future lost wages, her anguish and emotional distress at twice becoming pregnant, her loss of the society, companionship and consortium of her husband, John's mental anguish and emotional distress, his loss of the society, companionship and consortium of his wife, medical and hospital expenses and the expenses for the care and upbringing of the two new children until the age of twenty-one.

At trial, the jury found in favor of the plaintiffs, finding the defendant 100% negligent with reference to Maria and 50% negligent with reference to Roussi. The plaintiffs were found to be comparatively negligent as to the birth of Roussi. Damages were assessed in the amount of $250,000 for the birth of Maria and $100,000 for the birth of Roussi, the latter sum being reduced to $50,000 because of the plaintiff's comparative negligence. . . .

The rule in Florida is that "a parent cannot be said to have been damaged by the birth and rearing of a normal, healthy child." "[I]t has been imbedded in our law for centuries that the father and now both parents or legal guardians of a child have the sole obligation of providing the necessaries in raising the child, whether the child be wanted or unwanted." "The child is still the child of the parents, not the physician, and it is the parents' legal obligation, not the physician's, to support the child." For public policy reasons, we decline to allow rearing damages for the birth of a healthy child.

The same reasoning forcefully and correctly applies to the ordinary, everyday expenses associated with the care and upbringing of a physically or mentally deformed child. We likewise hold as a matter of law that ordinary rearing expenses for a defective child are not recoverable as damages in Florida.

We agree with the district court below that an exception exists in the case of special upbringing expenses associated with a deformed child. Special medical and educational expenses, beyond normal rearing costs, are often staggering and quite debilitating to a family's financial and social health; "indeed the financial and emotional drain associated with raising such a child is often overwhelming to the affected parents." There is no valid policy argument against parents being recompensed for these costs of extraordinary care in raising a deformed child to majority. We hold these special upbringing costs associated with a deformed child to be recoverable.

[The court allowed only the extraordinary rearing costs associated with Maria; it permitted nothing for the birth of Roussi.]

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Garcia v. San Antonio Metropolitan Transit Authority

Supreme Court decision

By: Harry Blackmun, Lewis Powell, William Rehnquist, and Sandra Day O'Connor

Date: February 19, 1985

Source: Blackmun, Harry, Lewis Powell, William Rehnquist, and Sandra Day O'Connor. *Garcia v. San Antonio Metropolitan Transit Authority,* 469 U.S. 528. Available online at http://laws.findlaw.com/us/469/528.html; website home page: http://laws.findlaw.com (accessed April 19, 2003).

About the Authors: Harry Blackmun (1908–1999) served on the Supreme Court from 1970 to 1994. Lewis Powell (1907–1998) served on the Supreme Court from 1971 to 1987. William Rehnquist (1924–) was named to the Supreme Court in 1971. In 1986, he was appointed chief justice. In 1981, Sandra Day O'Connor (1930–) became the first woman appointed to the Supreme Court. ■

Introduction

In the late nineteenth century, most American industrial workers worked ten-hour days six days a week. Conditions were worse in the steel industry, where

Justice Harry Blackmun delivered the majority opinion of the Court for *Garcia v. San Antonio Metropolitan Transit Authority.* GETTY IMAGES. REPRODUCED BY PERMISSION.

twelve-hour workdays were the norm. Although conditions were better for state workers, reformers called for minimum-wage and maximum-hours laws. One of the first reforms passed by many states was a requirement that employees would not work more than eight hours a day on state projects.

These laws were sometimes followed up by laws forcing a maximum work week on employers in general. Employers frequently challenged such laws in court, and throughout the late nineteenth and early twentieth centuries, the Supreme Court agreed with employers, holding that maximum-hour laws were an infringement of the workers' "freedom of contract." These decisions remained in force until the 1930s, when the federal government passed the 1938 Fair Labor Standards Act, which set up a maximum work week of forty-four hours (later reduced to forty) and a minimum wage of twenty-five cents an hour. This law was upheld by the Supreme Court, and the nation has had a maximum work week (without overtime) and a minimum wage for most workers ever since.

As the federal bureaucracy expanded in the twentieth century, many people looked to the federal government for solutions to problems, and many new federal programs were created. By the 1970s, though, critics thought that the federal government was the problem, not the solution, and called upon it to cede more power to the states. In 1974, in the midst of this spirit, Congress extended the Fair Labor Standards Act (FLSA), as it had several times before—each time the extension had been held constitutional. The 1974 amendments extended the FLSA to force cities to pay overtime for certain city employees. In response, the National League of Cities sued and won, as the Supreme Court held that the federal government had overstepped its commerce powers and that the Tenth Amendment required that the states be allowed to manage their own affairs. The same issue arose in *Garcia.*

Significance

In *Garcia,* the Court held that the Tenth Amendment did not protect cities and states from congressional legislation. The concept of "traditional government functions," which *National League of Cities* had said was not subject to congressional mandates, was unworkable, and that judgment was overturned. The Court majority held that a city or a state's main protection was within the political framework. The dissenting justices claimed that the Court's decision encroached on the authority of the states, eradicated federalism, and ignored the Tenth Amendment. Regardless of who had the better historical argument, the dissenters have had more success on the Court since *Garcia.* Appointments in the late twentieth century, including Justice Antonin Scalia, have used both the Tenth and Eleventh Amendments to strengthen the position of states and to limit the federal government.

Primary Source

Garcia v. San Antonio Metropolitan Transit Authority [excerpt]

SYNOPSIS: Justice Blackmun, who delivered the majority opinion, opens by noting that the Court was overruling *National League of Cities.* He then discusses the difficulties in determining what were "uniquely governmental functions" and so rules that this criteria should be abandoned. He then holds that states are protected by the political process. Justice Powell in dissent argues that this decision destroys federalism. Justice Rehnquist, also dissenting, says that federalism will rise again, and Justice O'Connor, dissenting, holds that the autonomy of states, ignored by the majority, is necessary to our republic.

Justice Blackmun delivered the opinion of the Court.

We revisit in these cases an issue raised in *National League of Cities v. Usery,* . . . In that litigation, this Court, by a sharply divided vote, ruled that

the Commerce Clause does not empower Congress to enforce the minimum-wage and overtime provisions of the Fair Labor Standards Act (FLSA) against the States "in areas of traditional governmental functions." . . . Although National League of Cities supplied some examples of "traditional governmental functions," it did not offer a general explanation of how a "traditional" function is to be distinguished from a "nontraditional" one. Since then, federal and state courts have struggled with the task, thus imposed, of identifying a traditional function for purposes of state immunity under the Commerce Clause. . . .

Our examination of this "function" standard applied in these and other cases over the last eight years now persuades us that the attempt to draw the boundaries of state regulatory immunity in terms of "traditional governmental function" is not only unworkable but is also inconsistent with established principles of federalism and, indeed, with those very federalism principles on which National League of Cities purported to rest. That case, accordingly, is overruled. . . .

Were SAMTA a privately owned and operated enterprise, it could not credibly argue that Congress exceeded the bounds of its Commerce Clause powers in prescribing minimum wages and overtime rates for SAMTA's employees. Any constitutional exemption from the requirements of the FLSA therefore must rest on SAMTA's status as a governmental entity rather than on the "local" nature of its operations. . . .

Thus far, this Court . . . has made little headway in defining the scope of the governmental functions deemed protected under National League of Cities. In that case the Court set forth examples of protected and unprotected functions, . . . but provided no explanation of how those examples were identified. . . .

Many constitutional standards involve "undoubte[d] . . . gray areas," . . . and, despite the difficulties that this Court and other courts have encountered so far, it normally might be fair to venture the assumption that case-by-case development would lead to a workable standard for determining whether a particular governmental function should be immune from federal regulation under the Commerce Clause. A further cautionary note is sounded, however, by the Court's experience in the related field of state immunity from federal taxation. . . .

Even during the heyday of the governmental/proprietary distinction in intergovernmental tax-immunity doctrine the Court never explained the constitutional basis for that distinction. . . .

The distinction the Court discarded as unworkable in the field of tax immunity has proved no more fruitful in the field of regulatory immunity under the Commerce Clause. Neither do any of the alternative standards that might be employed to distinguish between protected and unprotected governmental functions appear manageable. . . . Reliance on history as an organizing principle results in line-drawing of the most arbitrary sort; the genesis of state governmental functions stretches over a historical continuum from before the Revolution to the present, and courts would have to decide by fiat precisely how longstanding a pattern of state involvement had to be for federal regulatory authority to be defeated.

A nonhistorical standard for selecting immune governmental functions is likely to be just as unworkable as is a historical standard. The goal of identifying "uniquely" governmental functions, for example, has been rejected by the Court in the field of government tort liability in part because the notion of a "uniquely" governmental function is unmanageable. . . . Another possibility would be to confine immunity to "necessary" governmental services, that is, services that would be provided inadequately or not at all unless the government provided them. . . . The set of services that fits into this category, however, may well be negligible. . . .

We believe, however, that there is a more fundamental problem at work here, a problem that explains why the Court was never able to provide a basis for the governmental/proprietary distinction in the intergovernmental tax-immunity cases and why an attempt to draw similar distinctions with respect to federal regulatory authority under National League of Cities is unlikely to succeed regardless of how the distinctions are phrased. The problem is that neither the governmental/proprietary distinction nor any other that purports to separate out important governmental functions can be faithful to the role of federalism in a democratic society. . . .

We therefore now reject, as unsound in principle and unworkable in practice, a rule of state immunity from federal regulation that turns on a judicial appraisal of whether a particular governmental function is "integral" or "traditional." Any such rule leads to inconsistent results at the same time that it disserves principles of democratic self-governance, and it breeds inconsistency precisely because it is divorced from those principles. If there

are to be limits on the Federal Government's power to interfere with state functions—as undoubtedly there are—we must look elsewhere to find them. We accordingly return to the underlying issue that confronted this Court in National League of Cities—the manner in which the Constitution insulates States from the reach of Congress' power under the Commerce Clause.

The central theme of National League of Cities was that the States occupy a special position in our constitutional system and that the scope of Congress' authority under the Commerce Clause must reflect that position. . . . National League of Cities reflected the general conviction that the Constitution precludes "the National Government [from] devour[ing] the essentials of state sovereignty." . . . In order to be faithful to the underlying federal premises of the Constitution, courts must look for the "postulates which limit and control."

What has proved problematic is not the perception that the Constitution's federal structure imposes limitations on the Commerce Clause, but rather the nature and content of those limitations. . . .

We doubt that courts ultimately can identify principled constitutional limitations on the scope of Congress' Commerce Clause powers over the States merely by relying on a priori definitions of state sovereignty. In part, this is because of the elusiveness of objective criteria for "fundamental" elements of state sovereignty, a problem we have witnessed in the search for "traditional governmental functions." There is, however, a more fundamental reason: the sovereignty of the States is limited by the Constitution itself. A variety of sovereign powers, for example, are withdrawn from the States by Article I, {section} 10. . . . Finally, the developed application, through the Fourteenth Amendment, of the greater part of the Bill of Rights to the States limits the sovereign authority that States otherwise would possess to legislate with respect to their citizens and to conduct their own affairs.

The States unquestionably do "retai[n] a significant measure of sovereign authority." . . . They do so, however, only to the extent that the Constitution has not divested them of their original powers and transferred those powers to the Federal Government. . . .

With rare exceptions, like the guarantee, in Article IV, 3, of state territorial integrity, the Constitution does not carve out express elements of state sovereignty that Congress may not employ its delegated powers to displace. . . . In short, we have no license to employ freestanding conceptions of state sovereignty when measuring congressional authority under the Commerce Clause. . . .

Apart from the limitation on federal authority inherent in the delegated nature of Congress' 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. It is no novelty to observe that the composition of the Federal Government was designed in large part to protect the States from overreaching by Congress. . . .

In short, the Framers chose to rely on a federal system in which special restraints on federal power over the States inhered principally in the workings of the National Government itself, rather than in discrete limitations on the objects of federal authority. State sovereign interests, then, are more properly protected by procedural safeguards inherent in the structure of the federal system than by judicially created limitations on federal power. . . .

The fact that some federal statutes such as the FLSA extend general obligations to the States cannot obscure the extent to which the political position of the States in the federal system has served to minimize the burdens that the States bear under the Commerce Clause.

. . . against this background, we are convinced that the fundamental limitation that the constitutional scheme imposes on the Commerce Clause to protect the "States as States" is one of process rather than one of result. Any substantive restraint on the exercise of Commerce Clause powers must find its justification in the procedural nature of this basic limitation, and it must be tailored to compensate for possible failings in the national political process rather than to dictate a "sacred province of state autonomy." . . . This analysis makes clear that Congress' action in affording SAMTA employees the protections of the wage and hour provisions of the FLSA contravened no affirmative limit on Congress' power under the Commerce Clause. The judgment of the District Court therefore must be reversed.

Of course, we continue to recognize that the States occupy a special and specific position in our constitutional system and that the scope of Congress' authority under the Commerce Clause must reflect that position. But the principal and basic limit on the federal commerce power is that inherent in all congressional action—the built-in restraints that our system provides through state participation in federal governmental action. The political process

ensures that laws that unduly burden the States will not be promulgated. In the factual setting of these cases the internal safeguards of the political process have performed as intended. . . .

We do not lightly overrule recent precedent. We have not hesitated, however, when it has become apparent that a prior decision has departed from a proper understanding of congressional power under the Commerce Clause. . . . Due respect for the reach of congressional power within the federal system mandates that we do so now.

National League of Cities v. Usery, . . . is overruled. . . .

Justice Powell, with whom The Chief Justice, Justice Rehnquist, and Justice O'Connor join, dissenting. . . .

Despite some genuflecting in the Court's opinion to the concept of federalism, today's decision effectively reduces the Tenth Amendment to meaningless rhetoric when Congress acts pursuant to the Commerce Clause. The Court holds that the Fair Labor Standards Act (FLSA) "contravened no affirmative limit on Congress' power under the Commerce Clause" to determine the wage rates and hours of employment of all state and local employees . . . I note that it does not seem to have occurred to the Court that it—an unelected majority of five Justices—today rejects almost 200 years of the understanding of the constitutional status of federalism. In doing so, there is only a single passing reference to the Tenth Amendment. Nor is so much as a dictum of any court cited in support of the view that the role of the States in the federal system may depend upon the grace of elected federal officials, rather than on the Constitution as interpreted by this Court. . . .

In our federal system, the States have a major role that cannot be pre-empted by the National Government. As contemporaneous writings and the debates at the ratifying conventions make clear, the States' ratification of the Constitution was predicated on this understanding of federalism. Indeed, the Tenth Amendment was adopted specifically to ensure that the important role promised the States by the proponents of the Constitution was realized. . . .

This history, which the Court simply ignores, documents the integral role of the Tenth Amendment in our constitutional theory. It exposes as well, I believe, the fundamental character of the Court's error today. Far from being "unsound in principle," . . . judicial enforcement of the Tenth Amendment is essential to maintaining the federal system so carefully designed by the Framers and adopted in the Constitution.

Although the Court's opinion purports to recognize that the States retain some sovereign power, it does not identify even a single aspect of state authority that would remain when the Commerce Clause is invoked to justify federal regulation. . . .

As I view the Court's decision today as rejecting the basic precepts of our federal system and limiting the constitutional role of judicial review, I dissent. . . .

Justice Rehnquist, dissenting. . . .

I do not think it incumbent on those of us in dissent to spell out further the fine points of a principle that will, I am confident, in time again command the support of a majority of this Court.

Justice O'Connor, with whom Justice Powell and Justice Rehnquist join, dissenting.

The Court today surveys the battle scene of federalism and sounds a retreat. . . .

In my view, federalism cannot be reduced to the weak "essence" distilled by the majority today. . . . If federalism so conceived and so carefully cultivated by the Framers of our Constitution is to remain meaningful, this Court cannot abdicate its constitutional responsibility to oversee the Federal Government's compliance with its duty to respect the legitimate interests of the States. . . .

Just as surely as the Framers envisioned a National Government capable of solving national problems, they also envisioned a republic whose vitality was assured by the diffusion of power not only among the branches of the Federal Government, but also between the Federal Government and the States. . . .

It is not enough that the "end be legitimate"; the means to that end chosen by Congress must not contravene the spirit of the Constitution. Thus many of this Court's decisions acknowledge that the means by which national power is exercised must take into account concerns for state autonomy. . . . The Court today rejects National League of Cities and washes its hands of all efforts to protect the States. In the process, the Court opines that unwarranted federal encroachments on state authority are and will remain "'horrible possibilities that never happen in the real world.'" . . . There is ample reason to believe to the contrary. . . .

Instead, the autonomy of a State is an essential component of federalism. If state autonomy is ignored

in assessing the means by which Congress regulates matters affecting commerce, then federalism becomes irrelevant simply because the set of activities remaining beyond the reach of such a commerce power "may well be negligible." . . . That the Court shuns the task today by appealing to the "essence of federalism" can provide scant comfort to those who believe our federal system requires something more than a unitary, centralized government. I would not shirk the duty acknowledged by National League of Cities and its progeny, and I share Justice Rehnquist's belief that this Court will in time again assume its constitutional responsibility.

I respectfully dissent.

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Bowers v. Hardwick

Supreme Court decision

By: Byron White, Warren Burger, Lewis F. Powell, and Harry Blackmun

Date: June 30, 1986

Source: White, Byron, Warren Burger, Lewis F. Powell, and Harry Blackmun. *Bowers v. Hardwick,* 478 U.S. 186. Available online at http://laws.findlaw.com/us/478/186.html; website home page: http://laws.findlaw.com (accessed April 19, 2003).

About the Authosr: Byron White (1917–2002), a Rhodes scholar and talented athlete in college, graduated from Yale University and served on the Supreme Court from 1962 to 1993. Warren Burger (1907–1995) was appointed chief justice of the Supreme Court in 1969 and served until 1986. Lewis F. Powell (1907–1998) served on the Court from 1971 to 1987. Harry Blackmun (1908–1999) was appointed to the Supreme Court in 1970 and remained there until 1994. ■

Introduction

For much of the history of the United States, homosexual behavior has been illegal. Sodomy was a crime in all thirteen states when the Constitution was enacted. These laws were not enforced very consistently, but their existence was a constant threat to homosexuals. Thus they were inhibited in their lifestyle, forced either to hide their true nature or else avoid the public eye entirely.

In the mid-twentieth century, attitudes toward homosexuals began to change in the United States. The Kinsey Reports of the 1940s and 1950s revealed that homosexuality was more common than was previously believed. They also showed that many Americans, both hetero- and homosexual, engaged in illegal sexual behavior like sodomy and oral sex. In part because of these revelations, a so-called sexual revolution swept the United States in the 1960s and 1970s, and sodomy laws began to be loosened.

Many states, though, did not repeal their laws against sodomy, including Georgia, which imposed a twenty-year jail term, even for conduct between consenting adults. While serving an outdated, unrelated warrant, a police officer arrested Michael Hardwick for sodomy, but later the charges were dropped. Hardwick used this arrest to challenge Georgia's sodomy law, and this challenge reached the Supreme Court.

Significance

In *Bowers v. Hardwick,* the Supreme Court narrowly sustained Georgia's sodomy law by a 5 to 4 decision, holding homosexual sodomy, even if engaged in consensually and privately, had no constitutional safeguards. Burger concurred, arguing strongly that there was no fundamental right to something banned in "Judeo-Christian moral and ethical standards." Justice Powell stuck a middle ground, holding that there was no fundamental right but that the punishment of twenty years in jail was excessive, and that if Georgia had imposed such a jail term on Hardwick, he might have voted to reverse. The dissent argued that part of our essential freedom to choose is the freedom to make different choices, even sexual ones. The Georgia sodomy law was eventually struck down, not by a federal court, but by the Georgia Supreme Court, which held that it violated Georgia's state constitution.

Homosexuality and personal freedom returned to the forefront of the news in the 1990s when President Clin-