A Survey of Federal Cases Involving the Constitutionality of the Driver's Privacy Protection Act

This section presents a broad selection of cases recently decided in the federal court system, but is not intended to be a comprehensive collection.

Condon v. Reno, 155 F.3d 453 (4th Cir. 1998). THE COURT OF APPEALS HELD THAT (1) THE PASSAGE OF THE DRIVER'S PRIVACY PROTECTION ACT VIOLATED THE TENTH AMENDMENT, AND (2) THE DPPA DID NOT FALL WITHIN THE VALID CONFINES OF CONGRESSIONAL POWER UNDER SECTION 5 OF THE FOURTEENTH AMENDMENT.

I. INTRODUCTION

The plaintiff, the Attorney General of South Carolina (the "State"), challenged Congress' power to promulgate the Driver's Privacy Protection Act ("DPPA"), which regulates the circulation and use of information obtained from State motor vehicle records.[1] Specifically, the plaintiff argued that the DPPA violates the Tenth and Eleventh Amendments of the United States Constitution[2] and therefore sought a permanent injunction to enjoin the enforcement of the DPPA.[3] Conversely, the United States maintained that Congress was within its boundaries of both the Commerce Clause and Section 5 of the Fourteenth Amendment.[4] The Court of Appeals found that the passage of the DPPA was an unconstitutional act of Congressional power under the Tenth Amendment.[5]

II. BACKGROUND

In 1994, Congress passed the DPPA in an effort to restrict the "easy availabil-

[1] *See* Condon v. Reno, 155 F.3d 453, 455 (4th Cir. 1998).
[2] *See id.*
[3] *See id.* at 457.
[4] *See id.* at 456.
[5] *See id.*

ity of, personal information contained in State motor vehicle records."[6] According to congressional testimony, the personal information contained in motor vehicle records was not only accessed by companies engaged in direct marketing, but also by criminals seeking to locate their victims.[7]

The DPPA enjoins "a State department of motor vehicles and any officer, employee or contractor . . . from knowingly disclos[ing] or otherwise mak[ing] available to any person or entity personal information about any individual obtained by the department in connection with a motor vehicle record."[8] The DPPA, however, does not completely foreclose the possibility of obtaining access to personal information contained in State motor vehicle records.[9] In fact, Section 2721(b) of the Act provides a list of exceptions under which personal information may be acquired.[10] In order to ensure compliance with the DPPA, Congress attached a civil penalty of not more than $5,000 per day for noncompliance,[11] as well as a civil cause of action against any individual who violates the law.[12]

South Carolina also protects its citizens from the disclosure and use of motor vehicle records.[13] However, the State's statutory scheme is unlike the DPPA.[14] According to the State law, a person who requests information from motor vehicle records must vouch not to use the information for telemarketing or solicitation purposes, articulate the reason for the request and include his or her name on the request form.[15] In addition, South Carolina mandates that the Department of Public Safety charge a fee for providing the motor vehicle record information and provide a process by which individuals may enjoin the use of such personal information.[16] In order to comply with the DPPA, South Carolina would have to expend a great deal of time and effort.[17]

The plaintiff argued that the DPPA is unconstitutional under the Tenth and Eleventh Amendments of the United States Constitution and sought to enjoin its enforcement through a permanent injunction.[18] In a motion to dismiss, the United States asserted that Congress had legitimately enacted the DPPA under

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[6] *Id.*

[7] *See id.*

[8] 18 U.S.C. § 2721(a).

[9] *See Condon*, 155 F.3d at 456.

[10] *See* 18 U.S.C. § 2721(b). The DPPA also establishes procedures that enable motor vehicle departments to mail copies of requests for personal information to the individual in question who then has the opportunity to authorize the release of the information through the waiver of privacy rights. *See id.* at § 2721(d).

[11] *See id.* at § 2723(b).

[12] *See id.* at § 2724(a).

[13] *See* S.C. Code Ann. §§ 56-3-510 – 56-3-540.

[14] *See Condon*, 155 F.3d at 457.

[15] *See id.* (citing S.C. Code Ann. § 56-3-510).

[16] *See id.* (citing S.C. Code Ann. § 56-3-540).

[17] *See id.* at 457.

[18] *See id.* at 455.

the Commerce Clause and Section 5 of the Fourteenth Amendment.[19]

The District Court found that the DPPA was unconstitutional and subsequently upheld the State's motion for summary judgement, thereby refusing to enforce the DPPA in South Carolina.[20] The United States appealed.[21]

III. ANALYSIS

A. *Defendant's Contention of Constitutionality Under the Commerce Clause*

The United States argued that the DPPA was constitutionally promulgated under the Commerce Clause.[22] The Court of Appeals noted, however, that the Commerce Clause is limited by the Tenth Amendment.[23] Furthermore, the court stated that the Supreme Court has analyzed Congress' use of Commerce Clause powers under two distinct lines of cases.[24] The United States urged that the present case fell within the first line of cases that concerns Congress' authority to regulate the States as States.[25] According to these cases, Congress has the power to "enact laws of general applicability that incidentally apply to state governments."[26] Conversely, the plaintiff asserted that the case resembled the second line of cases that dealt with Congress' ability to order States to administer a federal regulatory scheme.[27]

The Court of Appeals rejected the argument made by the United States stating that the present case should be analyzed under *Garcia*.[28] The court agreed that the DPPA did not resemble the statutes in either *New York* or *Printz*[29] because the DPPA did not require the state legislature to enact legislation to regulate the disclosure of personal information, nor selected state enforcers to uphold Con-

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[19] *See id.*

[20] *See Condon*, 155 F.3d at 455.

[21] *See id.*

[22] *See id.* at 458.

[23] *See id.*

[24] *See id.* (citing New York v. United States, 505 U.S. 144, 160-161 (1992)).

[25] *See* id. at 458.

[26] *Condon*, 155 F.3d at 459. The Court noted the inconsistency of the decisions under the first line of cases. Most recently, in Garcia v. San Antonio Metropolitan Transit Authority, the Supreme Court chose to "leave to the political processes the protection of the States against intrusive exercises of Congress's Commerce Clause powers." *Id.* at 547-56 (citing 469 U.S. 528 (1985)).

[27] *See id* at 459. Unlike the first line of cases, the second line has been a "model of consistency." *Id.* In New York v. United States, the Supreme Court held that Congress did not have the ability to control the States' legislative processes by compelling them to adopt certain regulatory programs. *See id.* at 176 (citing 505 U.S. 144 (1992)). Later, in Printz v. United States, the Supreme Court ruled that Congress cannot side step the holding in *New York* by "conscripting the State's officers directly." *See id.* (citing 521 U.S. 98 (1997)).

[28] *See id.* at 459.

[29] *See id.* at 460.

gressional regulation.[30] The court recognized, however, that state officials were required to execute the DPPA.[31] Relying on the holdings of both *Printz* and *New York*, the court noted that the Supreme Court has clearly stated that "Federal Government may not require State officials to administer a federal regulatory program."[32]

According to the majority, the United States attempted to avoid this obstacle by arguing that these two cases are only applicable when the law mandates a State to regulate the conduct of citizens.[33] The United States, therefore urged that the DPPA be interpreted under *Garcia*.[34] Even if the DPPA were analyzed under *Garcia*, the court held that the statute would still not be constitutional.[35] Under *Garcia* and the cases following the decision, "Congress may only subject States to legislation that is also applicable to private parties."[36] In this case, the DPPA regulated the disclosure of information in one exclusive sector – state motor vehicle records.[37] The majority concluded that Congress passed a law that applied only to states, rather than a law of general applicability.[38]

The United States also maintained that the DPPA was constitutional under *Garcia*, because States are subject to regulations similar to those that govern private parties.[39] The majority responded that Congress can only intrude on state sovereignty when the law enacted has general applicability.[40]

Finally, the United States posited that Congress already enacted several statutes which prohibit the disclosure of personal information.[41] The court retorted that Congress is entitled to regulate an individual's conduct, but has no power to regulate State's conduct.[42] In sum, Congress lacked the congressional power to enact the DPPA under the Commerce Clause, and thus violated the Tenth Amendment.

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[30] *See id.*

[31] *See id.*

[32] *Condon*, 155 F.3d at 460 (citing *Printz*, 117 S.Ct. at 2384; *New York*, 505 U.S. at 176).

[33] *See id.* at 461.

[34] *See id.*

[35] *See id.*

[36] *Id.* at 461 (quoting *New York*, 505 U.S. at 160). "In *Garcia*, the Supreme Court upheld the application of the Fair Labor Standards Act (FLSA) to state and local governments because the FLSA was generally applicable. Thus, Congress was allowed to regulate how much the states pay their hourly employees because Congress also regulates how much private parties pay their hourly employees." *Id.* (citing *Garcia*, 469 U.S. at 528).

[37] *See id.* at 461.

[38] *See Condon*, 155 F.3d at 461-62.

[39] *See id.* at 462.

[40] *See id.*

[41] *See id.* (citing Video Privacy Protection Act, 18 U.S.C.A. § 2710 (West Supp. 1998), Cable Communications Policy Act, 47 U.S.C.A. § 551 (West 1991 and Supp. 1998), and Fair Credit Reporting Act, 15 U.S.C.A. § 1618(b) (West 1998 and Supp. 1998)).

[42] *See id.* The one exception to this is through laws of general applicability.

B. *Defendant's Contention of Constitutionality Under Section 5 of the Fourteenth Amendment*

The United States also argued that the DPPA was constitutional pursuant to Section 5 of the Fourteenth Amendment.[43] The language in Section 5 states that "Congress shall have power to enforce, by appropriate legislation, the provisions of this article."[44] In determining if Congress abused its power under Section 5 by passing the Act, the court questioned whether the DPPA enforced a right guaranteed under the Fourteenth Amendment.[45] The United States posited that car owners and drivers have a "reasonable expectation" of privacy with respect to their names and addresses.[46]

The court offered four reasons for rejecting the argument proffered by the United States.[47] In general, the court noted that "there is no general constitutional right to privacy."[48] More importantly, the court emphasized that neither that court, nor the Supreme Court, ever found that personal information contained in motor vehicle records were protected.[49]

First, with respect to the DPPA, the court found that expectations of privacy are decreased in "pervasive schemes of regulation" such as vehicle licensing.[50] Second, the court noted that the individual does not have a "reasonable expectation that the information is confidential" because the personal information found in motor vehicle records could also be discovered in other sources.[51] Third, legal precedent indicates that the United States government has treated motor vehicle records as public records.[52] Finally, the court reasoned that the information supplied by motor vehicle records is frequently distributed to private parties.[53]

In sum, the court maintained that individuals had no reasonable expectation of privacy with respect to information filed in motor vehicle records. As a result, the court concluded that Congress erred in acting the DPPA under Section 5 of the Fourteenth Amendment.[54]

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[43] *See id.* at 463.

[44] U.S. Const. amend. XIV, § 5.

[45] *See Condon*, 155 F.3d at 464.

[46] *See id.*

[47] *See id.*

[48] *Id.* at 464 (quoting Whalen v. Roe, 429 U.S. 589, 608 (1977)).

[49] *See id.*

[50] *Id.* at 465 (quoting California v. Carney, 471 U.S. 386, 392 (1985)).

[51] *Condon*, 155 F.3d at 465. The court stated that same information could be learned from public property tax records. *See id.*

[52] *See id.* (citing United States Dept. of Health & Human Services v. FLRA, 833 F.2d 1129 (4th Cir. 1987)) (upholding that an individual's name and address is a matter of public record).

[53] *See id.*

[54] *See id.*

C. *Dissent*

Judge Phillips ("dissent") dissented from the Court's conclusion that the DPPA is unconstitutional under the Tenth Amendment "because it impermissibly regulates States as States and because it is not a law of general applicability to both State and Private actors."[55] According to the dissent, the DPPA remained within the confines of both the substantive and structural boundaries of federal power.[56] In addition, the dissent maintained that the DPPA's unique structure distinguished it from those cases cited and utilized by the majority.[57]

Unlike the statutes in *Printz* and *New York*, the DPPA directly regulated State activity.[58] The dissent argued that while states "must take steps to administer their [motor vehicle information disclosure] programs in conformity with federal guidelines . . . that administration will be of their own choosing and will not be a 'federal regulatory program.' "[59] Moreover, there was no blanket provision that classified every type of "federally forced state administration" as a violation of the Tenth Amendment.[60] In fact, the Supreme Court has held that there is no "constitutional defect" in enacting administrative and legislative action in order to comply with federal standards.[61]

The dissent disagreed with the majority's reasoning that the DPPA must be a law of general applicability in order for it to withstand a Tenth Amendment challenge.[62] According to the dissent, the majority made a distinction between the statutes in *Garcia* and *Baker* and the DPPA.[63] However, the majority failed to articulate the constitutional theory upon which the distinction is made.[64] The dissent asserted that *Garcia* was immune to the Tenth Amendment in part because it "directly regulated state activities rather than using the 'States as implements of regulation' of 3rd parties."[65] This distinction, according to the dissent, "critically distintinguishe[d]" the legislation of *Garcia* and *Baker* from examples of *New York* and *Printz* used by the majority.[66] In those cases, the issue was whether or not Congress could direct States to regulate in a particular way.[67] The dissent argued that question was not discussed in the DPPA.[68]

The DPPA provisions only apply once the State has made a voluntary decision to enter into a market "created by the release of personal information in its

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[55] *Id.*
[56] *See id.*
[57] *See Condon*, 155 F.3d at 465.
[58] *See id.* at 467.
[59] *Id.*
[60] *See id.*
[61] *See id.* (citing South Carolina v. Baker, 485 U.S. 505 (1988)).
[62] *See id.*
[63] *See Condon*, 155 F.3d at 467.
[64] *See id.*
[65] *Id.* at 468 (citing *New York*, 505 U.S. at 160).
[66] *See id.*
[67] *See id.*
[68] *See id.*

files."[69] Therefore, the dissent concluded that was no need to invalidate the Act under *Printz* and *New York*.[70] The dissent viewed the Act as merely a congressionally approved method to regulate the release of personal information for those states choosing to do so.[71] In *New York*, the statute was invalidated largely because of a fear of lack of political accountability, however, political accountability is not a concern with the DPPA.[72]

Finally, the dissent rejected the majority's argument concerning Congress' inability to regulate "States as States," contending that the argument "had no current force."[73] The dissent articulated that according to Article VI, clause 2 of the Constitution, as long as the federal government remains within its constitutionally-imposed boundaries, it may "direct or forbid the states to do any number of fundamental things by . . . exercising its fundamental powers of preemption."[74] By promulgating an approved congressional method to regulate the release of personal information, Congress is simply exercising its preemption power.[75]

In sum, the dissent failed to see "how the DPPA's lack of general applicability require[d] its invalidation" and therefore concluded that the DPPA was not a violation of the Tenth Amendment.[76]

IV. CONCLUSION

The Fourth Circuit held that the DPPA was not within Congress' power to promulgate under the Commerce Clause, and therefore was a violation of the Tenth Amendment. In addition, the Court found that individuals have no reasonable expectation of privacy of personal information contained in motor vehicle records. As a result, the Court of Appeals affirmed the decision of the District Court, finding that the passage of the DPPA was not a valid exercise of congressional power pursuant to Section 5 of the Fourteenth Amendment.

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[69] *Condon*, 155 F.3d at 468.

[70] *See id.*

[71] *See id.*

[72] *See id.* at 469. Any problems with political accountability will be paid by Congress.

[73] *Id.*

[74] *Id.*

[75] *See Condon*, 155 F.3d at 469.

[76] *Id.* at 470.

Travis v. Reno, 163 F.3d 1000 (7th Cir. 1998). THE SEVENTH CIRCUIT HELD THAT THE DRIVER'S PRIVACY PROTECTION ACT DOES NOT EXCEED CONGRESS' AUTHORITY UNDER THE COMMERCE CLAUSE.

I. INTRODUCTION

The original plaintiffs (five members of Wisconsin's legislature, one newspaper editor, and one attorney) and the intervening plaintiffs (the states' Division of Motor Vehicles and its director) ("Wisconsin"), claim that Congress' enactment of the Driver's Privacy Protection Act ("Act") exceeds its authority under the Commerce Clause.[1] In the alternative, they argue that the Act violates the Eleventh Amendment and is unconstitutionally discriminatory to the State.[2] The District Court held that the Act exceeds Congress' authority under the Commerce Clause because it orders the State to do as the national government directs.[3] The Seventh Circuit found that the Act is within Congress' commerce power and that it comports with the principle of federalism.[4] The court held that although this is not a neutral law in that it applies only to the States, it is nondiscriminatory in nature, and therefore constitutional.[5]

II. BACKGROUND

The Driver's Privacy Protection Act regulates the disclosure of information which States keep in drivers' records.[6] The Act forbids revealing information about a person obtained by the State's Department of Motor Vehicles in connection with a motor vehicle record, unless the Act itself permits or requires such a disclosure.[7] Wisconsin argues that the Act violates structural immunity because it permits the national government to limit the legislative and executive powers of a state.[8] Specifically, Wisconsin contends that the Act commands State Departments of Motor Vehicles to create a mechanism for determining when there is a mandatory or permissive disclosure situation.[9] Wisconsin also claims that because Congress failed to combine all information-handling rules for the entire economy into a single statute, the Act is unconstitutional.[10] Additionally, Wisconsin claims that the Act deprives the State of millions of dollars in annual revenues, because to comply with it requires costly changes to the State's procedures for handling requests for access to its motor vehicle licensing records.[11]

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[1] Travis v. Reno, 163 F.3d 1000 (1998).

[2] *See id.*

[3] *See id.* (citing 12 F. Supp. 2d 921 (W.D. Wis. 1998).

[4] *See id.*

[5] *See id.* at 1008.

[6] 18 U.S.C. § § 2721-25.

[7] *See id.*

[8] *See Travis*, 163 F.3d at 1003.

[9] *See id.*

[10] *See id.* at 1005.

[11] *See id.* at 1002 (stating that because Wisconsin had previously sold its records for

III. ANALYSIS

A. *Commerce Clause*

Congress has the power to regulate interstate commerce under Art. 1 sec. 8 cl. 3 of the United States Constitution.[12] Even though each single disclosure may have little affect on interstate commerce, the interstate component becomes high when viewed in the aggregate.[13] With this argument, the court held that Congress had the power to enact the Driver's Privacy Protection Act. However, it discussed the limitations which courts have traditionally placed on this power. Specifically, the court made an analogy between the power to enact this Act and the power to enforce a tax or regulate the national government.[14] The court discussed the history of the power to tax, stating that originally, there was an intergovernmental immunity in place by which all taxation of a governmental body was foreclosed.[15]

This immunity, however, became transformed into the present-day rule of non-discrimination which states that one governmental body may tax (or impose a regulation) on another on the grounds that it imposes an equivalent burden on those who do business with private citizens.[16] This principle ensures that participants in the public market are treated the same as participants in private ones. Wisconsin contended that the Act violated this principle in that it only applied to the states.[17] The court responded by stating that the Act affects states as owners of databases (private conduct) rather that as their role as sovereigns.[18]

The court went on to say that the Act was not unduly discriminatory to the states.[19] The court drew analogies between this legislation and the Bank Secrecy Act, the Stored Wire and Electronic Communications and Transactional Records Access Act, and the Freedom of Information Act by stating that these acts, which also regulate record-keeping and information-disclosure, have been held constitutional in the past.[20] The Driver's Privacy Protection Act should likewise

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use in creating mailing lists, among other purposes, the Act deprives Wisconsin of 8 million in annual revenues).

[12] *See id.* at 1000.

[13] *See id.* at 1002.

[14] *See Travis*, 163 F.3d at 1002-1003.

[15] *See id.* citing McCulloch v. Maryland, 17 U.S. 316 (1819); Collector v. Day, 78 U.S. 113 (1871) (extending intergovernmental tax immunity); Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429 (1895) (prohibiting all taxation of a governmental body on the ground that the power to tax was the power to destroy).

[16] *See id.*

[17] *See id.* at 1003-1004.

[18] *See id.* at 1004. (emphasis added).

[19] *See id.* at 1005.

[20] *See Travis*, 163 F.3d at 1005 (demonstrating that states often regulate the disclosure of information from databases. The Bank Secrecy Act specifically states which records banks must keep, and what information they must/must not disclose; the Stored Wires Act regulates data maintained by phone companies; and the Freedom of Information Act

be held constitutional.[21]

The court accepted the argument that this is not a neutral law which applies equally to everyone.[22] Rather, this Act applies only to the states. Withstanding its limited application, the court concluded that there are similar burdens placed upon private parties.[23] The court then went on to clarify that more than one law may need to be implemented in order to make a nondiscriminatory system by which states are treated equally to private parties.[24] In other words, justice has never required that to avoid discrimination, merely one general law must apply to all.

B. *Eleventh Amendment*

Wisconsin and the original plaintiffs argued that the Act violated the Eleventh Amendment in that, if implemented, it would authorize lawsuits against public employees in their official capacities.[25] The court refuted this argument by pointing out that that amendment addresses the location of private litigation, not the substance of the laws. It went on to state that any action would be brought by the United States under § 2723 of the Act and that the Eleventh Amendment does *not* lessen the ability of the national government to sue a state in federal court.[26] The court continued to disprove Wisconsin's concerns about the Act by stating that the statute limits suits to personal-capacity actions, by which there are no constitutional predicaments.[27]

C. *First Amendment*

The original plaintiffs argued that the Act violated the First Amendment by limiting access to public records.[28] The court had a two-fold response. First, it claimed that looking into public records is not part of the "freedom of speech" guaranteed by the First Amendment.[29] Second, the court stated that if the plaintiffs are asserting a constitutional right to the records, then they need to bring a different suit in which the defendants are the people whose actions cause the injury, not the creators of the legal edict.[30] Neither the United States, nor its Attor-

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regulates which information the national government can/must disclose).

[21] *See id.*

[22] *See id.*

[23] *See id.* at 1006.

[24] *See id.*

[25] *See id.* at 1006-1007

[26] *See Travis*, 163 F.3d at 1007.

[27] *See id.* (further stating that if a future lawsuit under § 2724 exposes the State to financial liability, there will be plenty of time to determine whether the Constitution authorizes that step. The court acknowledged that it did not address that question here.)

[28] *See id.* (the plaintiffs claimed that the Act violated the First Amendment as applied to states by the Fourteenth Amendment).

[29] *See id.* (citing Houchins v. KQED, Inc., 438 U.S. 1 (1978)).

[30] *See id.*

ney General are the proper defendants for a First Amendment suit of this type.

D. *Article 4 § 4*

Finally, the original plaintiffs claimed that the Act violated Art. 4 § 4 of the Constitution.[31] This Article asserts that the United States shall guarantee each state a Republican form of government and protect the states from domestic violence.[32] The court belittled this argument and replied: "Surely plaintiffs don't mean that all federal laws violate the Constitution when applied to the states, because they may contradict the choices made by the states' elected legislators."[33] The court further held that compliance with the Act in no way deprives a state of a "Republican form of Government."[34] The court concluded by pointing out that the Act does not interfere with the state's internal and political affairs.[35] Rather, it only attempts to regulate how the state interacts with private parties who seek information from its records.[36]

IV. CONCLUSION

Congress has the power under the Commerce Clause to pass the Driver's Privacy Protection Act. The Act regulates the states as operators of databases, and not as governmental bodies. The Act does not unduly discriminate against the states, as equivalent regulations affect private parties. The court recognized that future litigation may arise under First Amendment claims of access to the records or if the state became exposed to financial liability. Those questions, it stated, were for later courts, and beyond the scope of this action.

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[31] *See id.* at 1007-1008.

[32] *See Travis*, 163 F.3d at 1007-1008.

[33] *Id.*

[34] *See id.*

[35] *See id.*

[36] *See id.*

State of Oklahoma., ex rel Oklahoma Department of Public Safety v. United States, 161 F.3d 1266 (10th Cir. 1998). THE COURT HELD THAT THE FEDERAL DRIVER'S PRIVACY PROTECTION ACT DOES NOT INFRINGE UPON STATE POWERS IN VIOLATION OF THE TENTH AMENDMENT OF THE U.S. CONSTITUTION.

I. INTRODUCTION

The plaintiff, the State of Oklahoma, brought suit against the United States to challenge the facial constitutionality of the federal Driver's Privacy Protection Act (DPPA).[1] The plaintiff argued that the DPPA violated the Tenth Amendment by usurping powers reserved to the states.[2] The defendant maintained that the DPPA involved a valid exercise of federal Commerce Clause power.[3] The court upheld the DPPA as a legitimate exercise of federal power and recognized the preemptive effect of the federal legislation on contrary state law.

II. BACKGROUND

Oklahoma's open record laws provide public information on any individual identified in the states' motor vehicle registry.[4] With certain exceptions, the DPPA prohibits state motor vehicle agencies from knowingly disclosing "personal information" about any individual obtained "in connection with a motor vehicle record."[5] The DPPA permits the Attorney General to impose fines of up to $5000 against any motor vehicle agency with "a policy or practice of noncompliance" with the DPPA.[6] The DPPA also sanctions any individual who "knowingly discloses or makes available to any person or entity personal information obtained through a motor vehicle record."[7] Personal information includes an individual's identity, photograph, social security number, and other facts but does not include information on an individual's driving violations or accidents.[8]

Exceptions to the DPPA's non-disclosure rules permit states to reveal personal information under limited conditions. The court specifically recognized exception eleven which allows states to waive DPPA disclosure regulations by utilizing an opt-out provision.[9] To exercise the exceptions, the state must, on forms for issuance or renewal of operators permits, or identification cards, provide notice that the department may disclose personal information and offer an opportunity for

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[1] *See* State of Okla., ex rel Okla Dep't of Pub. Safety v. United States, 161 F.3d 1266, 1267 (10th Cir. 1998).

[2] *See id.*

[3] *See id.* at 1269.

[4] *See* The Oklahoma Highway Safety Code, Okla. Stat. tit. 47, § 6-117(H), Oklahoma Open Records Act, Okla. Stat. tit. 51, § 24A.5.

[5] Driver's Privacy Protection Act, 18 U.S.C. § 2721(a).

[6] *See State of Okla.*, 161 F.3d at 1267 (citing Driver's Privacy Protection Act, 18 U.S.C § 2723(b)).

[7] 18 U.S.C. §§ 2723(a), 2724, 2721(a).

[8] *See id.* at § 2725(1) & (3).

[9] *See State of Okla.*, 161 F.3d at 1267.

individuals to prohibit such disclosures.[10]

The plaintiff brought suit in the United States District Court for the Western District of Oklahoma contesting the constitutionality of the DPPA. The state sought declaratory and injunctive relief in the form of a prohibition of DPPA enforcement in Oklahoma.[11] The state alleged that the DPPA wrongfully "commandeered" the operation of the state's motor vehicle department by requiring the state to regulate through a federal program.[12] The federal government argued that the DPPA directly regulates the disclosure of information without interfering with state processes.[13] The District Court granted a permanent injunction barring enforcement of the legislation in Oklahoma.[14] The court ruled that implementation of the DPPA would unconstitutionally infringe upon state sovereignty.[15] Because Oklahoma processed an inordinately high number of requests for motor vehicle information, the costs associated with retraining agency workers to comply with the DPPA would unduly burden the state.[16] According to the District Court, the DPPA unlawfully imposed an unsubsidized federal regulatory scheme to be administered by state agencies.[17] The United States appealed the decision to the Tenth Circuit Court of Appeals.[18]

III. ANALYSIS

The Tenth Circuit premised its argument concerning the validity of the DPPA by reaffirming the legislation's presumption of constitutionality.[19] In light of this general axiom, the court considered the legitimacy of the DPPA in terms of state sovereignty by way of a fundamental Tenth Amendment analysis.[20] At issue was the proper delegation of state and federal authority with regard to implementation of the DPPA.[21]

The court's analysis focused on the applicability of several Supreme Court decisions involving issues of state sovereignty. In arguing against the constitutionality of the DPPA, the State of Oklahoma relied on two cases, *New York v. United States*, and *Printz v. United States*, which invoked the Tenth Amendment

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[10] *See* 18 U.S.C. § 2721(b)(11).

[11] *See State of Okla.*, 161 F.3d at 1268.

[12] *See id.*

[13] *See id.*

[14] State of Okla., ex rel Okla Dep't of Pub. Safety v. United States, 994 F. Supp. 1358 (W.D.Okla. 1997).

[15] *See id.* at 1363.

[16] *See id.* at 1362. The state receives nearly 1 million requests for information per year. Oklahoma would have to train agency employees as to the procedures mandated by the DPPA. The state would also have to monitor the operation of each local agency.

[17] *See id.* at 1363.

[18] *See State of Okla.*, 161 F.3d at 1268.

[19] *See id.* at 1269 (citing Rotsker v. Goldberg, 453 U.S. 57, 64 (1981); INS v. Chadha, 462 U.S. 919, 944 (1983)).

[20] *See State of Okla.*, 161 F.3d at 1269.

[21] *See id.*

to set aside federal legislation.[22]

The *New York* case involved a federal radioactive waste management statute that directed states to enact legislation regulating the disposal of locally produced nuclear waste or, alternatively, to take title to and possession of the waste.[23] Non-complying states assumed all liabilities imposed upon waste producers.[24] The Supreme Court invalidated the federal legislation on the grounds that it unlawfully commandeered the states' legislative process.[25] Because either alternative required the state to implement federal mandates, the Court ruled that Congress had interfered with state sovereignty.[26]

The *Printz* case considered the constitutionality of provisions of the Brady Handgun Violence Prevention Act that directed state officials to perform background checks and other investigative measures related to prospective handgun purchasers.[27] Ruling that Congress could not compel state administrators to implement federal programs, the Supreme Court found provisions of the Brady Handgun Violence Act unconstitutional.[28]

With regard to the DPPA, The United States argued that *New York* and *Printz* did not govern the statute's constitutionality. Unlike the federal rules at issue in *New York* and *Printz* which directed states to regulate third parties, the defendants suggested that the DPPA imposes limits directly upon state actors.[29] The defendants relied upon *South Carolina v. Baker* to substantiate their claim.[30] The federal statute at bar in that case compelled states to issue registered bonds as opposed to bearer bonds.[31] Despite treating the statute as if it directly regulated the states by prohibiting the issuance of certain types of bonds, the Court found the federal mandate constitutionally sound.[32]

In *Condon v. Reno*,[33] the court entertained additional objections to the constitutionality of the DPPA. Relying on recent Supreme Court precedent, the court invalidated the DPPA as it did not regulate state governments through rules of general applicability.[34] Because the DPPA did not govern both state and private

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[22] *See id.* (citing New York v. United States, 505 U.S. 144, 174-177 (1992); Printz v. United States, 521 U.S. 98 (1997)).

[23] *See New York*, 505 U.S. at 174-177.

[24] *See id.*

[25] *See id.* The law mandated that states legislate pursuant to federal Congressional intent or expend resources to implement their own administrative solutions.

[26] *See id.* at 178.

[27] *See Printz*, 117 S.Ct. at 2384.

[28] *See id.*

[29] *See State of Okla.*, 161 F.3d at 1270.

[30] *See id.* (citing South Carolina v. Baker 485 U.S. 505 (1988)).

[31] *See Baker*, 485 U.S. at 506-08.

[32] *See id.* at 513. Ruling that such interference with state affairs was a necessary by-product of congressional regulation, the Court found that the law did not commandeer the state legislative process.

[33] 155 F.3d 453 (4th Cir. 1988).

[34] *See Condon*, 155 F.3d at 463. (The Court discussed Garcia v. San Antonio Met. Auth., 469 U.S. 528 (1985); *Baker*, 485 U.S. 505; *New York*, 505 U.S. 144; *Printz*, 521

motor vehicle database providers, the Fourth Circuit ruled that the law violated the Tenth Amendment.[35]

In considering both Supreme Court precedent and the findings of the Fourth Circuit, the Tenth Circuit rejected arguments challenging the DPPA's constitutionality. In response to the ruling in *Condon*, the court explained that the Supreme Court has never suggested that the Tenth Amendment prohibits Congress from regulating state conduct because Congress has not concomitantly regulated similar private actors.[36]

In terms of the Supreme Court's rulings in *New York* and *Printz*, the court demonstrated that the DPPA differs markedly from the statutes respectively at issue in each case.[37] Unlike the statute under consideration in *New York*, which required states to enact legislation, the DPPA "directly regulates the disclosure of such [personal] information and preempts contrary state law"[38] The court distinguished the DPPA from the statute at issue in *Printz* by emphasizing that the DPPA does not compel state officials to enforce federal law.[39] Instead, the DPPA represents a valid exercise of Congressional power to regulate the release of information into the stream of commerce.[40] The legislation neither interferes with state legislative processes nor infringes upon the states' ability to regulate in the field of motor vehicle licensing.[41]

The court relied heavily upon the Supreme Court's decision in *South Carolina v. Baker* to reaffirm the constitutionality of the DPPA.[42] The Court, in *Baker*, explained that federal regulation of state activity was "a commonplace that presents no constitutional defect."[43] Similarly, the Supreme Court has not suggested that Congress may not exercise its preemptive authority under the Commerce Clause to directly regulate state activity.[44] The court recognized recent trends in *New York* and *Printz* to strike federal legislation that commandeers state legislative processes.[45] Because, however, when Supreme Court precedent "has direct application yet appears to rest on reasons rejected in some other lines of decision, the Court of Appeals should follow the case that directly controls."[46] The court therefore recognized the logic in *Baker* controlling and reem-

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U.S. 98 in holding that Congress may not regulate "states as states.").

[35] *See id.* at 460-463. The court explained that "Congress may only subject states to legislation that is also applicable to private parties."

[36] *See State of Okla.*, 161 F.3d at 1271.

[37] *See id.* at 1272.

[38] *Id.*

[39] *See id.*

[40] *See id.* at 1270.

[41] *See id.* at 1272.

[42] *See State of Okla.*, 161 F.3d at 1272. The *Baker* Court upheld the constitutionality of a federal statute that imposed a direct burden upon local agencies by forcing the states to issue only registered bonds.

[43] *See Baker*, 485 U.S. at 515.

[44] *See State of Okla.*, 161 F.3d at 1272.

[45] *See id.*

[46] Rodriguez de Quijas v. Shearson/Am. Exp., Inc. 490 U.S. 477, 484 (1989).

phasized the constitutionality of the DPPA in terms of the Tenth Amendment.[47]

IV. CONCLUSION

The Tenth Circuit Court of Appeals held that the DPPA represents a valid exercise of Congress' Commerce Clause powers. The federal legislation permits Congress to lawfully regulate states' abilities to disclose personal information associated with an individual's motor vehicle record. The court found that the federal mandate neither commandeers the state legislative processes nor unduly interferes with the states' regulatory abilities.

Gregory E. Peterson

[47] *See State of Okla.*, 161 F.3d at 1272.

Pryor v. Reno, 998 F.Supp. 1317 (M.D. Ala. 1998). ON CROSS-MOTIONS FOR SUMMARY JUDGMENT, THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA HELD THAT: (1) ALABAMA HAD STANDING TO BRING AN ACTION CHALLENGING THE FEDERAL DRIVER'S PRIVACY AND PROTECTION ACT (DPPA); BUT (2) DPPA DID NOT EXCEED CONGRESSIONAL AUTHORITY UNDER THE COMMERCE CLAUSE; (3) DPPA DID NOT IMPERMISSIBLY REQUIRE STATES TO REGULATE THE USERS OF INFORMATION IN VIOLATION OF THE TENTH AMENDMENT; AND (4) THE PENALTY PROVISIONS OF DPPA DID NOT VIOLATE THE ELEVENTH AMENDMENT.

I. INTRODUCTION

The plaintiffs, Bill Pryor, Attorney General of the State of Alabama, and the State of Alabama, filed an action in the United States District Court for the Middle District of Alabama, seeking: (1) a declaratory judgment that the Driver's Privacy and Protection Act (DPPA)[1] is unconstitutional under the Tenth and Eleventh Amendments to the United States Constitution, and (2) a preliminary and permanent injunction prohibiting the defendants, United States Attorney General Janet Reno and the United States, from enforcing the Act in whole or in part.[2] The DPPA regulates the sale, dissemination, and use by the state and private individuals of personal information contained in state motor vehicle records.[3] The Act prohibits "a state department of motor vehicles, and any officer, employee, or contractor, thereof, from knowingly disclosing or otherwise making available to any person or entity personal information about any individual obtained by the department in connection with a motor vehicle record."[4] The District Court held that: (1) Alabama had standing to bring an action challenging DPPA; but (2) DPPA did not exceed congressional authority under the Commerce Clause; (3) DPPA did not impermissibly require states to regulate users of information in violation of the Tenth Amendment; and (4) penalty provisions of DPPA did not violate the Eleventh Amendment.

II. BACKGROUND

In 1994, Congress passed the Driver's Privacy and Protection Act (DPPA),[5] which regulates the sale, dissemination and use by States and private individuals of personal information contained in state motor vehicle records.[6] The Act prohibits "a state department of motor vehicles, and any officer, employee, or contractor, thereof, from knowingly disclosing or otherwise making available to any person or entity personal information about any individual obtained by the department in connection with a motor vehicle record."[7] The statute extends to all

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[1] 18 U.S.C. §§ 2721-25.

[2] Pryor v. Reno, 998 F. Supp. 1317, 1319-1320 (M.D. Ala. 1998).

[3] *See id.* at 1320.

[4] *See id.*

[5] 18 U.S.C. §§ 2721-25.

[6] *See Pryor*, 998 F. Supp. at 1320.

[7] *See id.*

personal DMV information for any purpose other than a "permissible use."[8] State Departments of Motor Vehicles with a "policy or practice of substantial noncompliance" with the Act's provisions are subject to a civil penalty of up to $5,000 a day for each day of substantial noncompliance, to be imposed by the United States Attorney General.[9] The DPPA further regulates private individuals' sale or disclosure of information.[10] The Act prohibits authorized recipients of personal DMV information from reselling or re-disclosing personal information for a use for which the state could not have disclosed it in the first place.[11]

According to the defendants, Congress' purpose in enacting the DPPA was two-fold. First, Congress wished to regulate the sale of personal DMV records for use in direct marketing, as numerous states sell or give personal information to data-base compilers, who used it in compiling targeted mailing lists sold to marketers and retailers.[12] Second, Congress sought to regulate the disclosure and dissemination of personal DMV records in order to protect the privacy and safety of individuals.[13]

On September 18, 1997, Bill Pryor, Attorney General for the State of Alabama, and the State of Alabama, filed a civil action, seeking: (1) a declaratory judgment that the DPPA is unconstitutional under the Tenth and Eleventh Amendments to the United States Constitution, and (2) a preliminary and permanent injunction prohibiting defendants Janet Reno and the United States from enforcing the Act in whole or in part.[14] Specifically, the plaintiffs contended that DPPA is an unconstitutional federal directive requiring the State of Alabama, through its executive and legislature, to administer a federal program, infringing on the State's sovereign right to legislate and regulate its own citizens, in violation of the Tenth Amendment.[15] The State further contended that the penalties for noncompliance imposed by the Act violated the Eleventh Amendment.[16] The defendants, in turn, contend that the plaintiffs had no standing to bring the suit, and asserted that the DPPA passes constitutional muster.[17]

The parties filed Cross-Motions for Summary Judgment.[18] The United States District Court for the Middle District of Alabama denied the plaintiff's Motion for Summary Judgment, and allowed the defendant's Motion for Summary Judgment.[19] As such, the plaintiff's Motion for Preliminary Injunction was denied as

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[8] *See id.*

[9] *See id.* at 1321.

[10] *See id.*

[11] *See id.*

[12] *See Pryor*, 998 F. Supp. at 1321.

[13] *See id.*

[14] *See id.* at 1319-1320.

[15] *See id.* at 1322.

[16] *See id.*

[17] *See id.*

[18] *See Pryor*, 998 F. Supp. at 1322.

[19] *See id.*

moot.[20]

III. ANALYSIS

A. *Summary Judgment Standard*

The District Court set out the standard for allowing a Motion for Summary Judgment. This section has been omitted.

B. *Standing*

The "case" or "controversy" requirement of Article III of the Constitution restricts the jurisdiction of the federal courts.[21] An essential element of the "case or controversy" requirement is that plaintiffs have standing to sue.[22] To have standing, the plaintiff must allege personal injury fairly traceable to the defendant's alleged unlawful conduct and likely to be redressed by the requested relief.[23] The alleged injury must be "distinct and palpable," and not "abstract, conjectural, or hypothetical."[24]

Before reaching the merits of the case, the plaintiffs had to establish that they had in fact suffered an injury.[25] The plaintiffs put forward two grounds on which to bring the action. First, the plaintiffs argued that the State had standing to protect the "continued enforceability of its own statutes."[26] Specifically, the plaintiffs contended that the DPPA conflicted with the State's present disclosure laws, namely the Open Records Act.[27] Second, and in the alternative, the plaintiffs contended that the DPPA would impose "substantial costs" on the State minimally sufficient to establish its standing to bring suit.[28] Specifically, the plaintiffs argued that following the DPPA's restrictive disclosure guidelines would require development of a new regulatory scheme and the training of DMV staff, resulting in the State incurring substantial tangible costs.[29]

After setting forth both of the plaintiffs' arguments, the court determined that the plaintiffs had standing to bring the instant suit. Although the defendants con-

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[20] *See id.*

[21] *See id.* at 1323 (citing Raines v. Byrd, 117 S.Ct. 2312, 2317 (1997)).

[22] *See id.* (citing Lujan v. Defenders of Wildlife, 504 US 555, 561 (1992)).

[23] *See id.* (citing Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 474-475 (1982)).

[24] *See Pryor*, 998 F. Supp. at 1323 (citing Allen v. Wright, 468 U.S. 737, 751 (1984)).

[25] *See id.*

[26] *See id.*

[27] *See id.* Namely, the plaintiffs contend that the DPPA conflicts with Alabama Code §§ 32-6-14, 32-7-4, and 36-12-40. Alabama Code § 36-12-40, the "Open Records Act," states, in relevant part: "Every citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute."

[28] *See id.* at 1323-1324.

[29] *See id.* at 1324.

tended that the DPPA did not conflict with the Open Records Act,[30] the court found that no Alabama court deemed the information contained in the DMV records to be an exception to the Open Records Act.[31] Accordingly, the court found that the plaintiffs established standing on this basis. Alternatively, the court also found that the DPPA imposed "substantial costs" on the state minimally sufficient to establish standing.[32] Based upon the affidavit of the Director of the Alabama Department of Public Safety, the court found that the state had shown that it would suffer the incursion of costs sufficient to establish standing on this basis.[33]

C. *Congress has the Authority to Pass the DPPA Under the Tenth Amendment*

The Tenth Amendment provides: "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."[34] In arguing that the DPPA violated the Tenth Amendment, the plaintiffs contended that Congress exceeded its powers by passing the DPPA pursuant to the Commerce Clause.[35] Specifically, the State argued that Congress exceeded its Constitutional authority in legislating the State's release of public records, as such release is neither commerce nor an activity substantially affecting commerce.[36] The court rejected Alabama's argument, and found that Congress had a rational basis to conclude that States' disclosure of personal DMV records had a substantial, apparent, effect on interstate commerce sufficient to withstand Tenth Amendment scrutiny.[37]

When Congress seeks to regulate activities arising out of, or connected to, a commercial transaction, such activities, when viewed in the aggregate, must "substantially affect interstate commerce."[38] So long as Congress has a rational basis for concluding that a regulated activity sufficiently affects interstate com-

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[30] *See Pryor*, 998 F. Supp. at 1323.

[31] *See id.*

[32] *See id.* at 1323-1324.

[33] *See id.* at 1324 (citing Condon v. Reno, 972 F.Supp. 977, 981 n. 12 (D.S.C. 1997) (finding that evidence contained in an unrebutted affidavit of a Department of Motor Vehicles official that implementation of the DPPA would impose substantial costs and effort on the part of the Department in order for it to achieve compliance meets the requirements for standing).

[34] U.S. Const. Amend. X.

[35] *See Pryor*, 998 F. Supp. at 1324. Article I, § 8, Cl. 3 of the Constitution empowers Congress to "regulate Commerce . . . among the several states." U.S. Const. Art. I, § 8, cl. 3. Thus, Congress may: (1) regulate channels of interstate commerce; (2) regulate instrumentalities of, or persons or things in, interstate commerce; and (3) regulate intrastate activities that substantially affect interstate commerce. *See* United States v. Lopez, 514 U.S. 549, 558-559 (1995).

[36] *See Pryor*, 998 F. Supp. at 1325.

[37] *See id.* at 1326.

[38] *See id.* at 1325 (citing *Lopez*, 514 U.S. at 561)).

merce, its validity under the Commerce Clause is sound.[39] Congress had a rational basis for concluding that the States' disclosure of personal DMV records had a substantial affect on interstate commerce. First, Congress, in considering the DPPA, heard testimony revealing that personal DMV information is often used in direct marketing campaigns or resold by database-compiling companies.[40] Further, Congress learned that direct marketing is a national industry, as list compilers serve customers a "national audience" of customers.[41] Because the regulation of all states' disclosure of personal DMV records is necessary for the regulation of the interstate trade of such records, Congress had an apparent and rational basis for finding that the regulation of states' disclosure of personal DMV records had a substantial effect on interstate trade.[42] As such, the Act fell within the scope of Congress' authority pursuant to the Commerce Clause.[43]

D. *The DPPA does not Compel States to Regulate*

Congress' power under the Commerce Clause to regulate activities substantially affecting interstate commerce authorizes Congress to regulate state activities as well.[44] This authority, however, is limited, and Congress may not compel states or state officers to regulate.[45] The plaintiffs argued that the DPPA exceeded Congress' authority to regulate the states, as the statute is an unconstitutional federal directive requiring the State of Alabama to administer a federal program.[46] The court rejected this contention, and found the DPPA to be a statute that directly regulates the states, rather than one that requires the states to administer or enforce a federal regulation.[47] As such, the court found that the DPPA did not violate the Tenth Amendment.

The sum and substance of the State's argument was that, rather than regulate the commercial users of the information contained in the DMV records, the DPPA commands the states to regulate the users of the information.[48] The DPPA, Alabama contended, "commandeers the legislative processes of the states by directly compelling them to enact and enforce a federal regulatory program."[49] By relying heavily on *New York v. United States*[50] and *Printz v. United*

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[39] *See id.*

[40] *See id.* at 1326.

[41] *See id.*

[42] *See Pryor*, 998 F. Supp. at 1326.

[43] *See id.* (citing *Lopez*, 514 U.S. at 559, 566).

[44] *See id.* (citing Garcia v. San Antonio Metro. Transit Auth., 469 U.S. 528, 550 (1985) (upholding federal statute requiring states to pay their employees according to minimum wage and overtime standards).

[45] *See id.* (citing Printz v. United States, 117 S.Ct. 2365, 2384 (1997)).

[46] *See id.*

[47] *See id.* at 1329.

[48] See Pryor, 998 F. Supp. at 1327.

[49] *Id.*

[50] 505 U.S. 144 (1992) (the Federal Government may not compel the states to enact or administer a federal regulatory program).

States,[51] the plaintiffs argued that the DPPA is an attempt by Congress to require that states regulate their own activity, namely the release of DMV records. The court rejected the plaintiffs proposition, and found that the DPPA was analogous to the statute found constitutional in *South Carolina v. Baker*.[52] In *Baker*, the Court upheld the constitutionality of an Internal Revenue Code provision denying federal income tax exemptions for interest earned on state issued unregistered bonds, specifically rejecting South Carolina's argument that the provision violated the Tenth Amendment.[53] The Court rejected the State's argument that the provision, though regulating the state, nevertheless commandeers the state legislative and administrative process because the state's legislature had to amend numerous statutes to comply with the federal provision.[54] The Court reasoned that "commandeering" is an inevitable consequence of regulating a state activity.[55] States wishing to engage in the activity must take administrative and sometimes legislative action to comply with federal standards.[56] This is commonplace, the Court wrote, and presents no constitutional defect.[57]

The DPPA neither asks state officials to arrest or report violators of the statute, nor does it require states to ensure that citizens do not use, sell, or otherwise re-disclose personal DMV information.[58] In addition, the DPPA does not mandate that Alabama enact any specific legislation; nor does the Act require that the State take any specific action in furtherance of a federal goal.[59] Thus, the statute, like the one in *South Carolina v. Baker*, is one which directly regulates the states, rather than one requiring the states to administer or enforce federal regulations.[60] Moreover, the fact that the State may have to take action to comply with federal standards regulating that activity is commonplace and not constitutionally defective.[61] This distinguishes the DPPA from the provisions at issue in *New York* and *Printz*, and, thus, the DPPA presents no constitutional defect.

E. *The Eleventh Amendment*

The Eleventh Amendment provides: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or

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[51] 117 S.Ct. 2365 (1997) (the Federal Government may neither issue directives requiring the states to address particular problems, nor command the states' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program).

[52] *See Pryor*, 998 F. Supp at 1329 (citing South Carolina v. Baker, 485 U.S. 505 (1988)).

[53] *See id.*

[54] *See id.*

[55] *See id.*

[56] *See id.*

[57] *See id.*

[58] *See Pryor*, 998 F. Supp. at 1329.

[59] *See id.* at 1330.

[60] *See id.*

[61] *See id.* at 1330 (citing *Baker*, 485 U.S. at 514-515).

prosecuted against one of the United States by Citizens of another State, or by citizens or Subjects of any Foreign State."[62] In essence, the Eleventh Amendment bars suits in federal court by private parties seeking to impose a liability which must be paid from public funds in the state treasury.[63] The Eleventh Amendment, however, does not bar suits that impose individual or personal liability on state officials.[64] The plaintiffs argued that two provisions of the DPPA violate the Eleventh Amendment. Specifically, § 2723(b) of the Act provides for a $5,000 a day civil penalty for non-compliance.[65] In addition, the Act provides for a civil damages remedy against a person who knowingly discloses personal information from a motor vehicle record.[66] The court, in rejecting the plaintiffs' contentions, found that the DPPA did not authorize suits by private individuals against the state, and thus did not violate the Eleventh Amendment.[67]

The definitional section of the DPPA indicates that any suit authorized by the DPPA against "any person" knowingly disclosing personal information from a motor vehicle record excludes suits against the state or state agencies.[68] Specifically, "person" means an individual, organization, or entity, but does not include a state or agency.[69] Thus, by its own terms, the Act authorizes private suits against individuals, but precludes suits against the state.[70] The court rejected Alabama's argument that because only state employees have access and ability to make initial release of personal DMV records, suits against state employees for following state law "must necessarily be a claim against the state and therefore subject to Eleventh Amendment immunity."[71] The court found that the plain meaning of the statute did not authorize suits by private individuals against the state. Because suits against the state are precluded, there is no violation of the Eleventh Amendment.

IV. CONCLUSION

The United States District Court for the Middle District of Alabama held that the State of Alabama had standing to bring the an action challenging the DPPA

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[62] U.S. Const. Amend. XI.

[63] *See Pryor*, 998 F.Supp. at 1331 (citing Hafer v. Melo, 502 U.S. 21, 30 (1991)).

[64] *See id.* (citing *Hafer*, 502 U.S. at 30-31).

[65] "Any State department of motor vehicles that has a policy or practice of substantial noncompliance with this chapter shall be subject to a civil penalty imposed by the Attorney General of not more than $5,000 a day for each day of substantial noncompliance." 18 U.S.C. § 2723(b).

[66] "A person who knowingly obtains, discloses, or uses personal information, from a motor vehicle record, for a purpose not permitted under this chapter, shall be liable to the individual to whom the information pertains, who may bring a civil action in a United States District Court." 18 U.S.C. §2724(a).

[67] *See Pryor*, 998 F.Supp. at 1332.

[68] *See id.*

[69] 18 U.S.C. § 2725(2).

[70] *See Pryor*, 998 F.Supp. at 1332.

[71] *Id.*

because the Act conflicted with the State's present disclosure laws, namely the Open Records Act. The court, however, also found that Congress had authority to pass the DPPA under the Tenth Amendment because Congress had a rational basis to conclude that the regulation of states' disclosure of personal DMV records had a substantial affect on interstate commerce. Thus, the Act fell within the scope of Congress' authority pursuant to the Commerce Clause. Further, the court found that the DPPA did not compel the states to enact or administer a federal regulatory program. Instead, the statute was one that regulated the states, rather than one that required the states to administer or enforce federal regulations. As such, the DPPA presented no constitutional defect. Finally, the court found that the DPPA did not violate the Eleventh Amendment because the Act did not authorize suits by private individuals against the state. Therefore, on Cross-Motions for Summary Judgment, the court allowed the plaintiffs' motion, and denied the defendants' motion.

Gregory R. Youman