

PRINTZ, SHERIFF/CORONER, RAVALLI COUNTY, MONTANA v. UNITED STATES
No. 95-1478

RICHARD MACK v. UNITED STATES No. 95-1503

Argued December 3, 1996

Decided June 27, 1997

In 1992, 15,377 Americans were murdered with firearms, and 12,489 of these deaths were caused by handguns. James Brady, former White House Press Secretary, was crippled during the 1981 assassination attempt on President Ronald Reagan. He and his wife, Sarah, organized Handgun Control, Inc., and led the fight in Congress to pass legislation to cut down handgun violence.

The 1993 Brady Handgun Violence Prevention Act was passed as an amendment to the 1968 Gun Control Act. The Brady Act requires gun dealers to give a local sheriff the name of a would-be buyer, then wait five business days to hear back on the person's background. During that time, the sheriff is supposed to check state, local and national crime records, and inform the dealer if the potential buyer is a convicted felon or otherwise would be barred from purchasing a handgun. If law enforcement officers do not perform the screening duties, they may be held criminally liable.

Between the years 1993 and 1997, it was estimated by Clinton administration officials that the Brady Act had blocked 250,000 illegal gun purchases. National Rifle Association officials countered by stating that most criminals buy guns through the black market. The NRA also cited a story of a Virginia woman who tried to buy a gun but was killed by a stalker during the waiting period.

Montana Sheriff Jay Printz and Arizona Sheriff Richard Mack separately challenged the background check, saying it was time consuming and distracted their deputies from enforcing local laws. The sheriffs said states should be protected from such legislative intrusions by the Tenth Amendment, which says that constitutional powers not given to the federal government, nor explicitly removed from the states' domain, are reserved for the states and the people.

The sheriffs used as precedence to their cases a 1992 ruling, *New York v. United States*, in which the Supreme Court said Congress may not force states to enact or run a federal program. In that ruling, the Court struck down part of a federal law intended to make states responsible for the lowlevel radioactive waste they generate by drafting local legislation.

Both the Arizona and Montana Federal District Courts struck down the background checks of the Brady Law as unconstitutional, and the United States appealed. The Ninth Circuit Court of Appeals rejected the sheriffs' claims, reversing the district court's decisions, and upheld the Brady Act. Both Sheriff Printz and Sheriff Mack appealed to the United States Supreme Court.

ISSUE: Does Congress violate state sovereignty, as provided by the Tenth Amendment, by requiring local law enforcement officials to do background checks of prospective gun buyers without providing funding for the requirement?

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Voting five-to-four, the Supreme Court invalidated the provision requiring local sheriffs to check the backgrounds of gun buyers, part of the broader law known as the Brady Law. The Court upheld the law's five-day waiting period for gun buyers and said local police could do background checks on their own if they wished. Overturning the circuit court decision, the Supreme Court reaffirmed its holding in *New York v. United States (1992)*. Justice Scalia wrote for the Court:

... It is an essential attribute of the States' retained sovereignty that they remain independent and autonomous within their proper sphere of authority.... It is no more compatible with this independence and autonomy that their officers be "dragooned" ... into administering federal law than it would be compatible with the independence and autonomy of the United States that its officers be impressed into service for the execution of state laws.

... By forcing state governments to absorb the financial burden of implementing a federal regulatory program, Members of Congress can take credit for "solving " problems without having to ask their constituents to pay for the solutions with higher federal taxes. And even when the States are not forced to absorb the costs of implementing a federal program, they are still put in the position of taking the blame for its burdensomeness and for its defects....

... 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. It matters not whether policymaking is involved, and no case-by-case weighing of the burdens or benefits is necessary; such commands are fundamentally incompatible with our constitutional system of dual sovereignty....

The majority said that if the text and history of the Constitution fail to explicitly provide for congressional power in a particular area, courts should presume federal lawmakers don't have the power.

Justice O'Connor wrote in a concurring opinion that "Congress is ... free to amend the ... program to provide for its continuance on a contractual basis with the states if it wishes, as it does with a number of other federal programs."

In his concurring opinion, Justice Thomas wrote:

The Court today properly holds that the Brady Act violates the Tenth Amendment in that it compels state law enforcement officers to "administer or enforce a federal regulatory

program. " Although I join the Court's opinion in full, I write separately to emphasize that the Tenth Amendment affirms the undeniable notion that under our Constitution, the Federal Government is one of enumerated, hence limited, powers.... Accordingly, the Federal Government may act only where the Constitution authorizes it to do so.

In my "revisionist" view, the Federal Government's authority under the Commerce Clause, which merely allocates to Congress the power "to regulate Commerce ... among the several states," does not extend to the regulation of wholly intrastate, point-of-sale transactions.... Absent the underlying authority to regulate the intrastate transfer of firearms, Congress surely lacks the corollary power to impress state law enforcement officers into administering and enforcing such regulations. Although this Court has long interpreted the Constitution as ceding Congress extensive authority to regulate commerce (interstate or otherwise), I continue to believe that we must "temper our Commerce Clause jurisprudence" and return to an interpretation better rooted in the Clause's original understanding....

Even if we construe Congress' authority to regulate interstate commerce to encompass those intrastate transactions that "substantially affect" interstate commerce, I question whether Congress can regulate the particular transactions at issue here. The Constitution, in addition to delegating certain enumerated powers to Congress, places whole areas outside the reach of Congress' regulatory authority. The First Amendment, for example, is fittingly celebrated for preventing Congress from "prohibiting the free exercise" of religion or "abridging the freedom on speech. " The Second Amendment similarly appears to contain an express limitation on the government's authority.... This Court has not had recent occasion to consider the nature of the substantive right safeguarded by the Second Amendment. If, however, the Second Amendment is read to confer a personal right to "keep and bear arms, " a colorable argument exists that the Federal Government's regulatory scheme, at least as it pertains to the purely intrastate sale or possession of firearms, runs afoul of that Amendment's protections. As the parties did not raise this argument, however, we need not consider it here. Perhaps, at some future date, this Court will have the opportunity to determine whether Justice Story is correct when he wrote that the right to bear arms "has justly been considered, as the palladium of the liberties of a republic. " ...

Other than in Justice Thomas' concurrence, the Supreme Court did not deal with the Second Amendment right to bear arms in this case.

The dissenters said the Court should look to see whether anything in the Constitution explicitly denied Congress the power challenged in this case. Wrote Stevens, who was joined by Justices Souter, Ginsburg, and Breyer:

Article 1 grants the Congress the power to regulate commerce among the States.... [T]here can be no question that that provision adequately supports the regulation of commerce in handguns effected by the Brady Act....

There is not a clause, sentence, or paragraph in the entire text of the Constitution of the United States that supports the proposition that a local police officer can ignore a command contained in a statute enacted by Congress pursuant to all express delegation of power enumerated in Article 1.