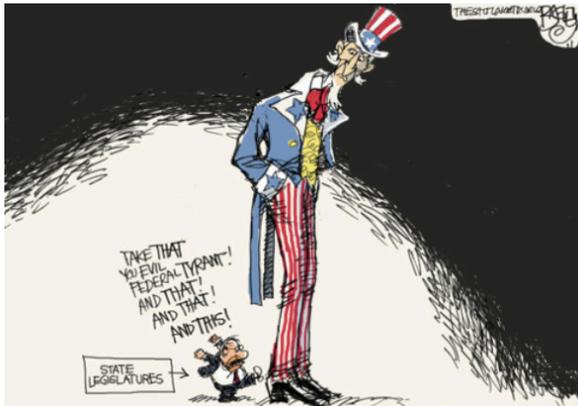


1.8 Constitutional Interpretations of Federalism



ESSENTIALS

The balance of power between the national and state governments has changed over time based on U.S. Supreme Court interpretation of such cases as:

- *McCulloch v. Maryland (1819)*—which declared that Congress has implied powers necessary to implement its enumerated powers and established supremacy of the U.S. Constitution and federal laws over the states.
- *U.S. v. Lopez (1995)*—which ruled that Congress may not use the Commerce Clause to make possession of a gun in a school zone a federal crime, introducing a new phase of federalism that recognized the importance of state sovereignty and local control.

The interpretation of the Tenth and Fourteenth Amendments, the Commerce Clause, the Necessary and Proper Clause, and other enumerated and implied powers is at the heart of the debate over the balance of power between the national and state governments.

1. What is the underlying idea of this cartoon?
2. The story of American government is the story of federal aggrandizement. What public policies are state and local governments still more prepared and able to accomplish better than a strong central government? Explain.

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For each of the following identify and state the significance to federalism:

Tenth Amendment

Fourteenth Amendment

Commerce Clause

Necessary and Proper Clause

TENTH AMENDMENT

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

1. Restate the Tenth Amendment in your own words.
2. Why is the Tenth Amendment often referred to as the “reserved powers” amendment?
3. List three (3) authoritative opinions from political scientists, judges or elected officials regarding the meaning and reach of the Tenth Amendment. Explain each.
4. Do you think the Tenth Amendment is still relevant? What powers are still reserved exclusively to the states? Should there be more?

SCOTUS Comparison

For the second time in recent months, the Supreme Court on Tuesday reinforced the authority of the federal government’s energy regulators in the ongoing national-state competition to manage the markets for electricity. The Federal Power Act assures roles for both the Federal Energy Regulatory Commission and for the states, but major shifts in the energy markets are tending to favor FERC over the states.

That happened again as the Court decided the combined cases titled *Hughes v. Talen Energy Marketing*, curbing initiatives taken by Maryland and New Jersey when they were frustrated that federally regulated wholesale markets were not creating sufficient incentives to increase electricity generation. Those efforts, the Court declared by an eight-to-zero vote (with some disagreement among the Justices), have had an illegal influence over the prices at which power is sold at wholesale.

The new ruling illustrated the Court’s continued close attention to the federal-state division of energy regulation since the growth of giant regional auctions that seek to keep electricity flowing even during times of peak demand without pushing up too high the prices that are ultimately paid by the customers at the end of the power distribution chain.

The states felt certain that their scheme was legal under the Federal Power Act because the actual generation of electricity has long been within the states’ regulatory realm, under that act.

But it was the impact of that scheme on the auctions that the Court majority found did amount to an intrusion on FERC’s authority. The specifics of the Maryland and New Jersey plans, Justice Ruth Bader Ginsburg wrote in the main opinion, was to drive down the regional prices in the Atlantic market below what FERC had concluded was necessary to assure the continued supply of adequate generation.

“States,” the Ginsburg opinion said, “may not seek to achieve ends, however legitimate, through regulatory means that intrude on FERC’s authority over interstate wholesale rates, as Maryland [and New Jersey] has done here.” Past precedents, the Court added, made clear that “states interfere with FERC’s authority by disregarding wholesale rates FERC has deemed just and reasonable, even when states exercise their traditional authority over retail rates or, as here, in-state generation.”

Source: Lyle Denniston, *U.S. Energy Regulators’ Authority Grows*, SCOTUS blog, April 19, 2016

Based on the information above, respond to the following questions.

- A. Identify the clause in the U.S. Constitution that was used as the basis for the decision in both *McCulloch v. Maryland* (1819) and *Hughes v. Talen Energy Marketing* (2016).
- B. Explain how the facts in both *McCulloch v. Maryland* (1819) and *Hughes v. Talen Energy Marketing* (2016) led to a similar decision in both cases.
- C. Describe an action that an interest group could take to respond to the *Hughes v. Talen Energy Marketing* (2016) ruling if it disagreed with the decision.