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-

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[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.