

Preside or Lead?

The Attributes and Actions of Effective Regulators

39. Federal-State Jurisdiction IV: A Plea for Constitutional Literacy

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“A victory for the Tenth Amendment,” declared Arizona’s Governor—about a Supreme Court opinion that never mentioned, and had nothing to do with, the Tenth amendment, and which struck most of the state statute.

At issue was the Supremacy Clause, not the Tenth Amendment. Addressing Arizona’s 2010 immigration statute, the Court struck three provisions as preempted by federal law. The fourth provision? The Court did not decide its validity, because “[t]here is a basic uncertainty about what [it] means and how it will be enforced.” The Court allowed that provision to take effect—which is different from finding it constitutional. The Court did not affirmatively find any provision constitutional.

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