

2003 Term “Federalism” Decisions
Prepared by AEI’s Federalism Project

Civil Rights

Elk Grove Unified School District v. Newdow

- 5-4, Stevens opinion
- Because California law deprives Newdow of the right to sue as next friend, he lacks prudential standing to challenge the school district's Pledge of Allegiance policy in federal court.

Locke v. Davey

- 7-2, Rehnquist opinion
- Washington’s exclusion of theology degrees from its otherwise-inclusive scholarship aid program does not violate the Free Exercise Clause.

Hibbs v. Winn

- 5-4, Ginsburg opinion
- suit challenging state tax credits to parochial schools may proceed in federal court without any Tax Injunction Act (TIA) impediment.

McConnell v. FCC (BCRA)

- (Among other things) The Bipartisan Campaign Reform Act’s restrictions on national parties’ soft-money soliciting and spending (§323) and limits on electioneering communications do not violate the First Amendment.

Preemption/Statutory/Administrative Law

Aetna Health Inc. v. Davila

- 9-0, Thomas opinion
- Texas state-court suits against HMO’s, authorized by the Texas Health Care Liability Act, are completely preempted by the Employee Retirement Income Security Act of 1974 (ERISA).

Engine Manufacturers Ass'n v. South Coast Air Quality Management Dist.

- 8-1, Scalia opinion
- California's Fleet Rules prohibiting the purchase or lease of vehicles that do not comply with stringent emission requirements are (largely) preempted by the federal Clean Air Act.
- The Fleet Rules do not escape pre-emption because they address the purchase of vehicles, rather than their manufacture or sale.

General Dynamics Land Systems v. Cline

- 6-3, Souter opinion
- The Age Discrimination in Employment Act of 1967 (ADEA) does not mean to stop an employer from favoring an older employee over a younger one.

Cheney v. U.S. District Court for the District of Columbia

- 7-2, Kennedy opinion
- White House papers from the energy policy task force Vice President Dick Cheney headed to remain confidential for now (the Court declined to direct the Court of Appeals to issue mandamus against the District Court).

Nixon v. Missouri Municipal League

- 8-1, Souter opinion
- The Telecommunications Act of 1996 does not apply to states' authority over their subdivisions and, therefore, these activities are not preempted. States may restrict local delivery of telecommunications services.

Alaska Dept. of Environmental Conservation v. EPA

- 5-4, Ginsburg opinion
- Under the terms of the Clean Air Act, the EPA can override a state's determination that a pollutant emitting facility meets BACT ("the best available control technology") standards.

Verizon Communications v. Trinko

- 9-0, Scalia opinion
- The Telecommunications Act of 1996 has no effect upon the application of traditional antitrust principles. Local exchange carrier's refusal to share its network with competitors does not merit a claim under §2 of the Sherman Act.

Dept. of Transportation v. Public Citizen

- 9-0 Thomas opinion
- The Federal Motor Carrier Safety Administration lacks discretion to prevent cross-border operations of Mexican motor carriers, so neither the National Environmental Policy Act of 1969 nor the Clean Air Act requires FMCSA to evaluate the environmental effects of such operations.

Norton v. Southern Utah Wilderness Alliance

- 9-0, Scalia opinion
- Under the Administrative Procedure Act (APA), federal court power does not extend to review of the Bureau of Land Management's stewardship of public lands. Declaratory and injunctive relief is not available for BLM's failure to protect Utah public lands from environmental damage caused by off-road vehicles.

BedRoc Ltd. & Western Elite, Inc. v. U.S.

- 6-3, Rehnquist opinion
- sand and gravel are not "valuable minerals" reserved to the United States in land grants issued under the Pittman Underground Water Act of 1919.

South Florida Water Management District v. Miccosukee Tribe of Indians

11th Amendment/Jurisdiction/Federalism

Frew v. Hawkins

- 9-0, Kennedy opinion
- The Eleventh Amendment does not bar enforcement of a federal consent decree entered into by state officials. State officials' concerns should be addressed by federal courts' equitable powers and in the direction given by Federal Rule of Civil Procedure.

Tennessee v. Lane

- 5-4, Stevens opinion
- Title II of the Americans with Disabilities Act (guaranteeing, among other things, the right of physical access to courts) constitutes a valid exercise of Congress' §5 enforcement power. Title II is an appropriate response to a history and pattern of unequal treatment.

Tennessee Student Assistance Corp. v. Hood

- 7-2, Rehnquist opinion
- Bankruptcy Clause of the Constitution may give Congress the authority to abrogate state sovereign immunity, but the question is moot (a proceeding initiated by a debtor to determine the dischargeability of a student loan debt is not a suit against the state for purposes of the Eleventh Amendment).

Grupo Dataflux v. Atlas Global Group

- 5-4, Scalia opinion
- In diversity cases, a party's post-filing change in citizenship can not cure a lack of subject-matter jurisdiction that existed at the time of the original filing.

Sabri v. US

- 9-0, Souter opinion
- Section 666 of the federal anti-bribery statute is a valid exercise of Congress's Article I authority (spending clause, necessary and proper clause), and no direct connection needs to be shown between local bribes and actual federal funds.

Virginia v. Maryland

- 7-2, Rehnquist opinion
- The Black-Jenkins Award gives Virginia sovereign authority, free from regulation by Maryland, to build improvements appurtenant to her shore and to withdraw water from the River, subject to the constraints of federal common law and the Award.

Of Additional Interest

Terror

Hamdi v. Rumsfeld

- 6-3, O'Connor decision
- The detention of American citizens classified as "enemy combatants" is authorized (though limited), but due process demands that those held have a meaningful opportunity to contest the factual basis for that detention before a "neutral decisionmaker."

Donald Rumsfeld v. Jose Padilla

- 5-4, Rehnquist opinion
- Enemy combatant Padilla did not properly file his habeas petition; no need, then, to consider whether the President possess authority to detain him militarily.

Rasul v. Bush

- 6-3, Stevens opinion
- United States courts have jurisdiction to consider challenges to the legality of the detention of foreign nationals captured abroad and incarcerated at Guantanamo Bay.

Foreign Relations

Austria v. Altmann

- 6-3, Stevens opinion
- The Foreign Sovereign Immunities Act of 1976 applies to conduct that occurred prior to the Act's enactment.

F. Hoffmann-LaRoche v. Empagran

- 8-0, Breyer opinion
- Where price-fixing conduct affects both customers outside and within the United States, but the foreign effect is independent of any domestic effect, the Sherman Act does not apply.

Olympic Airlines v. Husain

- 6-2, Thomas opinion
- An airline stewardess' inaction (i.e., her unwillingness to move a smoke-allergic passenger away from smokers) is an "accident" under Article 17 of the Warsaw Convention.

Intel v. Advanced Micro Devices

- 7-1, Ginsburg opinion
- Considered: the authority of federal district courts to assist in the production of evidence for use in a foreign tribunal.
- foreign private citizens may ask an American court to help obtain information, even if the foreign prosecutor is indifferent or unreceptive.
- Since §1782 authorizes, but does not require, discovery assistance, it is left to the courts below to determine what assistance is appropriate.

Sosa v. Alvarez-Machain (Alien Tort Statute and global forum shopping)

Preview of 2004 Federalism Cases

Granholm v. Heald (state wine shipping laws, commerce/dormant commerce)

Veneman v. Livestock Marketing Association (Federal Beef Act and 1st Amendment)

Ashcroft v. Raich (Congress' commerce power and California's Compassionate Use Act)

Bates v. Dow Agrosciences (Federal Insecticide, Fungicide and Rodenticide Act and the preemption of peanut farmers' state law claims)