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-

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[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.