MEMORANDUM

TO:       Ms. Penny Hazelton       DATE: Nov. 13, 1984
FROM:     Lewis F. Powell, Jr.

First, my thanks for the very real help you have given my Chambers in connection with our interest in federalism and the adoption of the Tenth Amendment.

If you should be available for further research, I am interested in another aspect of the legislative history: The National Labor Relations Act, 29 USC §152(2); and Labor-Management Reporting and Disclosure Act, 29 USC §8402(e); the Occupational Safety and Health Act, 29 USC §652(5); and the Employee Retirement Insurance Security Act, 29 USC §§1003(b)(1), 1002(32); the Federal Power Act, 16 USC §824(f).

In each of these statutes - as well as several others - Congress exempted the states and their subdivisions. I am interested in knowing why Congress exempts states from certain of its major regulatory statutes but not from others. For example, the Fair Labor Standards Act, as a result of amendments since its enactment, is now fully applicable to the states and their subdivisions. Perhaps the legislative history of one or more of the statutes mentioned above sheds some light on this question.

With many thanks.

L.F.P., Jr.
Memorandum

TO: Justice Lewis F. Powell, Jr.
FROM: Penny A. Hazelton
       Assistant Librarian for Research Services

DATE: November 16, 1984
RE: States and Federal Regulatory Agencies

Thank you for the kind words expressed in your November 13, 1984 memo. However, I confess that Sara Sonet found the materials you received on the Tenth Amendment question. I have conveyed your gratitude to her. I am glad the Library could be of service.

I am working on your interesting question about the states and federal regulatory agencies. I will have something before the end of the day today (Friday).

PAH/dp
Dear Bill:

My dissent in this case was circulated this afternoon. I have tried to defend your fine opinion in National League of Cities. Having considered your reasoning more carefully, I have even a higher opinion of what you wrote in League of Cities than formerly.

If you have any inclination to write separately, I would of course welcome it.

I am sending copies of this note to the Chief and Sandra. Suggestions from any of you will be carefully considered.

Sincerely,

Justice Rehnquist

c - The Chief Justice
Justice O'Connor

LFP/vde
No. 82-1913 Garcia v. San Antonio MTA  
No. 82-1951 Donovan v. San Antonio MTA

Dear Harry,

I realize a great deal has been said already in your opinion and in Lewis' dissent. Nevertheless, I plan to add a few words of my own and I will try not to hold you up for long.

Sincerely,

Sandra

Justice Blackmun

Copies to the Conference
December 20, 1984

Re: 82-1913 - Garcia v. San Antonio Metropolitan Transit Authority
82-1951 - Donovan v. San Antonio Metropolitan Transit Authority

Dear Lewis:

I join your dissent.

Regards,

Justice Powell

Copies to the Conference

PPS: I may have some thoughts later, but I'd like to get the ball rolling.
December 26, 1984

PERSONAL

82-1913 Garcia v. San Antonio Metropolitan

Dear Sandra:

Upon my return to the Court today I was glad to find your letter to Harry indicating that you will write in this case.

You may recall that I expressed the hope that you would write. After all, you and I are the only members of the Court who have had extended experience in state and local government. Your experience, of course, was of a more important character as mine was limited to serving on Boards and Commissions.

I hope that also you will join my opinion. If there are changes that you would like for me to make, I probably would be glad to accept your views.

Sincerely,

Justice O'Connor

LFP/vde
January 24, 1985

Re: 82-1913) Garcia v. San Antonio MTA
     )
 82-1951) Donovan v. San Antonio MTA

Dear Lewis,

I will be circulating my dissent in this case shortly. I would like to join your excellent dissent also, but, frankly, I do not feel comfortable with the citations to City of Akron v. Akron Center for Reproductive Health on page 3 and in footnote 3 of your dissent. If you would not object to deleting those references, I would welcome the opportunity to join your dissent.

Sincerely,

Justice Powell
January 30, 1985

82-1913  Garcia v. San Antonio Metropolitan Transit Authority
82-1951  Donovan v. San Antonio Metropolitan Transit Authority

Dear Lewis,

Please join me in your dissenting opinion.

Sincerely,

[Signature]

Justice Powell

Copies to the Conference
February 11, 1985

82-1913 & 82-1951 Garcia v. San Antonio Metro. Transit
Auth.

Dear Sandra:

Please join me.

Sincerely,

Justice O'Connor

Copies to the Conference

LFP/vde
82-1913 Garcia v. San Antonio (Joe)
HAB for the Court 3/31/84
1st draft 6/11/84
2nd draft 6/13/84
WJB 6/11/84 - does not want to reargue
Joined by JPS 6/12/84
TM does not want to reargue
SOC wants to reargue 6/11/84
LFP voted to reargue
82-1913 Garcia v. San Antonio Metropolitan (Annmarie)

HAB for the Court 10/5/84
1st draft 10/23/84
2nd draft 12/21/84
Joined by JPS 10/23/84
TM 10/24/84
WJB 10/25/84
BRW 10/29/84

LFP dissenting
1st draft 12/19/84
2nd draft 2/11/85
Joined by CJ 12/19/84
SDO 1/30/85

SOC dissenting
1st draft 1/25/85
2nd draft 1/30/85
3rd draft 2/12/85
Joined by LFP 2/11/85

LFP will dissent 10/23/84
SOC awaits dissents and may write separate 10/23/84
SOC will dissent 12/20/84