

AMERICAN CONSTITUTIONALISM
VOLUME I: STRUCTURES OF GOVERNMENT
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Supplementary Material

Chapter 11: The Contemporary Era—Powers of the National Government

Reno v. Condon, 528 U.S. 141 (2000)

In 1994, Congress adopted the Driver's Privacy Protection Act (DPPA), which regulated the nonconsensual disclosure of personal information contained in the records of state departments of motor vehicles. States routinely sold such information, and there was an active secondary market of private companies that aggregated such information and resold it. South Carolina was among those states that had by statute created a process for selling such information to private parties. South Carolina Attorney General Charlie Condon filed suit against U.S. Attorney General Janet Reno in federal district court, arguing that DPPA violated the Tenth Amendment to the U.S. Constitution. The district court struck down the federal law, and the circuit court affirmed that decision. The U.S. Supreme Court unanimously reversed the lower courts, concluding that the act is a valid exercise of the congressional power to regulate interstate commerce. This decision emphasized the limits of the Court's earlier cases blocking federal commandeering of state officials to implement federal policies and the extent to which Congress could regulate states as actors in the marketplace, even when the commerce in question involved state records.

Why did the commandeering cases not control the result in this case? Would the result have been different if there was no secondary market in information about drivers? Would the result have been the same if Congress only regulated the state governments, but not private actors in the same marketplace? Could Congress prohibit the state governments from releasing individuals arrested or convicted in state courts or mugshots? Could Congress prohibit the states from charging a fee to private actors seeking a copy of a mugshot? Could Congress prohibit state departments of motor vehicles from sharing information from their records with state and local law enforcement agencies? Could Congress regulate what information the state departments of motor vehicles collect from drivers?

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

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We of course begin with the time-honored presumption that the DPPA is a "constitutional exercise of legislative power." . . .

The United States asserts that the DPPA is a proper exercise of Congress' authority to regulate interstate commerce under the Commerce Clause. The United States bases its Commerce Clause argument on the fact that the personal, identifying information that the DPPA regulates is a "thing in interstate commerce," and that the sale or release of that information in interstate commerce is therefore a proper subject of congressional regulation. *United States v. Lopez* (1995). We agree with the United States' contention. The motor vehicle information which the States have historically sold is used by insurers, manufacturers, direct marketers, and others engaged in interstate commerce to contact drivers with customized solicitations. The information is also used in the stream of interstate commerce by various public and private entities for matters related to interstate motoring. Because drivers' information is, in this context, an article of commerce, its sale or release into the interstate stream of business is sufficient to support congressional regulation. We therefore need not address the Government's alternative argument

that the States' individual, intrastate activities in gathering, maintaining, and distributing drivers' personal information has a sufficiently substantial impact on interstate commerce to create a constitutional base for federal legislation.

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.... [In *New York v. United States* (1992), we said]:

"While Congress has substantial powers to govern the Nation directly, including in areas of intimate concern to the States, the Constitution has never been understood to confer upon Congress the ability to require the States to govern according to Congress' instructions. *Coyle v. Smith* (1911)."

....

South Carolina contends that the DPPA violates the Tenth Amendment because it "thrusts upon the States all of the day-to-day responsibility for administering its complex provisions," and thereby makes "state officials the unwilling implementors of federal policy." . . .

We agree with South Carolina's assertion that the DPPA's provisions will require time and effort on the part of state employees, but reject the State's argument that the DPPA violates the principles laid down in either *New York* or *Printz v. United States* (1997). We think, instead, that this case is governed by our decision in *South Carolina v. Baker* (1988). In *Baker*, we upheld a statute that prohibited States from issuing unregistered bonds because the law "regulated state activities," rather than "seeking to control or influence the manner in which States regulate private parties."

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Like the statute at issue in *Baker*, the DPPA does not require the States in their sovereign capacity to regulate their own citizens. The DPPA regulates the States as the owners of databases. It does not require the South Carolina Legislature to enact any laws or regulations, and it does not require state officials to assist in the enforcement of federal statutes regulating private individuals. We accordingly conclude that the DPPA is consistent with the constitutional principles enunciated in *New York* and *Printz*.

As a final matter, we turn to South Carolina's argument that the DPPA is unconstitutional because it regulates the States exclusively. The essence of South Carolina's argument is that Congress may only regulate the States by means of "generally applicable" laws, or laws that apply to individuals as well as States. But we need not address the question whether general applicability is a constitutional requirement for federal regulation of the States, because the DPPA is generally applicable. The DPPA regulates the universe of entities that participate as suppliers to the market for motor vehicle information—the States as initial suppliers of the information in interstate commerce and private resellers or redisclosers of that information in commerce.

Reversed.