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# And Then along Came John: Federal Statutory Interpretation in Contravention of State Law Violates Principles of Federalism

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# AND THEN ALONG CAME JOHN: FEDERAL STATUTORY INTERPRETATION IN CONTRAVENTION OF STATE LAW VIOLATES PRINCIPLES OF FEDERALISM

## I. INTRODUCTION

In 1995, the Supreme Court restored the Commerce Clause to the curriculum of every law school in the nation by invalidating the Gun-Free School Zones Act<sup>1</sup> in *United States v. Lopez*.<sup>2</sup> The Court held Congress had gone too far in passing legislation that provided stiff penalties for possessing a gun while in a school zone.<sup>3</sup> *Lopez* signaled the Court's shift away from a deferential stance to Congress and towards a more suspicious view of federal intrusion on matters of local control. Many figured *Lopez* was simply a blip on the Supreme Court's radar screen until the Court again invalidated a federal regulation as too attenuated to Congress's Commerce Clause powers in *United States v. Morrison*.<sup>4</sup> Since *Lopez* and *Morrison*, Congress has had to tread more cautiously when passing legislation pursuant to its Commerce Clause powers—powers that from 1937 until 1995 had seen virtually no challenge.<sup>5</sup>

There are numerous areas of legislation traditionally reserved to the states under their general police power. Probably the most well-known of these areas are criminal law enforcement,<sup>6</sup> education,<sup>7</sup> health and safety,<sup>8</sup> and family law.<sup>9</sup> This list, however, is illustrative

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1. 18 U.S.C. § 922(q)(1) (2000).

2. 514 U.S. 549 (1995).

3. *See id.* at 567–68.

4. 529 U.S. 598 (2000).

5. *See Lopez*, 514 U.S. at 606–07.

6. *See id.* at 549.

7. *See Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Soc'y of Sisters*, 268 U.S. 510 (1925).

8. *See Hillsborough County v. Automated Med. Labs., Inc.*, 471 U.S. 707, 719 (1985).

9. *See Lopez*, 514 U.S. at 549.

and far from exhaustive. The tension between state police power and federal control rears its head in numerous contexts.

Three contexts in which this tension arises are the general state police power, the preemption doctrine, and state immunity to suit in federal court. The first context reflects a common sentiment in federalism jurisprudence that some areas of regulations are simply better left to state control. The *Lopez* court felt that giving Congress the power to regulate firearms possession near schools was too much of an intrusion on the police power of the state.<sup>10</sup> The Court in *Morrison* held the Violence Against Women Act<sup>11</sup> unconstitutional because it allowed the federal government to regulate gender-motivated crime. The Court stated it could not think of a “better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime . . . .”<sup>12</sup>

Preemption doctrine supplies a second example of federalism at work. Specifically relevant to this Note is the judicial assumption of nonpreemption, where courts presume federal law does not preempt state law to the contrary when there has been a lack of a federal presence in that area.<sup>13</sup> This assumption illustrates the judiciary’s skepticism towards attempts by the federal government to supercede existing state law absent a history of federal regulation in that area.

A third context in which federalism concerns often arise is when a state claims immunity to suit in federal court absent specific congressional intent to abrogate this immunity.<sup>14</sup> In recent years, the Supreme Court has indicated a willingness to expand the immunity of states to suit in federal<sup>15</sup> and, in some cases, state court.<sup>16</sup>

The Court has thus supplied many foundations of federalism. For example, regulation of certain matters is best left to local control. Also, a state is not subject to suit in federal court unless Congress expressly abrogates its immunity through its Fourteenth Amendment,

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10. *See id.* at 567–68.

11. 42 U.S.C. § 13981 (2000).

12. *Morrison*, 529 U.S. at 618.

13. *See Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

14. *See* U.S. CONST. amend. XI; *Fitzpatrick v. Bitzer*, 427 U.S. 445, 451–56 (1976).

15. *See Alden v. Maine*, 527 U.S. 706 (1999).

16. *See id.* at 793 n.29.

Section Five powers.<sup>17</sup> Finally, courts presume federal law does not preempt state law to the contrary when no history of federal regulation in the area exists.

With these three admittedly general concepts of federalism in the background, this Note considers a more specific illustration of the tension between federal and state power. Suppose a federal statute exists that Congress passed pursuant to its Commerce Clause powers. Assume further that a federal executive official has the power to interpret this statute. Although this statute regulates a broad class of interstate activity, this executive interprets the federal statute in a manner that contravenes existing state law. Finally and most crucially, assume the activity in question, when viewed strictly at the state level, is an activity where regulation has traditionally been reserved to the States under their general police power.

This situation parallels the current battle between Attorney General John Ashcroft and the state of Oregon. Although addressed at length later in this Note,<sup>18</sup> it suffices to say that in the case of *Oregon v. Ashcroft*, Ashcroft interpreted a federal law—the Controlled Substances Act (CSA)—in a manner that invalidated Oregon’s physician assisted suicide law. A District Court found Ashcroft lacked the statutory authority to interpret the CSA, and thus enjoined Ashcroft from enforcing his interpretation of the CSA. Assuming arguendo that Ashcroft *has* the statutory authority to interpret the CSA as he sees fit, this Note proposes his interpretation violates principles of federalism.

If one accepts the principles of federalism above, that certain areas are better left to state control, that courts require express congressional intent to abrogate state immunity to suit in federal court, and that courts apply federal preemption warily, it follows that a federal official should not be able to interpret federal law in a manner that infringes on a state’s power to regulate in an arena traditionally reserved to the state. In addition, consistent with the Court’s approach in *Fitzpatrick v. Bitzer*,<sup>19</sup> the court should require the federal statute to contain express congressional intent to abrogate state regulation in the area in question. This principle would prevent federal officials from overriding a contravening state practice when

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17. See *Fitzpatrick*, 427 U.S. at 456.

18. See *infra* Part III.

19. 427 U.S. at 445.

the state has traditionally regulated that area. Without such a principle federal officials are free to interpret federal law in a manner that contravenes existing state policy and thus runs afoul of federalism concerns.

This is not to say that any time a federal law conflicts with a state law there needs to be express congressional intent to override the state's legislation. Such a principle would undermine the doctrine of field preemption.<sup>20</sup> Rather, this Note proposes that when the area affected is an area traditionally within a state's police power, the Court should require a showing of express intent before allowing a federal official to interpret federal law in this contravening manner.

Part II of this Note addresses the backdrop to this discussion and provides the reader with an overview of principles of federalism (specifically, the concepts of state police power, the assumption of nonpreemption, and state sovereign immunity) and a discussion of case law and scholarship in support of this proposal. Part III applies this proposal to the ongoing battle between Attorney General Ashcroft and the state of Oregon over the validity of Oregon's Death with Dignity Act, which is a timely example of a federal official interpreting a federal statute in contravention of existing state law.

Part IV concludes that absent a showing of specific congressional intent, a federal official should not be able to interpret a federal statute in a manner that contravenes existing state law when the area of regulation is one traditionally reserved to the states. This Note concludes that Ashcroft's actions do not pass Constitutional muster and represent a dramatic attempt to increase the power of the executive at the expense of the states. Courts must adopt principles that prevent such a usurpation of power by the Executive from the states. This Note provides one possible method: a requirement of express congressional intent before such an interpretation can take effect.

## II. DISCUSSION: PRINCIPLES OF FEDERALISM

Although it is difficult to describe broad principles of federalism adequately in such limited space, the reader must grasp the following three principles of federalism in order to accept this Note's proposal:

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20. See *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

1) the states' general police power, 2) preemption doctrine, and 3) state immunity to suit in federal court.

*A. First Principles: John Marshall and Cohens v. Virginia*

Before delving into principles of federalism and an extensive discussion of *Oregon v. Ashcroft*, it is helpful to note the comments of Chief Justice John Marshall, the father of first principles of federal power. Writing for the Court in *Cohens v. Virginia*, Marshall observed that:

To interfere with the penal laws of a State, where they are not levelled against the legitimate powers of the Union, but have for their sole object the internal government of the country, is a very serious measure, which Congress cannot be supposed to adopt lightly, or inconsiderately. The motives for it must be serious and weighty. It would be taken deliberately, and the intention would be clearly and unequivocally expressed.

An act, such as that under consideration, ought not, we think, to be so construed as to imply this intention, unless its provisions were such as to render the construction inevitable.<sup>21</sup>

Marshall was only willing to allow Congress to intrude on areas of state sovereignty if the act by which it sought to legislate inevitably resulted in an intrusion on state sovereignty. In *Cohens*, Congress enacted a gaming law that applied only to the District of Columbia. The Court found Congress intended the gaming statute to be local legislation and, therefore, the law had no preemptive effect on state statutes.<sup>22</sup>

Similarly, Congress did not enact the CSA with the inevitable construction in mind that the CSA would preempt all contrary state legislation.<sup>23</sup> It is doubtful that states would even have an equivalent of the CSA, since the CSA addresses *interstate* drug trafficking, which is necessarily the province of the federal Drug Enforcement Agency (DEA), not the individual states.

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21. 19 U.S. (6 Wheat.) 264, 443 (1821).

22. *See id.* at 441–46.

23. *See discussion infra* Part III.B.

Marshall noted that in certain, limited circumstances the federal government may pass laws that appear to exercise the police power. In *Cohens*, Marshall stated, "Congress has a right to punish murder in a fort, or other place within its exclusive jurisdiction; but no general right to punish murder committed within any of the States."<sup>24</sup> Here, *Cohens* provides a final statement of further support to the proposal that a federal official, absent a clear congressional statement, may not interpret federal law in a manner that contravenes existing state law in an area traditionally reserved to the states because of the intrusion on state plenary power. With the admonition of Chief Justice Marshall and a brief overview of *Oregon v. Ashcroft* in hand, this Note turns to a discussion of principles of federalism.

### B. The Police Power

While the federal government is a government of limited, enumerated powers, the states have general police power to regulate matters of local concern.<sup>25</sup> The Founding Fathers realized that many areas of regulation are better left to local rather than federal control. Combined with a healthy dose of suspicion of a powerful, centralized federal government, the framers created a system consisting of a limited federal government and states with general police power.<sup>26</sup>

The federal government has traditionally left certain areas of regulation to the states. *Lopez* highlighted a few of these areas as crime, education, and family law.<sup>27</sup> As stated above, this list is far from exhaustive and only serves to highlight a few areas of the Court's police power jurisprudence over the years.<sup>28</sup> Another area of general police power reserved to the states is health and safety regulation,<sup>29</sup> which specifically includes the direct control of medicine. *Linder v. United States* added the direct control of

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24. *Cohens*, 19 U.S. (6 Wheat.) at 426.

25. See U.S. CONST. amend. X.

26. See *id.*

27. See *Lopez*, 514 U.S. at 549.

28. See *Nat'l League of Cities v. Usery, Sec'y of Labor*, 426 U.S. 833, 842-44 (1976). While the Court overruled *National League of Cities* shortly thereafter, *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528 (1985), the notion that certain areas of control are best left to local regulation lives on. See *id.* at 546-51.

29. See *Hillsborough County*, 471 U.S. at 719.

medicine to the list of general state police powers in 1925.<sup>30</sup> There, the Supreme Court reversed a doctor's federal conviction for providing a drug addict with prescription drugs that relieved conditions related to her addiction.<sup>31</sup> This specific example of a state's general police power becomes important when we consider this Note's proposal as applied to Oregon's Death with Dignity Act in Part III.

The Tenth Amendment reflects a compromise among the Framers. Specifically, certain Framers were afraid that the Constitution took too much power away from the states and some Framers feared that it did not take enough.<sup>32</sup> This amendment reflects the sentiment that if a right is neither delegated to the federal government nor prohibited to the states, then the right falls within the states' police power.<sup>33</sup>

The *Linder* Court made a strong statement about Congress's power to regulate the area of prescription medicine, saying:

Congress cannot, under the pretext of executing delegated power, pass laws for the accomplishment of objects not entrusted to the Federal Government. And we accept as established doctrine that any provision of an act of Congress ostensibly enacted under power granted by the Constitution, not naturally and reasonably adapted to the effective exercise of such power but solely to the achievement of something plainly within power reserved to the States, is invalid and cannot be enforced.<sup>34</sup>

The Court held the narcotics law at issue was no more than a revenue raising measure and that the federal prescription law could not interfere with a doctor's "professional conduct."<sup>35</sup> This

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30. See *Linder v. United States*, 268 U.S. 5, 18 (1925). While *Linder* may appear to be a relic of a bygone era, having been decided before the New Deal, courts have been kind to *Linder's* characterization of the direct control of medicine. *Hillsborough County* notes that "the regulation of health and safety matters is primarily, and historically, a matter of local concern." *Hillsborough County*, 471 U.S. at 719.

31. See *Linder*, 268 U.S. at 18.

32. See THE FEDERALIST NO. 45 (James Madison).

33. See U.S. CONST. amend. X.

34. *Linder*, 268 U.S. at 17.

35. See *id.* at 23. Granted, the Court has been wary of using the Tenth Amendment as the main vehicle for protection of states' rights and has opined that the political process provides the only protection for the state. See *Garcia*



statement reflects the Court's general disapproval of congressional regulation of matters left to the state.

*Linder* decided the limits of Congress's ability to legislate in an area traditionally reserved to the states—the prescribing of medicine.<sup>36</sup> It has long been a hallmark of Constitutional jurisprudence that Congress may not legislate under its enumerated powers in order to effect the achievement of something within the power of the states.<sup>37</sup> *Linder* noted that the federal government could not use a federal revenue raising statute in order to prosecute a doctor for prescribing opiates to a known drug addict because the statute was simply a tax statute.<sup>38</sup> The importance of *Linder* for its description of an area traditionally reserved to state control becomes important in the consideration of the current stand-off between Attorney General Ashcroft and the state of Oregon.

The police power doctrine within federalism represents the strongest argument in favor of the approach this Note proposes. The states are better suited than the federal government to regulate certain areas such as the direct control of medicine. Whenever a federal official threatens to contravene existing state law in a traditionally state-regulated area, courts should immediately cast a wary eye towards the federal action and view it as an intrusion on the state police power.

### C. *The Assumption of Nonpreemption*

As stated earlier, this Note does not propose that a federal official's interpretation of a federal regulation in contravention of existing state law necessarily violates the spirit of federalism. Such an approach would undermine the Supremacy Clause<sup>39</sup> and preemption doctrine. Preemption comes in two flavors: conflict preemption and field preemption. Conflict preemption refers to

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v. *San Antonio Metro. Transit Auth.*, 469 U.S. 528, 551–53 (1985). But in the instant case, Oregon faces an executive interpretation of a federal statute. Thus, the Tenth Amendment provides the state with protection as the Attorney General is not subject to the political process.

36. Note that Congress may still regulate interstate trafficking of drugs pursuant to its Article I, Section Eight powers, and that *Linder* only imposes a limit on federal regulation of the direct control (i.e. prescription) of medicine.

37. See *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819).

38. See *Linder*, 268 U.S. at 17.

39. See U.S. CONST. art. VI, § 2.

situations where “compliance with both federal and state regulations is a physical impossibility.”<sup>40</sup> Field preemption refers to a broader concept of federal supremacy, where the federal regulation in question is “so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it.”<sup>41</sup>

This Note’s proposal applies only when an area of regulation traditionally left to the states is in question. Thus this Note’s proposal reinforces values of federalism by preserving both states’ power to regulate matters of local concern and federal power to supercede state law. But preemption only applies when such federal power is a constitutional exercise of federal regulation (or interpretation, as is the case in this Note’s example).

A final element of the preemption doctrine that lends support to this Note is the Court’s observation in *Rice v. Santa Fe Elevator Corp.* that there is an “assumption” of nonpreemption.<sup>42</sup> The Court in *Rice* stated “the historic police powers of the States were not to be superceded by . . . [the federal law in question] unless that was the clear and manifest purpose of Congress.”<sup>43</sup> The Court more recently has noted that *Rice* indicates that “an ‘assumption’ of nonpreemption is not triggered when the State regulates in an area where there has been a history of significant federal presence.”<sup>44</sup> This assumption of nonpreemption weighs in favor of skeptically viewing any attempt by a federal official to interpret a law in contravention of existing state law.

#### *D. State Sovereign Immunity to Suit in Federal Court*

The notion that a state should be immune from suit in federal court has its roots in English law, and it was the subject of much discussion by the Framers.<sup>45</sup> However, codification of this concept did not occur until the late eighteenth century in response to the case

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40. *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–43 (1963).

41. *Rice*, 331 U.S. at 230.

42. *See id.*

43. *Id.*

44. *United States v. Locke*, 529 U.S. 89, 108 (2000).

45. *See* THE FEDERALIST NO. 81 (Alexander Hamilton) (“It is inherent in the nature of sovereignty not to be amenable to the suit of an individual *without its consent* . . . . [T]he exemption, as one of the attributes of sovereignty, is now enjoyed by the government of every State in the Union.”).

of *Chisholm v. Georgia*.<sup>46</sup> In *Chisholm*, the Supreme Court found that “the Constitution vests a jurisdiction in the Supreme Court over a State, as a defendant, at the suit of a private citizen of another State.”<sup>47</sup> This decision “fell upon the country with a profound shock,”<sup>48</sup> prompting Congress and the states to ratify quickly the Eleventh Amendment.<sup>49</sup>

The Court has conceded that the plain text of the Eleventh Amendment does not directly assert that a state is immune to suit by its own citizens, but has nonetheless held that federal jurisdiction over unconsenting states “was not contemplated by the Constitution when establishing the judicial power of the United States.”<sup>50</sup> The Supreme Court has maintained that, absent express congressional intent, an unconsenting state is immune to suit in federal court, regardless of the citizenship of the plaintiff.<sup>51</sup>

The Supreme Court requires express congressional intent before Congress may abrogate a state’s immunity to suit in federal court.<sup>52</sup> Further, the Court has recognized that Congress may only abrogate state sovereign immunity through its powers under Section Five of the Fourteenth Amendment.<sup>53</sup> Both doctrines illustrate a sentiment among the Court that state sovereignty to suit in federal court is one of the more hallowed hallmarks of federalism.<sup>54</sup> The Court requires express congressional intent to abrogate state sovereign immunity because if the federal government were allowed to drag a state into

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46. 2 U.S. (2 Dall.) 419 (1793).

47. *Id.* at 420.

48. 1 CHARLES WARREN, THE SUPREME COURT IN UNITED STATES HISTORY 96 (rev. ed. 1932).

49. *See Alden*, 527 U.S. at 712–25 (discussing *Chisholm* and its wake). Most notably, the Georgia legislature passed a bill providing that anyone who attempted to enforce the *Chisholm* decision would be “guilty of felony and shall suffer death, without benefit of clergy, by being hanged.” DAVID P. CURRIE, THE CONSTITUTION IN CONGRESS: THE FEDERALIST PERIOD 1789–1801 196 (1997).

50. *Hans v. Louisiana*, 134 U.S. 1, 15 (1890).

51. *See id.* at 16–18.

52. *See Fitzpatrick*, 427 U.S. at 451–56.

53. *See id.* at 456.

54. *But see Seminole Tribe v. Florida*, 517 U.S. 44, 101 (1996) (Souter, J., dissenting) (supporting a more narrow view of state immunity where a state is only immune to suit in federal court when the plaintiff is a non-citizen).

federal court, Congress would exercise more power over the state's affairs than over federal affairs.<sup>55</sup>

This judicially enforced requirement of express congressional intent represents a particularly striking protection of state sovereignty. Not only must Congress specifically abrogate state immunity in these instances, but it may only do so pursuant to its Fourteenth Amendment, Section Five powers. It is of no small import that the Court does not allow Congress to abrogate state immunity to federal suit through its Commerce Clause powers, the main vehicle of congressional legislation.<sup>56</sup> If abrogation under the Fourteenth Amendment requires an express statement of congressional intent, then certainly legislating pursuant to the Commerce Clause is even more judicially suspect. It thus appears that in this situation, where the Court feels state autonomy is especially at risk, the Court requires the federal government to justify its intrusion on state sovereignty more persuasively.

One should not view the Court's Eleventh Amendment jurisprudence in a vacuum and conclude the doctrine is limited solely to the situation where a state is a non-consenting defendant in federal court. Rather, the Court's decisions in this arena represent broader concepts of federalism. If the Court is willing to require such an exacting method of abrogating state immunity to federal suit, the Court must feel that subjecting a state to federal jurisdiction is a serious threat to the balance of power that principles of federalism are designed to uphold.

Thus, when contravention is in an area traditionally reserved to the states, the Court should view any attempt by a federal official to contravene existing state law as a violation of principles of federalism unless there is a clear expression of congressional intent to supercede the state's practice. Allowing a federal official to contradict state law in an arena that falls under the state police power is at least as much of an intrusion on state sovereignty as it would be if states were subject to federal court jurisdiction. In order to ameliorate this situation, courts should uphold such an interpretation only when Congress has expressly stated its intent to override a state's intent in passing its own legislation.

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55. See *Fitzpatrick*, 427 U.S. at 451-52, 455.

56. See *id.*

*E. Lopez and Morrison: Certain Areas are Better Left to Local Rather than Federal Control*

With the *Lopez* decision in 1995, the Supreme Court signaled that Congress could not simply show an attenuated link to interstate commerce and legislate freely regarding matters that are arguably of purely local concern. Specifically, it was not for Congress to legislate regarding the possession of a firearm in a school zone, as the regulation of crime and education are matters within the police power of the states.<sup>57</sup> The Court dismissed any purported link to interstate commerce by invalidating the statute as beyond Congress's power.<sup>58</sup>

It appeared that *Lopez* might have been an aberration and nothing more than a shot across Congress's bow; a judicial effort to tell Congress to do a better job of legislative fact-finding before passing legislation that appeared to exceed its authority. Any such thoughts vanished when the Court handed down its decision in *Morrison*, which was strongly in favor of expansive state police power.<sup>59</sup> The Court, with these two decisions, dramatically shifted from its post-New Deal reluctance to invalidate federal legislation, no matter how attenuated its link to Congress's (in these cases, Commerce Clause) power to make law.

These recent decisions highlight the Court's view that Congress must keep its nose out of areas within a state's police power.<sup>60</sup> *Lopez* and *Morrison* not only stand for a restriction on Congress's Commerce Clause powers, but also reflect traditional principles of federalism, such as the concept of general state police power.

*F. Linder: Direct Control of Medicine is a Matter of Local Control*

Rarely does one find a statement regarding state police power as blunt as the Court's statement in *Linder*. There, the Court stated, "Obviously, direct control of medical practice in the States is beyond the power of the Federal Government."<sup>61</sup> In *Linder*, a doctor prescribed morphine and cocaine in order to help a patient with her

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57. See *Lopez*, 514 U.S. at 556-57.

58. See *id.* at 552.

59. See *Morrison*, 529 U.S. at 598.

60. For an excellent overview of the Court's Commerce Clause jurisprudence, see *Lopez*, 514 U.S. at 568-80 (Kennedy, J., concurring).

61. *Linder*, 268 U.S. at 18.

drug addiction.<sup>62</sup> The doctor prescribed these drugs without a prescription and was found guilty under a federal narcotics law.<sup>63</sup> The Court reversed the conviction, finding that the federal statute was “essentially a revenue measure” with the primary purpose of “enforcing the special tax [on prescription drugs].”<sup>64</sup> The Court cautioned against further overreaching by Congress near the end of its opinion, when it stated, “Federal power is delegated, and its prescribed limits must not be transcended even though the end seem desirable.”<sup>65</sup> *Linder’s* declaration that the direct control of medicine is an area of regulation reserved to the states has withstood the test of time.<sup>66</sup>

*G. Courts Must Require Express Congressional Intent Before a  
Federal Official May Interpret Federal Law in Contravention of  
Existing State Law*

Three concepts of federalism are central to the analysis of the situation involving Attorney General Ashcroft and the state of Oregon. First, states have general police power to regulate matters of local concern; the Constitution withholds such a plenary police power from Congress.<sup>67</sup> This is a hallmark of states’ rights and one of the founding principles of this nation. Second, the assumption of nonpreemption supports the notion that when all else fails, state law should govern the regulation of matters of local concern and courts should not presume federal preemption.<sup>68</sup> Third, states enjoy

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62. *See id.* at 11–12.

63. *See id.* at 15–16.

64. *Id.* at 22.

65. *Id.*

66. Concerns of health and safety are matters of local control. *Hillsborough County v. Automated Med. Labs., Inc.*, 471 U.S. 707, 719 (1985). In *Hillsborough County*, the Court rejected an argument that a federal statute preempted a plaintiff from recovering for medical negligence. *See id.* This is especially interesting considering the current push to limit punitive damage awards for medical malpractice: a push occurring at the federal level. *See* National Center for Policy Analysis, *Medical Malpractice Reform Urgently Needed*, available at <http://www.ncpa.org/iss/hea/2003/pd010203b.html> (Jan. 2, 2003).

67. *See Lopez*, 514 U.S. at 566.

68. *See Rice*, 331 U.S. at 230 (“[C]ongress legislated here in a field which the States have traditionally occupied. So we start with the assumption that the historic police powers of the States were not to be superseded by the [f]ederal

sovereignty to federal intrusion in certain arenas, perhaps most notably in their being immune to suit in federal court absent consent or congressional abrogation.<sup>69</sup> Only with an express statement by Congress abrogating a state's immunity may someone bring suit against the non-consenting state in federal court.

Case law (especially recently) strongly supports the notion that certain matters are better left to local control and that state sovereignty is of paramount importance in these areas.<sup>70</sup> *Lopez* and *Morrison* provide the reader with an overview of what the Court considers to be examples of federal overreaching. Both of these cases address Congress's overstepping its Commerce Clause powers and legislating where states should be legislating. *Linder* provides a specific example of an area where the federal government has no business legislating—the direct control of medicine.

In order to prevent further overreaching by federal lawmakers, the Court must adopt principles that limit the ability of federal officials to interpret federal law in a manner that runs contrary to existing state law. One such vehicle would be to require Congress to explicitly state in a federal statute that an official may interpret the law in a manner that would contradict existing state law. This would avoid the problem that arises when a federal official simply interprets a federal statute so as to supercede state law. With express congressional intent behind such an interpretation, the federal official is no longer usurping the power of the states, rather, the official is acting pursuant to a valid grant of power from Congress.

Absent such intent, it appears that the federal official is acting on his own volition and giving little consideration to the federalism ramifications of his interpretive action. But Congress should be able to insert its intent to abrogate state sovereignty in statutes if it so desires. A federal official should only be able to interpret federal law in contradiction of existing state law when Congress has specifically granted the official such preemptory power, and the requirement of express congressional intent is the most efficient method of allowing such an interpretation while preserving fundamentals of federalism.

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[law] unless that was the clear and manifest purpose of Congress.”) (citations omitted).

69. See *Seminole Tribe*, 517 U.S. at 54.

70. See *Lopez*, 514 U.S. at 549; *Morrison*, 529 U.S. at 598.

With these principles in hand, this Note considers the case of *Oregon v. Ashcroft* and the pitched battle between, in the blue corner, a federal executive's interpretation of a federal statute and, in the red corner, a state-level ballot initiative.

### III. APPLICATION

Oregon's Death with Dignity Act<sup>71</sup> has seen a tumultuous ride. After a narrowly passed 1994 ballot initiative,<sup>72</sup> a District Court's determination that the initiative violated the Equal Protection Clause,<sup>73</sup> the Ninth Circuit's vacating that decision,<sup>74</sup> and a 1997 vote that decisively reaffirmed the original ballot initiative,<sup>75</sup> Oregon became the first to legalize physician-assisted suicide.

Then, on November 6, 2001, Attorney General John Ashcroft, in a memorandum to DEA Administrator Asa Hutchinson (the "Ashcroft Directive"), declared that "assisting suicide is not a 'legitimate medical purpose' within the meaning of 21 CFR § 1306.04 (2001), and that prescribing, dispensing, or administering federally controlled substances to assist suicide violates the Controlled Substances Act."<sup>76</sup>

The state of Oregon filed suit two days later and challenged Ashcroft's "interpretive rule." District Court Judge Robert E. Jones entered a preliminary injunction on November 20, 2001, and issued a permanent injunction on April 17, 2002.<sup>77</sup> Judge Jones noted that the "case turns on the CSA and does not require constitutional analysis."<sup>78</sup> He concluded that "Congress never intended, through the CSA or through any other current federal law, to grant blanket authority to the Attorney General or the DEA to define, as a matter

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71. OR. REV. STAT. §§ 127.800–995 (1999).

72. Oregon Measure 16 passed by a margin of 51% to 49%. Oregon Blue Book, Initiative, Referendum and Recall 1988–1995, available at <http://bluebook.state.or.us/state/elections/elections21.htm>.

73. See *Lee v. Oregon*, 891 F. Supp. 1429 (D. Or. 1995).

74. See *Lee v. Oregon*, 107 F.3d 1382 (9th Cir. 1997).

75. Oregon Measure 51 passed by a margin of 60% to 40%. See Oregon Blue Book, Initiative, Referendum and Recall 1996–2000, available at <http://bluebook.state.or.us/state/elections/elections22.htm>.

76. Dispensing of Controlled Substances to Assist Suicide, 66 Fed. Reg. 56,607 (Nov. 9, 2001) (to be codified at 21 C.F.R. pt. 1306).

77. See *Ashcroft*, 192 F. Supp. 2d at 1080, 1084 (D. Or. 2002).

78. *Id.* at 1084.



of federal policy, what constitutes the legitimate practice of medicine.”<sup>79</sup> The Department of Justice has appealed this decision.

Although Judge Jones’ granting of the permanent injunction turned on a statutory analysis of whether Ashcroft had the authority to interpret the CSA, this situation presents a compelling constitutional question: If the Supreme Court requires express Congressional intent to abrogate state sovereignty,<sup>80</sup> and some matters of regulation are better left to local control,<sup>81</sup> is Ashcroft’s action consistent with the principles of federalism? The CSA makes no mention of abrogating existing state law regarding prescription medicine. Yet Ashcroft’s interpretation of the CSA amounts to “direct control” of medical practice, which is an area traditionally left to state regulation.<sup>82</sup> The same express intent the Court requires for congressional abrogation of state autonomy should apply when the federal government threatens to interpret a law in contravention of state regulation of an area traditionally reserved to the states. Consequently, the lack of any clear congressional intent to abrogate existing state regulations in the CSA precluded Ashcroft from issuing his Directive.

This Note has already provided the reader with a survey of relevant doctrines of federalism and case law that lends support to the contention that a federal official should not be able to interpret federal law in a manner that infringes on a state’s power to regulate in an arena traditionally reserved to the state. The next sections outline the historical and legal background of Oregon’s physician-assisted suicide initiative.

#### *A. The Death with Dignity Act*

Oregon’s Death with Dignity Act (also known as Measure 16) allows a capable, terminally ill Oregon resident to obtain a prescription for a lethal dose of medication after obtaining the

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79. *Id.*

80. See *Blatchford v. Native Vill. of Noatok*, 501 U.S. 775, 786 (1991) (stating that the “power to abrogate [Eleventh Amendment immunity] can only be exercised by a clear legislative statement.”).

81. See *Lopez*, 514 U.S. at 556.

82. See, e.g., *Linder*, 286 U.S. at 18 (stating that “[d]irect control of medical practice in the States is beyond the power of the Federal Government.”)

approval of two licensed physicians.<sup>83</sup> The Act imposes significant obligations on the physician, who must inform the patient of his diagnosis, his prognosis, the potential risks of life-ending medication, and alternatives “including, but not limited to, comfort care, hospice care and pain control.”<sup>84</sup> The physician must “recommend that the patient notify next of kin”<sup>85</sup> and inform the patient of a fifteen day waiting period, during which the patient has the opportunity to rescind the request at any time.<sup>86</sup>

Oregon voters first passed the Death with Dignity Act in 1994, by a 51% to 49% margin.<sup>87</sup> The next year a District Court found the Act unconstitutional because it “provides a means to commit suicide to a severely overinclusive class who may be competent, incompetent, unduly influenced, or abused by others. The state interest and the disparate treatment are not rationally related . . . .”<sup>88</sup> However, in February 1997 the Ninth Circuit ruled that the federal courts lacked jurisdiction over the matter and vacated the District Court’s ruling.<sup>89</sup> The Act again went before Oregon voters in November 1997, when the state legislature gave voters the opportunity to repeal the Act. Oregonians decisively declined to repeal the Act and rejected the referendum by a 60% to 40% margin.<sup>90</sup>

The result is that Oregon voters passed legislation that addressed prescription medicine. This ballot initiative thus appears to have been a *valid exercise of the state’s plenary power* to regulate a matter of local concern—health and safety and, more specifically, the direct control of medicine.

### *B. The Controlled Substances Act*

Congress enacted the CSA as part of the Comprehensive Drug Abuse Prevention and Control Act of 1970.<sup>91</sup> The legislative history shows that Congress’s purpose in enacting the CSA was to control

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83. OR. REV. STAT. §§ 127.800–995 (1999).

84. *Id.* § 127.815.

85. *Id.* § 127.815(f).

86. *See id.* § 127.840.

87. *See supra* note 72.

88. *Lee*, 891 F. Supp. at 1437.

89. *Lee*, 107 F.3d at 1382.

90. *See supra* note 75.

91. *See* 21 U.S.C. § 801–950 (2000).

drug use and trafficking in the United States.<sup>92</sup> Under the CSA, it is unlawful for any person “to manufacture, distribute, or dispense . . . a controlled substance [except as authorized by the CSA].”<sup>93</sup> Congress amended the CSA numerous times in response to growing concern over drug trafficking and abuse of both illicit and prescription drugs.<sup>94</sup> In order to lawfully dispense controlled substances, a physician must register with the DEA.<sup>95</sup> In 1984, Congress empowered the Attorney General to “deny an application for [DEA] registration if he determines that the issuance of such registration would be inconsistent with the public interest.”<sup>96</sup>

The Department of Justice (DOJ) and DEA adopted several regulations regarding the CSA. The regulation entitled “Purpose of issue of prescription” provides, “A prescription for a controlled substance to be effective must be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice . . . .”<sup>97</sup> If a doctor fills a prescription outside the usual course of medical treatment, that doctor faces criminal penalties.<sup>98</sup>

To recap, Congress passed federal legislation to address an interstate issue, and it did so pursuant to a valid exercise of its powers under the Commerce Clause. The statute makes *no mention of any intent* to supercede contrary state law because the impetus behind the statute was interstate drug trafficking, the regulation of which is necessarily not within a state’s plenary police power.

### C. *The DEA and Congress Respond*

The DEA and Congress were quick to respond to Oregon, yet enjoyed little success. In November 1997, DEA Administrator Thomas Constantine wrote Representative Henry Hyde a letter stating that “delivering, dispensing or prescribing a controlled substance with the intent of assisting a suicide would not be under any current definition a ‘legitimate medical purpose’ [under the

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92. *See id.* § 801(2).

93. *Id.* § 841(a)(1).

94. *See Ashcroft*, 192 F. Supp. 2d. at 1081.

95. *See id.* at 1081–82.

96. *Id.*

97. 21 C.F.R. § 1306.04 (2001).

98. *Id.*

CSA].”<sup>99</sup> Attorney General Janet Reno rebuffed Constantine in a June 1998 letter to Representative Hyde, where she stated, “There is no evidence that Congress, in the CSA, intended to displace the states as the primary regulators of the medical profession, or to override a state’s determination as to what constitutes legitimate medical practice in the absence of a federal law prohibiting that practice.”<sup>100</sup>

Now that Reno had declared that the states, and not the federal government, had the power to decide what constituted “legitimate medical practice,” opponents of physician-assisted suicide turned their focus to Congress. The same day of Reno’s pronouncement, Representative Hyde and Senator Don Nickles introduced the Lethal Drug Abuse Prevention Act in the House and Senate, respectively.<sup>101</sup> The purpose of this Bill was to “clarify Federal law to prohibit the dispensing or distribution of a controlled substance for the purpose of causing, or assisting in causing, the suicide, euthanasia, or mercy killing of any individual.”<sup>102</sup> The Bill stalled in the House and was discharged in September 1998.<sup>103</sup>

In 1999, Representative Hyde and Senator Nickles again attempted to strike down Oregon’s Act with their introduction of the Pain Relief Promotion Act (PRPA) concurrently in the House and Senate.<sup>104</sup> The purpose of the PRPA was “[t]o amend the Controlled Substances Act to promote pain management and palliative care without permitting assisted suicide and euthanasia, and for other purposes.”<sup>105</sup> The Bill passed the House by a 271 to 156 margin,<sup>106</sup> but it has been mired in the Senate for two years, “in large part due to

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99. Letter from Thomas A. Constantine, Administrator, Drug Enforcement Administration, to Representative Henry J. Hyde, Chairman, Judiciary Committee, U.S. House of Representatives (Nov. 5, 1997), *available at* <http://www.house.gov/judiciary/constantine.htm>.

100. Letter from Janet Reno, Attorney General, Department of Justice, to Representative Henry J. Hyde, Chairman, Judiciary Committee, U.S. House of Representatives (June 5, 1998), *available at* <http://www.house.gov/judiciary/attygen.htm>.

101. H.R. 4006, 105th Cong. (1998); S. 2151, 105th Cong. (1998).

102. 144 CONG. REC. S5,787 (1998) (statement of Sen. Nickles).

103. 144 CONG. REC. H8,083 (daily ed. Sept. 18, 1998).

104. H.R. 2260, 106th Cong. (1999); S. 1272, 106th Cong. (1999).

105. H.R. 2260 at 1.

106. Final Vote Results for Roll Call 544, *available at* <http://clerkweb.house.gov/cgi-bin/vote.exe?year=1999&rollnumber=544>.

[Oregon] Senator Ron Wyden's threat of a filibuster and his ability to garner enough support to avoid cloture."<sup>107</sup> Senate Bill 1272 remains in limbo.

Because of the *lack of congressional intent* in the CSA to supercede state regulation of the medical profession, Attorney General Reno informed the DEA Administrator that the states had the power to determine what constituted a legitimate medical practice. Members of Congress then attempted to pass legislation that would supercede Oregon law, but all such attempts have stalled.

#### D. *The Supreme Court Weighs In*

In *Washington v. Glucksberg*, the Supreme Court determined that individuals do not have a fundamental right to physician-assisted suicide.<sup>108</sup> *Glucksberg* had no direct impact on the Death with Dignity Act, and the Court noted that its "holding permits this debate to continue, as it should in a democratic society."<sup>109</sup> Justice O'Connor's concurring opinion went slightly further, noting that "States are presently undertaking extensive and serious evaluation of physician-assisted suicide . . . . '[T]he . . . challenging task of crafting appropriate procedures for safeguarding . . . liberty interests is entrusted to the 'laboratory' of the States . . . in the first instance."<sup>110</sup>

Thus the Supreme Court noted that the regulation of physician assisted suicide was a matter of *state-level* debate. Without a fundamental right at issue, it is difficult to conceive of a method by which the federal government could protect such activity, thus necessarily leaving the issue to the states.

#### E. *The Ashcroft Directive*

It is against this backdrop that Ashcroft issued his "interpretive rule" with regard to the CSA. Because federal legislation to override

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107. Robert A. Klinck, *Recent Development: Pain Relief Promotion Act*, 38 HARV. J. ON LEGIS. 249, 253 (2001).

108. See *Washington v. Glucksberg*, 521 U.S. 702 (1997). The Court was careful to distinguish any right to physician-assisted suicide from the acknowledged fundamental right to refuse life-saving treatment in *Cruzan v. Dir.*, 497 U.S. 261 (1990).

109. *Glucksberg*, 521 U.S. at 735.

110. *Id.* at 737 (citing *Cruzan v. Dir.*, 497 U.S. 261, 292 (1990)).

Oregon's Act stalled in Congress and the Supreme Court had indicated that there was room for states to devise constitutionally sound physician-assisted suicide statutes, only the executive branch could attempt to forestall the Act.<sup>111</sup>

The Ashcroft Directive resulted in the exact usurpation of states' rights that this Note contends violates principles of federalism. A federal official, faced with a lack of legislative or judicial support, interpreted a federal statute in a manner that directly contravened state law. The state law at issue regulated health and safety, a matter of state police power. The stage was thus set for a court battle.

#### *F. The District Court Injunction*

On April 17, 2002, District Court Judge Robert E. Jones issued a permanent injunction against Ashcroft on three grounds.<sup>112</sup> First, the plain language of the CSA did not support Ashcroft's interpretive rule, because:

No provision of the CSA, however, alone (as defendants urge) or viewed as a 'symmetrical and coherent scheme' demonstrates or even suggests that Congress intended to delegate to the Attorney General or the DEA the authority to decide, as a matter of national policy, a question of such magnitude as whether physician-assisted suicide constitutes a legitimate medical purpose or practice.<sup>113</sup>

Judge Jones also rejected Ashcroft's argument that the legislative history behind the CSA granted him the authority to determine what constitutes a legitimate medical purpose. He found that the primary purpose behind the CSA and its Amendments was to control drug trafficking and abuse, and noted that neither side has presented any evidence that Congress ever even considered physician-assisted suicide in enacting or amending the CSA.<sup>114</sup> Finally, the Judge concluded that case law did not support Ashcroft's

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111. Numerous news agencies have reported that Ashcroft acted to fulfill a campaign promise made by President George W. Bush. *See US Gov't Challenges Oregon Assisted Suicide Law*, REUTERS HEALTH, (Sept. 23, 2002), available at [http://www.deathwithdignity.org/resources/articles/reutershealth\\_9-23-02.htm](http://www.deathwithdignity.org/resources/articles/reutershealth_9-23-02.htm).

112. *See Ashcroft*, 192 F. Supp. 2d at 1077.

113. *Id.* at 1089.

114. *See id.* at 1091.

case, as each case cited in his favor involved criminal actions against DEA registered physicians or pharmacists whose activities bore little resemblance to “usual or accepted medical practice.”<sup>115</sup>

Based on these findings, Judge Jones issued a permanent injunction against Ashcroft. His opinion concluded with the observation that “certain congressional leaders made a good faith effort to get through the administrative door that which they could not get through the congressional door, seeking refuge with the newly-appointed Attorney General whose ideology matched their views . . . .”<sup>116</sup> The Court emphasized that the case turned on statutory interpretation and that any constitutional issues were outside the scope of the opinion.<sup>117</sup> It is to these constitutional issues that this Note now turns.

#### IV. CONCLUSION: “YOU DON’T HEAR ME COMPLAINING ABOUT OREGON’S LAW”—JUSTICE ANTONIN SCALIA<sup>118</sup>

Although perhaps outside the scope of the District Court’s holding, these Constitutional issues are necessarily within the scope of this Note. The battle between Oregon and Ashcroft boils down to a few facts relevant to this Note’s proposal. First, the regulation in controversy affects a matter within the states’ power to regulate, not the federal government’s. Second, a federal official has based his contravening interpretation on a federal statute that makes no mention of invalidating state law to the contrary.<sup>119</sup> Finally, Oregon voters passed the law in question twice, and it appears to mirror the Supreme Court’s holding in *Glucksberg*.

The fact that Measure 16 was a ballot initiative bears even more on federalism concerns. Oregon voters placed Measure 16 on the

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115. *Id.* The Court distinguished five cases: *United States v. Moore*, 423 U.S. 122 (1975); *United States v. Rosenberg*, 515 F.2d 190 (9th Cir. 1975); *United States v. Hayes*, 794 F.2d 1348 (9th Cir. 1986); *United States v. Boettjer*, 569 F.2d 1078 (9th Cir. 1978); *United States v. Leal*, 75 F.3d 219 (6th Cir. 1996).

116. *Ashcroft*, 192 F. Supp. 2d at 1093.

117. *See id.*

118. Associated Press, *Scalia Opines on Oregon Assisted Suicide Law*, (Feb. 11, 2002), available at [http://www.deathwithdignity.org/resources/articles/associated\\_press\\_2-11-02.htm](http://www.deathwithdignity.org/resources/articles/associated_press_2-11-02.htm).

119. The District Court appears to have seen as fatal the fact that Congress passed the CSA to address interstate *illegal* drug trafficking.

ballot and decisively reaffirmed it. After four years of effect, a federal official offered a new interpretation of a federal statute that suddenly threatened to invalidate Oregon's law. Although ballot initiatives are not entitled to any special Constitutional protection, the fact that a federal official could threaten to invalidate a state-level, voter-approved law that applies to a function that is the exclusive prerogative of the states smacks of federal paternalism. The Court has not been receptive to recent acts of paternalism, as *Lopez* and *Morrison* indicate.<sup>120</sup>

The District Court based its holding on its finding that Ashcroft lacked the power to interpret the CSA in any manner.<sup>121</sup> But this Note assumes that the District Court *did find* that Ashcroft had the power to interpret the statute. Under the reasoning outlined in Part II, a court should still have barred Ashcroft from interpreting the CSA in this manner. His interpretive rule essentially blocked the effect of Oregon's statute, a statute that deals solely with the regulation of physician-assisted suicide. Such regulation falls within the "direct control of medicine," which is reserved to the states under *Linder*.<sup>122</sup> Oregon's Act addresses the *prescription* of life-ending medication and falls squarely within *Linder*'s findings regarding the "direct control of medicine."<sup>123</sup>

Recall Chief Justice Marshall's observation in *Cohens* that "Congress has a right to punish murder in a fort, or other place within its exclusive jurisdiction; but no general right to punish murder committed within any of the States."<sup>124</sup> Likewise, had Congress succeeded in its attempts to criminalize physician assisted suicide at a federal level through either the Lethal Drug Abuse Prevention Act or the Pain Relief Promotion Act,<sup>125</sup> Congress still would have faced an uphill battle when the law met a constitutional challenge. Congress simply may not pass laws effecting a general police power, however noble its intentions may be. States have

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120. It is also hard to believe that any link to interstate commerce could save Ashcroft's interpretation of the CSA. An analysis along "costs-of-crime" lines would likely fail as it did in *Lopez* and *Morrison*.

121. See *Ashcroft*, 192 F. Supp. 2d at 1091.

122. See *Linder*, 268 U.S. at 17.

123. *Id.*

124. *Cohens*, 19 U.S. (6 Wheat.) at 426.

125. See *supra* Part III.C.



plenary police power, while Congress has limited, enumerated powers.

If not even Congress could have passed an act mirroring Ashcroft's wishes, it is even more offensive to federalism that an unelected federal official would take it upon himself to interpret a federal regulation in contravention of state law.<sup>126</sup> That a federal official would offer such an interpretation in the face of a ballot initiative that Oregon voters passed not once but twice is exactly the sort of federal intrusion on state sovereignty that the Founding Fathers sought to guard against.

The Court has noted that our representative political system provides sufficient protection to states. States elect the President through the electoral college and receive equal representation in the Senate. Thus, in *Garcia v. San Antonio Metropolitan Transit Authority*, the Court intimated that perhaps the states should turn to the political process instead of to the Tenth Amendment for protection.<sup>127</sup> But Oregon could not turn to the political process because Ashcroft is an *executive* official, unaccountable to both Congress and to the political process. Thus, in cases where an executive official outside the political process has interpreted a federal law in the manner that this Note proscribes, the Tenth Amendment provides a better vehicle for state protection than does the political process approach of *Garcia*.

The only way Ashcroft could save face is if there were a congressional mandate explaining that the CSA was drafted in an effort to supercede state law. But Congress did not choose to do this. Without such express congressional intent, a federal official should not be able to take the action that Ashcroft did and expect such an action to square with notions of federalism.

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126. It is especially ironic that Ashcroft was appointed by a Republican President, as the Republican Party has traditionally been more closely identified with the defense of states' rights. Note that Attorney General Reno, appointed by a Democratic President, issued the original interpretation of the CSA, despite the common conception that the Democratic Party gives little concern to states' rights.

127. *Garcia*, 469 U.S. at 551–53. The court found that the notion of “traditional” areas of local control was too ill-defined. *Id.* But the idea that some areas are best left to local control is a hallmark of federalism jurisprudence. See *supra* text accompanying notes 20–28.

Where a federal official interprets a law in contravention of existing state law in an area that is traditionally reserved to the states, there must be an express Congressional statement that gives that official the authority to interpret the law in that manner. Absent such express intent, an interpretation that contravenes existing state law in such an area runs afoul of principles of federalism that preserve state sovereignty and limited federal power. Ashcroft's interpretation of the CSA superceded Oregon's physician-assisted suicide law in spite of the lack of any indication that Congress intended the CSA to govern such matters of local control. Based on the principle proposed by this Note, federal overreaching of this nature violates principles of federalism, and threatens the balance of power between federal and state government.

Geoffrey C. Kertesz\*

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\* J.D. Candidate, May 2004. Without appearing trite, I wish to thank the staff of the *Loyola of Los Angeles Law Review* for its tireless work over the year. In particular, the efforts of Tamar Buchakjian and David Uchida greatly contributed to the publication of this Note. I would especially like to thank Professor Kurt T. Lash, whose criticisms and suggestions compelled me to produce a judicially honest work instead of one reflecting personal biases. Finally, I dedicate this Note to my friends and family, who have provided unwavering support for all of my endeavors, particularly over the last few years.

