaded a state province protected by the Tenth Amendment. But, the Justice wrote, "the two inquiries are mirror images of each other. If a power is delegated to Congress in the Constitution, the Tenth Amendment expressly disclaims any reservation of that power to the States; if a power is an attribute of state sovereignty reserved by the Tenth Amendment, it is necessarily a power the Constitution has not conferred on Congress." [180]

Powers delegated to the Nation, therefore, are subject to limitations that reserve power to the states. This limitation is not found in the text of the Tenth Amendment, which is, the Court stated, "but a truism," [181] but is a direct constraint on Article I powers when an incident of state sovereignty is invaded.[182] The "take title" provision was such an invasion. Both the Federal Government and the

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[175] Garcia v. San Antonio Metropolitan Transit Auth., 469 U.S. 528, 579–80 (1985).

[176] The shift was pronounced in Gregory v. Ashcroft, 501 U.S. 452 (1991), in which the Court, cognizant of the constraints of *Garcia*, chose to apply a "plain statement" rule to construction of a statute seen to be intruding into the heart of state autonomy. Id. at 463. To do otherwise, said Justice O'Connor, was to confront "a potential constitutional problem" under the Tenth Amendment and the Guarantee Clause of Article IV, § 4. Id. at 463–64.

[177] 505 U.S. 144 (1992).

[178] The line of cases exemplified by *Garcia* was said to concern the authority of Congress to subject state governments to generally applicable laws, those covering private concerns as well as the states, necessitating no revisiting of those cases. 505 U.S. at 160.

[179] Struck down was a provision of law providing for the disposal of radioactive wastes generated in the United States by government and industry. Placing various responsibilities on the states, the provision sought to compel performance by requiring that any state that failed to provide for the permanent disposal of wastes generated within its borders must take title to, take possession of, and assume liability for the wastes, 505 U.S. at 161, obviously a considerable burden.

[180] 505 U.S. at 156.

[181] 505 U.S. at 156 (quoting United States v. Darby, 312 U.S. 100, 124 (1941)).

[182] 505 U.S. at 156.