

Cl. 2—Supremacy of the Constitution, Laws, and Treaties

sovereignty”¹⁹⁰ reflected in many things but most notably in the constitutional conferral “upon Congress of not all governmental powers, but only discrete, enumerated ones,” which was expressed in the Tenth Amendment. Thus, although it had earlier rejected the commandeering of legislative assistance, the Court now made clear that administrative officers and resources were also fenced off from federal power.

The scope of the rule thus expounded was unclear. Particularly, Justice O'Connor in concurrence observed that Congress retained the power to enlist the states through contractual arrangements and on a voluntary basis. More pointedly, she stated that “the Court appropriately refrains from deciding whether other purely ministerial reporting requirements imposed by Congress on state and local authorities pursuant to its Commerce Clause powers are similarly invalid.”¹⁹¹

A partial answer was provided in *Reno v. Condon*,¹⁹² in which the Court upheld the Driver's Privacy Protection Act of 1994 against a charge that it offended the anti-commandeering rule of *New York* and *Printz*. The Act in general limits disclosure and resale without a driver's consent of personal information contained in the records of state motor vehicle departments, and requires disclosure of that information for specified government record-keeping purposes. While conceding that the Act “will require time and effort on the part of state employees,” the Court found this imposition permissible because the Act regulates state activities directly rather than requiring states to regulate private activities.¹⁹³

Federal Instrumentalities and Personnel and State Police Power

Federal instrumentalities and agencies have never enjoyed the same degree of immunity from state police regulation as from state taxation. The Court has looked to the nature of each regulation to determine whether it is compatible with the functions committed by Congress to the federal agency. This problem has arisen most often with reference to the applicability of state laws to the operation of national banks. Two correlative propositions have governed the decisions in these cases. The first was stated by Justice Miller

¹⁹⁰ 521 U.S. at 918.

¹⁹¹ 521 U.S. at 936 (citing 42 U.S.C. § 5779(a)) (requiring state and local law enforcement agencies to report cases of missing children to the Department of Justice).

¹⁹² 528 U.S. 141 (2000).

¹⁹³ 528 U.S. at 150–51.