The Court today, in its 5-4 decision, overrules National League of Cities v. Usery, 426 U.S. 833 (1976), a case in which we held that Congress lacked authority to impose the requirements of the Fair Labor Standards Act on state and local governments. Because I believe this decision substantially alters the federal system embodied in the Constitution, I dissent.

I

There are, of course, numerous examples over the history of this Court in which prior decisions have been reconsidered and overruled. I can recall, however, no case in which the principle of stare decisis was ignored as flagrantly as we now witness. The reasoning of the Court in National League of Cities, following some changes in the composition of the Court, had overruled Maryland v. Wirtz, 392 U.S. 183 (1968). Un-
Cities, and the principle applied there, have been reiterated consistently over the past eight years. Since its decision in 1976, National League of Cities has been cited and quoted in opinions joined by every member of the present Court. Hodel v. Virginia Surface Mining & Recl. Assn., 452 U. S. 264, 287-293 (1981); United Transportation Union v. Long Island R. R., 455 U. S. 678, 684-686 (1982); FERC v. Mississippi, 456 U. S. 742, 764-767 (1982). Less than three years ago, in Long Island R. R., supra, a unanimous Court reaffirmed the principles of National League of Cities but found them inapplicable to the regulation of a railroad heavily engaged in interstate commerce. The Court stated:

"The key prong of the National League of Cities test applicable to this case is the third one [repeated and reformulated in Hodel], which examines whether 'the states' compliance with the federal law would directly impair their ability to structure integral operations in areas of traditional governmental functions.'"

455 U. S., at 684. The Court in that case recognized that the test "may at times be a difficult one," ibid., but it was considered in that unanimous decision as settled constitutional doctrine.

As recently as June 1, 1982 the five Justices who constitute the majority in this case also were the majority in FERC v. Mississippi. In that case, the Court said:

"In National League of Cities, supra, for example, the Court made clear that the State's regulation of its relationship with its employees is an 'undoubted attribute of state sovereignty.' 426 U. S., at 845. Yet, by holding 'unimpaired' California v. Taylor, 353 U. S. 553 (1957), which upheld a federal labor regulation as applied to state railroad employees, 426 U. S., at 854. n. 18, National League of Cities acknowledged that not all aspects like National League of Cities, the holding of Wirtz had not been repeatedly accepted by our subsequent decisions.
of a State's sovereign authority are immune from federal control."

426 U. S., at 764 n. 28. The Court went on to say that even where the requirements of the National League of Cities standard are met, "'[t]here are situations in which the nature of the federal interest advanced may be such that it justifies state submission.'" Ibid., quoting Hodel, supra, 452 U. S., at 288 n. 29. The joint federal/state system of regulation in FERC was such a "situation," but there was no hint in the Court's opinion that National League of Cities—or its basic standard—was subject to the infirmities discovered today. The doctrine of stare decisis is never entirely persuasive on a constitutional question. City of Akron v. Akron Center for Reproductive Health, 462 U. S. 416, — (1983). Nevertheless, even in such a case, however, a "departure from the doctrine of stare decisis demands special justification." Arizona v. Rumsey, — U. S. — (1984). See also Oregon v. Kennedy, 456 U. S. 687, 691-692 n. 34 (1982) (JUSTICE STEVENS, concurring). In the present case, the five Justices who compose the majority today participated in National League of Cities and the cases reaffirming it.\(^2\) The stability of judicial decision, and with it respect for the authority of this Court, are not served by the abrupt overruling of multiple precedents we witness in this case.\(^3\)

Whatever effect the Court's decision may have in weakening the application of stare decisis, it is likely to be less important than what the Court has done to the Constitution.


\(^2\)As we observed recently, "stare decisis is a doctrine that demands respect in a society governed by the rule of law." City of Akron v. Akron Center for Reproductive Health, Inc., — U. S. — (1983). In this respect, stare decisis represents "a natural evolution from the very nature of our institutions." Lile, "Some Views on the Rule of Stare Decisis," 4 Va. L. Rev. 955,956 (1916).
itself. A unique feature of the United States is the federal system guaranteed by the Constitution and implicit in the very name of our country. Despite some genuflecting in Court's opinion to the concept of federalism, today's decision effectively reduces the Tenth Amendment to meaningless rhetoric when Congress acts pursuant to the Commerce Clause. The Court holds that the Fair Labor Standards Act ("FLSA") "contravened no affirmative limit on Congress' power under the Commerce Clause" to determine the wage rates and hours of employment of all state and local employees. Ante, at 27. In rejecting the traditional view of our federal system, the Court states:

"Apart from the limitation on federal authority inherent in the delegated nature of Congress' Article I powers, the principal means chosen by the Framers to ensure the role of the states in the federal system lies in the structure of the Federal Government itself."

Ante, at 21-22 (emphasis added).

To leave no doubt about its intention, the Court renounces its decision in National League of Cities because it "inevitably invites an unelected federal judiciary to make decisions about which state policies its favors and which ones it dislikes." Ante, at 17. In other words, the extent to which the States may exercise their authority, when Congress purports to act under the Commerce Clause, henceforth is to be determined from time to time by political decisions made by members of the federal government, decisions the Court says will not be subject to judicial review. I note that it does not seem to have occurred to the Court that it—an unelected majority of five Justices—today rejects almost 200 years of the understanding of the constitutional status of federalism. In doing so, there is only a single passing reference to the Tenth Amendment. Nor is so much as a dictum of any court cited in support of the view that the role of the States in the federal system may depend upon the grace of elected federal of-
ficials, rather than on the Constitution as interpreted by this Court.

In my opinion that follows, Part II addresses the Court's criticisms of National League of Cities. Part III reviews briefly the understanding of federalism that ensured the ratification of the Constitution and the extent to which this Court, until today, has recognized that the States retain a significant measure of sovereignty in our federal system. Part IV considers the applicability of the FLSA to the indisputably local service provided by an urban transit system.

II

The Court finds that the test of State immunity approved in National League of Cities and its progeny is unworkable and unsound in principle. In finding the test to be unworkable, the Court begins by mischaracterizing National League of Cities and subsequent cases. In concluding that efforts to define state immunity are unsound in principle, the Court radically departs from long settled principles of constitutionalism and of the role of judicial review in our system of government.

A

Much of the Court's opinion is devoted to arguing that it is difficult to define a priori "traditional governmental functions." National League of Cities neither engaged in, nor required, such a task. The Court discusses and condemns

"In National League of Cities, we referred to the sphere of state sovereignty as including "traditional governmental functions," a realm which is, of course, difficult to define with precision. But the luxury of precise definitions is one rarely enjoyed in interpreting and applying the general provisions of our Constitution. Not surprisingly, therefore, the Court's attempt to demonstrate the impossibility of definition is unpersuasive. A number of the cases it cites simply do not involve the problem of defining governmental functions. E. g., Williams v. Eastside Mental Health Center, Inc., 669 F. 2d 671 (CA11), cert. denied, 459 U. S. 976 (1982); Friends of the Earth v. Carey, 552 F. 2d 25 (CA2), cert. denied, 434 U. S. 902 (1977). A number of others are not properly analyzed under the principles of National League of Cities, notwithstanding some of the language of the
The Court

...function[s]," "purely historical" functions, "uniquely governmental functions," and "necessary governmental services." Ante, at 10–11, 15, 16. But nowhere does it mention that National League of Cities adopted a familiar type of balancing test for determining whether Commerce Clause enactments transgress constitutional limitations imposed by the federal nature of our system of government. This omission is noteworthy, since the author of today's opinion joined National League of Cities and concurred separately to point out that the Court's opinion in that case "adopt[s] a balancing approach [that] does not outlaw federal power in areas . . . where the federal interest is demonstrably greater and where state . . . compliance with imposed federal standards would be essential." 426 U. S., at 856 (JUSTICE BLACKMUN, concurring).

In reading National League of Cities to embrace a balancing approach, JUSTICE BLACKMUN quite correctly cited the part of the opinion that reaffirmed Fry v. United States, 421 U. S. 542 (1975). The Court's analysis reaffirming Fry explicitly weighed the seriousness of the problem addressed by the federal legislation at issue in that case, against the effects of compliance on State sovereignty. 426 U. S., at 852–853. Our subsequent decisions also adopted this approach of weighing the respective interests of the States and federal government. In EEOC v. Wyoming, 460 U. S. 226 (1983),

lower courts. E. g., in United States v. Best, 573 F. 2d 1095 (CA9 1978) and Hybud Equipment Corp. v. City of Akron, 654 F. 2d 1187 (CA6 1981). Moreover, rather than carefully analyzing the case law, the Court simply lists various functions thought to be protected or unprotected by courts interpreting National League of Cities. Ante, at 9–10. In the cited cases, however, the courts considered the issue of State immunity on the specific facts at issue; they did not make blanket pronouncements that particular things inherently qualified as traditional governmental functions or did not. Having thus considered the cases out of context, it was not difficult for the Court to conclude that there is no "organizing principle" among them. See ante, at 10.

*In undertaking such balancing, we have considered, on the one hand, the strength of the federal interest in the challenged legislation and the im-
for example, the Court stated that "[t]he principle of immu-
nity articulated in National League of Cities is a functional
document . . . whose ultimate purpose is not to create a sacred
province of state autonomy, but to ensure that the unique
benefits of a federal system . . . not be lost through undue
federal interference in certain core state functions." Id., at
236. See also Hodel v. Virginia Surface Mining & Recl-
namation Ass'n, 452 U. S. 264 (1981). In overruling Na-
tional League of Cities, the Court incorrectly characterizes
the mode of analysis established therein and developed in
subsequent cases.6

Moreover, the statute at issue in this case, the FLSA, is
the identical statute that was at issue in National League of
pact of exempting the States from its reach. Central to our inquiry into
the federal interest is how closely the challenged action implicates the cen-
tral concerns of the Commerce Clause, i.e., the promotion of a national
economy and free trade among the states. See EEOC v. Wyoming, 460
U. S. 226, 244 (JUSTICE STEVENS, concurring). E. g. United Transpor-
tation Union v. Long Island Rail Road Co., 455 U. S. 678, 688 (1982) ("Con-
gress long ago concluded that federal regulation of railroad labor services is
necessary to prevent disruptions in vital rail service essential to the na-
tional economy."); FERC v. Mississippi, 456 U. S. 742, 757 (1982), ("it is
difficult to conceive of a more basic element of interstate commerce than
electric energy . . . ."). Similarly, we have considered whether exempt-
ing States from federal regulation would undermine the goals of the federal
program. See Fry v. United States, 421 U. S. 542 (1975). See also Rodel,
452 U. S. at 282 (national surface mining standards necessary to insure
competition among States does not undermine States' efforts to maintain
adequate intrastate standards). On the other hand, we have assessed the
injury done to the States if forced to comply with federal Commerce Clause

'In addition, reliance on the Court's difficulties in the tax immunity
field is misplaced. Although the Court has abandoned the "governmental/proprietary" distinction in this field, see New York v. United
States, 326 U. S. 572 (1946), it has not taken the drastic approach of relying
solely on the structure of the federal government to protect the States' im-
munity from taxation. See Massachusetts v. United States, 435 U. S. 444
(1978). Thus, faced with an equally difficult problem of defining constitu-
tional boundaries of federal action directly affecting the States, we did not
adopt the view many would think naive, that the federal government itself
will protect whatever rights the States may have.
GARCIA v. SAN ANTONIO METRO. TRANSIT AUTH.

Cities. Although JUSTICE BLACKMUN's concurrence noted that he was "not untroubled by certain possible implications of the Court's opinion" in National League of Cities, it also stated that "the result with respect to the statute under challenge here [the FLSA] is necessarily correct." 426 U. S., at 866 (emphasis added). His opinion for the Court today does not discuss the statute, nor identify any changed circumstances that warrant a different holding.

B

Today's opinion does not explain how the States' role in the electoral process guarantees that particular exercises of the Commerce Clause power will not infringe on residual State sovereignty. Members of Congress are elected from the various States, but once in office they are members of the federal government. Although the States participate in the Electoral College, this is hardly a reason to view the President as a representative of the States' interest against fed-

1 Late in its opinion, the Court suggests that after all there may be some "affirmative limits the constitutional structure might impose on federal action affecting the States under the Commerce Clause." Ante, at 27. The Court asserts that "[i]n the factual setting of these cases the internal safeguards of the political process have performed as intended." Ibid. The Court does not explain the basis for this judgment. Nor does it identify the circumstances in which the "political process" may fail and "affirmative limits" are to be imposed. Presumably, such limits are to be determined by the Judicial Branch even though it is "unelected." Today's opinion, however, has rejected the balancing standard and suggests no other standard that would enable a court to determine when there has been a malfunction of the "political process." The Court's failure to specify the "affirmative limits" on federal power, or when and how these limits are to be determined, may well be explained by the transparent fact that any such attempt would be subject to precisely the same objections on which it relies to overrule National League of Cities.

8 One can hardly imagine this Court saying that because Congress is composed of individuals, individual rights are amply protected by the legislative process. Yet, the position adopted today is indistinguishable in principle. The Tenth Amendment was adopted as an essential part of the Bill of Rights and should be viewed as such. See infra, at ——.
eral encroachment. We noted recently "the hydraulic pressure inherent within each of the separate Branches to exceed the outer limits of its power . . . ." Immigration and Naturalization Service v. Chadha, 462 U. S. 919, (1983). The Court offers no reason to think that this pressure will not operate when Congress seeks to invoke its powers under the Commerce Clause, notwithstanding the electoral role of the States."

"At one time in our history, the view that the structure of the federal government sufficed to protect the States might have had somewhat more practical, although not more logical, basis. Professor Wechsler, whose seminal article in 1954 proposed the view adopted by the Court today, predicated his argument on assumptions that simply do not accord with current reality. Professor Wechsler wrote: "National action has . . . always been regarded as exceptional in our polity, an intrusion to be justified by some necessity, the special rather than the ordinary case."

Wechsler, The Political Safeguards of Federalism: The Role of the States in the Composition and Selection of the National Government, 54 Colum. L. Rev. 543, 544 (1954). Not only is the premise of this view clearly at odds with the proliferation of national legislation over the past 30 years, but "a variety of structural and political changes in this century have combined to make Congress particularly insensitive to state and local values." Advisory Comm'n on Intergovernmental Relations (ACIR), Regulatory Federalism: Policy, Process, Impact and Reform 50 (1984). The adoption of the Seventeenth Amendment (providing for direct election of senators), the weakening of political parties on the local level, and the rise of national media, among other things, have made Congress increasingly less representative of State and local interests, and more likely to be responsive to the demands of various national constituencies. Id., at 50-51. As one observer explained, "As Senators and members of the House develop independent constituencies among groups such as farmers, businessmen, laborers, environmentalists, and the poor, each of which generally supports certain national initiatives, their tendency to identify with state interests and the positions of state officials is reduced." Kaden, "Federalism in the Courts: Agenda for the 1980s," in ACIR, The Future of Federalism in the '80s 97 (1981).

See also Kaden, Politics, Money, and State Sovereignty: The Judicial Role, 79 Colum. L. Rev. 847 (1979) (changes in political practices and the breadth of national initiatives mean that the political branches "may no longer be as well suited as they once were to the task of safeguarding the
role of the states in the federal system and protecting the fundamental value of federalism.

The Court apparently thinks that the States' success at obtaining federal funds for various projects and exemptions from the obligations of some federal statutes is indicative of the "effectiveness of the federal political process in preserving the States' interests. . . ." Ante, at 23-24. But political success is not relevant to the question whether the political processes are the proper means of enforcing constitutional limitations. The fact that Congress generally does not transgress constitutional limits on its power to reach State activities does not make judicial review any less necessary to rectify the infrequent cases in which it does do so.

The Court believes that the significant financial assistance afforded the States and localities by the federal government is relevant to the constitutionality of extending Commerce Clause enactments to the States. See ante, at 23-24, 26. This Court has never held, however, that the mere disbursement of funds by the federal government establishes a right to control activities that benefit from such funds. See Pennhurst State School v. Halderman, 451 U. S. 1, 17-18 (1981). Regardless of the willingness of the federal government to provide federal aid, the constitutional question remains the same: whether the federal statute violates the sovereign powers reserved to the States by the Tenth Amendment.

Apparently in an effort to reassure the States, the Court identifies several major statutes that thus far have not been made applicable to State governments: the Federal Power Act, 16 U. S. C. 824(f); the Labor Management Relations Act, 29 U. S. C. § 152(2); the Labor-Management Reporting and Disclosure Act, 29 U. S. C. § 402(e); the Occupational Safety and Health Act, 29 U. S. C. § 652(6); the Employee Retirement Insurance Security Act, 29 U. S. C. §§ 1002(32), 1003(b)(1); and the Sherman Act, Parker v. Brown, 317 U. S. 341 (1945). Ante, at 24. The Court does not suggest that this restraint will continue after its decision is understood. Indeed, it is unlikely that special interest groups will fail to accept the Court's open invitation to urge Congress to extend these and other statutes to apply to the States and their local subdivisions.

This Court has never before abdicated responsibility for assessing the constitutionality of challenged action on the ground that affected parties
The States' role in our system of government is a matter of constitutional law, not of legislative grace. "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." U. S. Const., Amend. 10.

More troubling than the logical infirmities in the Court's reasoning is the result of its holding, i.e., that federal political officials, invoking the Commerce Clause, are the sole judges of the limits of their own power. This result is inconsistent with the fundamental principles of our constitutional system. See, e.g., The Federalist No. 78 (Hamilton). At least since Marbury v. Madison it has been the settled province of the federal judiciary "to say what the law is" with respect to the constitutionality of acts of Congress. In rejecting the role of the judiciary in protecting the States from federal overreaching, the Court's opinion offers no explanation for ignoring the teaching of the most famous case in our history. Theoretically are able to look out for their own interests through the electoral process. As the Court noted in National League of Cities, a much stronger argument as to inherent structural protections could have been made in either Buckley v. Valeo, 424 U. S. 1 (1976) or Nye v. United States, 278 U. S. 592 (1929), than can be made here. In these cases, the President signed legislation that limited his authority with respect to certain appointments and thus arguably "it was no concern of this Court that the law violated the Constitution." 426 U. S., at 841-842 n. 12. The Court nevertheless held the laws unconstitutional because they infringed on presidential authority, the President's consent notwithstanding. The Court does not address this point; nor does it cite any authority for its contrary view.

"The Court states that the decision in National League of Cities "invite[s] an unelected federal judiciary to make decisions about which state policies it favors and which ones its dislikes." Curiously, the Court then suggests that under the application of the "traditional" governmental function analysis, "the states cannot serve as laboratories for social and economic experiment." Ante, at 17, citing Justice Brandeis' famous observation in New State Ice Co. v. Liebmann, 285 U. S. 262, 311 (1932) (Justice Brandeis, dissenting). Apparently the Court believes that when "an unelected federal judiciary" makes decisions as to whether a particular function is one for the federal or state governments, the States no longer may
In our federal system, the States have a major role that cannot be preempted by the national government. As contemporaneous writings and the debates at the ratifying conventions make clear, the States' ratification of the Constitution was predicated on this understanding of federalism. Indeed, the Tenth Amendment was adopted specifically to ensure that the important role promised the States by the proponents of the Constitution was realized.

Much of the initial opposition to the Constitution was rooted in the fear that the national government would be too powerful and eventually would eliminate the States as viable political entities. This concern was voiced repeatedly until proponents of the Constitution made assurances that a bill of rights, including a provision explicitly reserving powers in the States, would be among the first business of the new Congress. Samuel Adams argued, for example, that if the several States were to be joined in "one entire Nation, under one Legislature, the Powers of which shall extend to every Subject of Legislation, and its Laws be supreme & controul the whole, the Idea of Sovereignty in these States must be lost."

Letter from Samuel Adams to Richard Henry Lee (Dec. 3, 1787), reprinted in Anti-Federalists versus Federalists 159 (J. Lewis ed. 1967). Likewise, George Mason feared that "the general government being paramount to, and in every respect more powerful than the state governments, the latter must give way to the former." Address in the Ratifying Convention of Virginia (June 4-12 1788), reprinted in Anti-Federalists versus Federalists, supra, at 208-209.

engage in "social and economic experiment." Ante, at 17. The Court's decision putting federal Commerce Clause enactments beyond judicial review, however, surely does not enhance the States' opportunities to serve as "laboratories."

engage in "social and economic experiment." Ante, at 17. The Court's decision putting federal Commerce Clause enactments beyond judicial review, however, surely does not enhance the States' opportunities to serve as "laboratories."
Antifederalists raised these concerns in almost every State ratifying convention. See generally Elliot, Debates in the Several State Conventions on the Adoption of the Federal Constitution (1854). As a result, eight States voted for the Constitution only after proposing amendments to be adopted after ratification. All eight of these included among their recommendations some version of what later became the Tenth Amendment. Ibid. So strong was the concern that the proposed Constitution was seriously defective without a specific bill of rights, including a provision reserving powers to the States, that in order to secure the votes for ratification, the Federalists eventually conceded that such provisions were necessary. See Schwartz, A Documentary History of the Bill of Rights, supra, at 505 and passim. It was thus generally agreed that consideration of a bill of rights would be among the first business of the new Congress. See generally 1 Annals of Congress 432-437 (June 8, 1789) (remarks of James Madison). Accordingly, the ten amendments that we know as the Bill of Rights were proposed and adopted early in the first session of the First Congress. Schwartz, A Documentary History of the Bill of Rights, supra, 963-1167.

This history, which the Court simply ignores, documents the integral role of the the Tenth Amendment in our constitutional theory. It exposes as well, I believe, the fundamental character of the Court's error today. Far from being "unsound in principle," ante, at 18, judicial enforcement of the

14 Opponents of the Constitution were particularly dubious of the Federalist claim that the States retained powers not delegated to the United States in the absence of an express provision so providing. For example, James Winthrop wrote that "[i]t is a mere fallacy . . . that what rights are not given are reserved." Letters of Agrippa, reprinted in Schwartz, The Bill of Rights, supra, at 510, 511.

16 Indeed, the Virginia legislature came very close to withholding ratification of the Constitution until the adoption of a bill of rights that included, among other things, the substance of the Tenth Amendment. See Schwartz, The Bill of Rights, supra, at 782—786 and passim.
Tenth Amendment is essential to maintaining the federal system so carefully designed by the Framers and adopted in the Constitution.

The Framers had definite ideas about the nature of the Constitution's division of authority between the federal and state governments. In The Federalist No. 39, for example, Madison explained this division by drawing a series of contrasts between the attributes of a "national" government and those of the government to be established by the Constitution. While a national form of government would possess an "indefinite supremacy over all persons and things," the form of government contemplated by the Constitution instead consisted of "local or municipal authorities [which] form distinct and independent portions of the supremacy, no more subject within their respective spheres to the general authority than the general authority is subject to them, within its own sphere." The Federalist No. 39, p. 256 (J. Cooke ed. 1961).

Under the Constitution, the sphere of the proposed government extended to jurisdiction of "certain enumerated objects, only, . . . leaving to the several States a residuary and inviolable sovereignty over all other objects." Id.

Madison elaborated on the content of these separate spheres of sovereignty in The Federalist No. 45:

"The powers delegated by the proposed Constitution to the Federal Government are few and defined. Those which are to remain in the State Governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; . . . . The powers reserved to the several States will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties and properties of the people; and the internal order, improvement, and prosperity of the State."
Id., at 313. Madison considered that the operations of the federal government would be "most extensive and important in times of war and danger; those of the State Governments in times of peace and security." Ibid. As a result of this division of powers, the State governments generally would be more important than the federal government. Ibid.

The Framers believed that the separate sphere of sovereignty reserved to the States would ensure that the States would serve as an effective "counterpoise" to the power of the federal government. The States would serve this essential role because they would attract and retain the loyalty of their citizens. The roots of such loyalty, the Founders thought, were found in the objects peculiar to State government. For example, Hamilton argued that the States "regulate all those personal interests and familiar concerns to which the sensibility of individuals is more immediately awake...." The Federalist No. 17, supra, p. 107. Thus, he maintained that the people would perceive the States as "the immediate and most visible guardian of life and property," a fact which "contributes more than any other circumstance to impressing upon the minds of the people affection, esteem and reverence towards the government." Ibid. Madison took the same position, explaining that "the people will be more familiarly and minutely conversant" with the business of State governments, and "with the members of these, will a greater proportion of the people have the ties of personal acquaintance and friendship, and of family and party attachments...." The Federalist No. 46, p. 316. Like Hamilton, Madison saw the States' involvement in the everyday concerns of the people as the source of their citizens' loyalty. Id. See also Nagel, Federalism as a Fundamental Value: National League of Cities in Perspective, 1981 Sup. Ct. Rev. 81 (1981).

Thus, the harm to the States that results from federal overreaching under the Commerce Clause is not simply a matter of dollars and cents. National League of Cities, 426
U. S., at 846–851. Nor is it a matter of the wisdom or folly of certain policy choices. Cf. ante, at 17. Rather, by usurping functions traditionally performed by the States, federal overreaching under the Commerce Clause undermines the constitutionally mandated balance of power between the States and the federal government, a balance designed to protect our fundamental liberties.

C

The emasculation of the powers of the States that can result from the Court’s decision is predicated on the Commerce Clause as a power “delegated to the United States” by the Constitution. The relevant language states: “Congress shall have power . . . to regulate commerce with foreign nations and among the several states and with the Indian tribes.” Art. I, §8. Section eight identifies a score of powers, listing the authority to lay taxes, borrow money on the credit of the United States, pay its debts, and provide for the common defense and the general welfare before its brief reference to “Commerce.” It is clear from the debates leading up to the adoption of the Constitution that the commerce to be regulated was that which the states themselves were powerless to regulate. See, e. g., I M. Farrand, The Records of the Federal Convention of 1787 (rev. ed. 1937); The Federalist Nos. 7, 11, 22, 42, 45. See also EEOC v. Wyoming, 460 U. S. 226, 265 (1983) (JUSTICE POWELL, dissenting). Indeed, the language of the clause itself focuses on activities that only a national government could regulate: commerce with foreign nations and Indian tribes and “among” the several states.

To be sure, this Court has construed the Commerce Clause to accommodate unanticipated changes over the past two centuries. As these changes have occurred, the Court has had to decide whether the federal government has exceeded its authority in regulating activities beyond the capability of a single state to regulate or beyond legitimate federal interests that outweighed the authority and interests of the States.
In so doing, however, the Court properly has been mindful of the essential role of the States in our federal system. The opinion for the Court in *National League of Cities* was faithful to history in its understanding of federalism. The Court observed that "our federal system of government imposes definite limits upon the authority of Congress to regulate the activities of States as States by means of the commerce power." 426 U. S., at 842. The Tenth Amendment was invoked to prevent Congress from exercising its "power in a fashion that impairs the States' integrity or their ability to function effectively in a federal system." *Id.*, at 842–843, *quoting Fry v. United States*, 421 U. S. 542, 547 n. 7 (1975)).

This Court has recognized repeatedly that State sovereignty is a fundamental component of our system of government. More than a century ago, in *Lane County v. Oregon*, 74 U. S. (7 Wall.) 71 (1868), the Court stated that the Constitution recognized "the necessary existence of the States, and, within their proper spheres, the independent authority of the States." It concluded, as Madison did, that this authority extended to "nearly the whole charge of interior regulation . . .; to [the States] and to the people all powers not expressly delegated to the national government are reserved." *Id.*, at 76. Recently, in *Community Communications Co. v. City of Boulder*, 455 U. S. 40, 53 (1982), the Court recognized that the state action exemption from the antitrust laws was based on State sovereignty. Similarly, in *United Transportation Union v. Long Island Railroad Co.*, 455 U. S. 678, 683 (1982), although finding the Railway Labor Act applicable to a state-owned railroad, the unanimous Court was careful to say that the States possess constitutionally preserved sovereign powers.

Again, in *Federal Regulatory Commission v. Mississippi*, 456 U. S. 742, 752 (1982), in determining the constitutionality of the Public Utility Regulatory Policies Act, the Court explicitly considered whether the Act impinged on state sovereignty in violation of the Tenth Amendment. These repre-
sent only a few of the many cases in which the Court has recognized not only the role, but the importance, of state sovereignty. See also, e. g., United States v. Fry, supra; Metcalf & Eddy v. Mitchell, 269 U. S. 514 (1926); Coyle v. Oklahoma, 221 U. S. 559 (1911). As Justice Frankfurter noted, the States are not merely a factor in the "shifting economic arrangements" of our country, Kovacs v. Cooper, 336 U. S. 77, 95 (1949) (Justice Frankfurter, concurring), but constitute a "coordinate element in the system established by the Framers for governing our Federal Union." National League of Cities, supra, at 349.

D

In contrast, the Court today propounds a view of federalism that pays only lip service to the role of the States. Although it says that the States "unquestionably do 'retain[n] a significant measure of sovereign authority,'" ante, at 20 (quoting EEOC v. Wyoming, 460 U. S. 226, 269 (POWELL, J., dissenting)), it fails to recognize the broad, yet specific areas of sovereignty that the Framers intended the States to retain. Indeed, the Court barely acknowledges that the Tenth Amendment exists. 16 That Amendment states explicitly that "[t]he powers not delegated to the United States . . . are reserved to the States." U. S. Const., Amend. 10. The Court recasts this language to say that the States retain their sovereign powers "only to the extent that the Constitution has not divested them of their original powers and transferred those powers to the Federal Government." Ante, at 20. This rephrasing is not a distinction without a difference; rather, it reflects the Court's unprecedented view that Congress is free under the Commerce Clause to assume a State's traditional sovereign power without judicial review of its action. Indeed, the Court's view of federalism appears to

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16 The Court's opinion mentions the Tenth Amendment only once, when it restates the question put to the parties for reargument in this case. See ante, at 3.
relegate the States to precisely the trivial role that oppo-
ponents of the Constitution feared they would occupy."

In *National League of Cities*, we spoke of fire prevention,
police protection, sanitation, and public health as "typical of
[the services] performed by state and local governments in
discharging their dual functions of administering the public
law and furnishing public services." 426 U. S., at 561. Not
only are these activities remote from any normal concept of
interstate commerce, they are also activities that epitomize
the concerns of local, democratic self-government. See
*supra* n. 5. In emphasizing the need to protect traditional
governmental functions, we identified the kinds of activities
engaged in by state and local governments that affect the
everyday lives of people. These are services that people have
the ability to understand and evaluate as well as the right, in
a democracy, to oversee." We recognized that "it is func-

"As the amici argue, "the ability of the [S]tates to fulfill their role in the
constitutional scheme is dependent solely upon their effectiveness as in-
struments of self-government." Brief of Twenty-Four States as Amicus
Curiae 50. See also Brief of the National League of Cities *et al* as Amicus
Curiae (a brief on behalf of every major organization representing the con-
cerns of State and local governments).

The Framers recognized that the most effective democracy occurs at
local levels of government, where people with first hand knowledge of local
problems have more ready access to public officials responsible for dealing
with them. E. g., *The Federalist* No. 17, at 107; No.45, at 316. This is as
true today as it was when the Constitution was adopted. "Participation is
likely to be more frequent, and exercised at more different stages of a gov-
ernmental activity at the local level, or in regional organizations, than at
the state and federal levels. [Additionally,] the proportion of people actu-
ally involved from the total population tends to be greater, the lower the
level of government, and this, of course, better approximates the citizen
participation ideal." ACIR, Citizen Participation in the American Federal
System 98 (1978).

Moreover, we have witnessed in recent years the rise of numerous spe-
cial interest groups that engage in sophisticated lobbying, and make sub-
stantial campaign contributions to some members of Congress. These
groups are thought to have significant influence in the shaping and en-
actment of certain types of legislation. Contrary to the Court's view, a
tions such as these which governments are created to provide . . .” and that the states and local governments are better able than the national government to perform them. 426 U. S., at 851.

The Court maintains that the standard approved in National League of Cities “disserves principles of democratic self-government.” Ante, at 18. In reaching this conclusion, the Court looks myopically only to persons elected to positions in the federal government. It disregards entirely the far more effective role of democratic self-government at the state and local levels. One must compare realistically the operation of the state and local governments with that of the federal government. Federal legislation is drafted primarily by the staffs of the congressional committees. In view of the hundreds of bills introduced at each session of Congress and the complexity of many of them, it is virtually impossible for even the most conscientious legislators to be truly familiar with many of the statutes enacted. Federal departments and agencies typically are authorized to write regulations. Often these are more important than the text of the statutes. Like the original legislation, these are drafted largely by staff personnel. Thus, the administration and enforcement of federal laws and regulations necessarily are largely in the hands of staff and civil service employees. These employees may have little or no knowledge of the States and localities that will be affected by the statutes and regulations for which they are responsible. In any case, they hardly are as accessible and responsive as those who occupy analogous positions in State and local governments.

In drawing this contrast, I imply no criticism of these federal employees or the officials who are ultimately in charge. The great majority are conscientious and faithful to their duties. My point is simply that members of the immense federal bureaucracy are not elected, know less about the

"political process" that functions in this way is unlikely to safeguard the sovereign rights of States and localities.
services traditionally rendered by states and localities, and are inevitably less responsive to recipients of such services, than are state legislatures, city councils, and boards of supervisors of local agencies. Thus, while I share the Court's concern with "principles of democratic self-government," I think they are better served by National League of Cities than the Court's position today.

IV

The question presented in this case is whether the extension of the FLSA to the wages and hours of employees of a city-owned transit system unconstitutionally impinges on fundamental state sovereignty. The Court's sweeping holding does far more than simply answer this question in the negative. In overruling National League of Cities, today's opinion apparently authorizes federal control, under the auspices of the Commerce Clause, over the terms and conditions of employment of all state and local employees. Thus, for purposes of federal regulation, the Court rejects the distinction between public and private employers that had been drawn carefully in National League of Cities. The Court's action reflects a serious misunderstanding, if not an outright rejection, of the history of our country and the intention of the Framers of the Constitution.19

I return now to the balancing test approved in National League of Cities and accepted in Hodel, Long Island R. R., and FERC v. Mississippi. Under this test, the Court should consider whether the service or activity at issue is one that "the states and their political subdivisions have traditionally afforded their citizens." National League of Cities, supra, at 855. See ante, at --. One cannot think of a

19 The opinion of the Court in National League of Cities makes clear that the very essence of a federal system of government is to impose "definite limits upon the authority of Congress to regulate the activities of the States as States by means of the commerce power." See also the Court's opinion in Fry, supra, at 547 n. 7.
more fundamental and traditional activity of a State than determination of the terms and conditions of employment of its own employees. Moreover, the Court does not find in this case that the "federal interest is demonstrably greater." No such finding could have been made, for the state interest is compelling. The financial impact on States and localities of displacing their control over wages, hours, overtime regulations, pensions, and labor relations with their employees could have serious, as well as unanticipated, effects on State and local planning, budgeting, and the levying of taxes. As we said in National League of Cities, federal control also inevitably "displaces state policies regarding the manner in which [States] will structure delivery of those governmental services that citizens require." Id., at 847.

The Court emphasizes that municipal operation of an intra-city mass transit system is relatively new in the life of our country. It nevertheless is a classic example of the type of service traditionally provided by local government. It is local by definition. It is indistinguishable in principle from the traditional services of providing and maintaining streets, public lighting, traffic control, water, and sewerage systems. Services of this kind are precisely those "with which citizens are more 'familiar[ ]' and minutely conversant." The Federalist, supra, No. 46, p. 316. State and local officials of course must be intimately familiar with these services and sensitive to their quality as well as cost. Such officials also know that their constituents and the press respond to the adequacy, fair distribution, and cost of these services. It is

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"As Justice Douglas observed in his dissent in Maryland v. Wirtz, supra, extension of the FLSA to the States could "disrupt the fiscal policy of the states and threaten their autonomy in the regulation of health and education." Id., at 302.

"In Long Island R. Co. the unanimous Court recognized that "[t]his Court's emphasis on traditional governmental functions and traditional aspects of state sovereignty was not meant to impose a static historical view of state functions generally immune from federal regulation." 455 U. S., at 696."
this kind of state and local control and accountability that the Framers understood would insure the vitality and preservation of the federal system that the Constitution explicitly requires. See National League of Cities, supra, at 847–852.

V

Although the Court's opinion purports to recognize that the States retain some sovereign power, it does not identify even a single aspect of state authority that would remain when the Commerce Clause is invoked to justify federal regulation. In Maryland v. Wirtz, 392 U. S. 183 (1968), overruled by National League of Cities and today reaffirmed, the Court sustained an extension of the FLSA to certain hospitals, institutions, and schools. Although the Court's opinion in Wirtz was comparatively narrow, Justice Douglas, in dissent, wrote presciently that the Court's reading of the Commerce Clause would enable “the National Government [to] devour the essentials of state sovereignty, though that sovereignty is attested by the Tenth Amendment.” Id., at 205. Today's decision makes Justice Douglas's fear once again a realistic one.

As I view the Court's decision today as rejecting the basic precepts of our federal system and limiting the constitutional role of judicial review, I dissent.
JUSTICE POWELL, dissenting.

The Court today, in its 5-4 decision, overrules National League of Cities v. Usery, 426 U.S. 833 (1976), a case in which we held that Congress lacked authority to impose the requirements of the Fair Labor Standards Act on state and local governments. Because I believe this decision substantially alters the federal system embodied in the Constitution, I dissent.

I

There are, of course, numerous examples over the history of this Court in which prior decisions have been reconsidered and overruled. A few of recent instances in which perhaps the principle of stare decisis was ignored as flagrantly as we now witness. 1 The reasoning of the Court in National League of

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1 National League of Cities, following some changes in the composition of the Court, had overruled Maryland v. Wirtz, 392 U. S. 183 (1968). Un-
Cities, and the principle applied there, have been reiterated consistently over the past eight years. Since its decision in 1976, National League of Cities has been cited and quoted in opinions joined by every member of the present Court. Hodel v. Virginia Surface Mining & Recl. Assn., 452 U. S. 264, 287–293 (1981); United Transportation Union v. Long Island R. R., 455 U. S. 678, 684–686 (1982); FERC v. Mississippi, 456 U. S. 742, 764–767 (1982). Less than three years ago, in Long Island R. R., supra, a unanimous Court reaffirmed the principles of National League of Cities but found them inapplicable to the regulation of a railroad heavily engaged in interstate commerce. The Court stated:

“The key prong of the National League of Cities test applicable to this case is the third one [repeated and reformulated in Hodel], which examines whether ‘the states’ compliance with the federal law would directly impair their ability to structure integral operations in areas of traditional governmental functions.”

455 U. S., at 684. The Court in that case recognized that the test “may at times be a difficult one,” ibid., but it was considered in that unanimous decision as settled constitutional doctrine.

As recently as June 1, 1982 the five Justices who constitute the majority in this case also were the majority in FERC v. Mississippi. In that case, the Court said:

“In National League of Cities, supra, for example, the Court made clear that the State’s regulation of its relationship with its employees is an ‘undoubted attribute of state sovereignty.’ 426 U. S., at 845. Yet, by holding ‘unimpaired’ California v. Taylor, 353 U. S. 553 (1957), which upheld a federal labor regulation as applied to state railroad employees, 426 U. S., at 854. n. 18, National League of Cities acknowledged that not all aspects like National League of Cities, the holding of Wirtz had not been repeatedly accepted by our subsequent decisions.”
of a State's sovereign authority are immune from federal control."

426 U. S., at 764 n. 28. The Court went on to say that even where the requirements of the National League of Cities standard are met, "[t]here are situations in which the nature of the federal interest advanced may be such that it justifies state submission." *Ibid.*, quoting *Hodel*, *supra*, 452 U. S., at 288 n. 29. The joint federal/state system of regulation in *FERC* was such a "situation," but there was no hint in the Court's opinion that National League of Cities—or its basic standard—was subject to the infirmities discovered today.

The doctrine of *stare decisis* is never entirely persuasive on a constitutional question. *City of Akron v. Akron Center for Reproductive Health*, 462 U. S. 416, —— (1983). Nevertheless, even in such a case, however, a "departure from the doctrine of *stare decisis* demands special justification." *Arizona v. Rumsey*, —— U. S. —— (1984). See also *Oregon v. Kennedy*, 456 U. S. 667, 691–692 n. 34 (1982) (JUSTICE STEVENS, concurring). In the present case, the five Justices who compose the majority today participated in National League of Cities and the cases reaffirming it. The stability of judicial decision, and with it respect for the authority of this Court, are not served by the overruling of multiple precedents we witness in this case.

Whatever effect the Court's decision may have in weakening the application of *stare decisis*, it is likely to be less important than what the Court has done to the Constitution.

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2As we observed recently, "*stare decisis* is a doctrine that demands respect in a society governed by the rule of law." *City of Akron v. Akron Center for Reproductive Health, Inc.*, —— U. S. —— (1983). In this respect, *stare decisis* represents "a natural evolution from the very nature of our institutions." Lile, "Some Views on the Rule of *Stare Decisis*," 4 Va. L. Rev. 996 (1916).
itself. A unique feature of the United States is the federal system guaranteed by the Constitution and implicit in the very name of our country. Despite some genuflecting in Court's opinion to the concept of federalism, today's decision effectively reduces the Tenth Amendment to meaningless rhetoric when Congress acts pursuant to the Commerce Clause. The Court holds that the Fair Labor Standards Act ["FLSA"] "contravened no affirmative limit on Congress' power under the Commerce Clause" to determine the wage rates and hours of employment of all state and local employees. *Ante*, at 27. In rejecting the traditional view of our federal system, the Court states:

"Apart from the limitation on federal authority inherent in the delegated nature of Congress' Article I powers, the principal means chosen by the Framers to ensure the role of the states in the federal system lies in the structure of the Federal Government itself."

*Ante*, at 21–22 (emphasis added).

To leave no doubt about its intention, the Court renounces its decision in *National League of Cities* because it "inevitably invites an unelected federal judiciary to make decisions about which state policies its favors and which ones it dislikes." *Ante*, at 17. In other words, the extent to which the States may exercise their authority, when Congress purports to act under the Commerce Clause, henceforth is to be determined from time to time by political decisions made by members of the federal government, decisions the Court says will not be subject to judicial review. I note that it does not seem to have occurred to the Court that it—an unelected majority of five Justices—today rejects almost 200 years of the understanding of the constitutional status of federalism. In doing so, there is only a single passing reference to the Tenth Amendment. Nor is so much as a dictum of any court cited in support of the view that the role of the States in the federal system may depend upon the grace of elected federal of-
officials, rather than on the Constitution as interpreted by this Court.

In my opinion that follows, Part II addresses the Court's criticisms of National League of Cities. Part III reviews briefly the understanding of federalism that ensured the ratification of the Constitution and the extent to which this Court, until today, has recognized that the States retain a significant measure of sovereignty in our federal system. Part IV considers the applicability of the FLSA to the indisputably local service provided by an urban transit system.

II

The Court finds that the test of State immunity approved in National League of Cities and its progeny is unworkable and unsound in principle. In finding the test to be unworkable, the Court begins by mischaracterizing National League of Cities and subsequent cases. In concluding that efforts to define state immunity are unsound in principle, the Court radically departs from long settled principles of constitutionalism and of the role of judicial review in our system of government.

A

Much of the Court's opinion is devoted to arguing that it is difficult to define a priori "traditional governmental functions." National League of Cities neither engaged in, nor required, such a task.4 The Court discusses and condemns

4 In National League of Cities, we referred to the sphere of state sovereignty as including "traditional governmental functions," a realm which is, of course, difficult to define with precision. But the luxury of precise definitions is one rarely enjoyed in interpreting and applying the general provisions of our Constitution. Not surprisingly, therefore, the Court's attempt to demonstrate the impossibility of definition is unpersuasive. A number of the cases it cites simply do not involve the problem of defining governmental functions. E. g., Williams v. Eastside Mental Health Center, Inc., 669 F. 2d 671 (CA11), cert. denied, 459 U. S. 976 (1982); Friends of the Earth v. Carey, 552 F. 2d 25 (CA2), cert. denied, 434 U. S. 902 (1977). A number of others are not properly analyzed under the principles of National League of Cities, notwithstanding some of the language of the
as standards "traditional governmental function[s]," "purely historical" functions, "uniquely" governmental functions," and "necessary" governmental services." Ante, at 10–11, 15, 16. But nowhere does it mention that National League of Cities adopted a familiar type of balancing test for determining whether Commerce Clause enactments transgress constitutional limitations imposed by the federal nature of our system of government. This omission is noteworthy, since the author of today's opinion joined National League of Cities and concurred separately to point out that the Court's opinion in that case "adopt[s] a balancing approach [that] does not outlaw federal power in areas . . . where the federal interest is demonstrably greater and where state . . . compliance with imposed federal standards would be essential." 426 U. S., at 856 (JUSTICE BLACKMUN, concurring).

In reading National League of Cities to embrace a balancing approach, JUSTICE BLACKMUN quite correctly cited the part of the opinion that reaffirmed Fry v. United States, 421 U. S. 542 (1975). The Court's analysis reaffirming Fry explicitly weighed the seriousness of the problem addressed by the federal legislation at issue in that case, against the effects of compliance on State sovereignty. 426 U. S., at 852–853. Our subsequent decisions also adopted this approach of weighing the respective interests of the States and federal government. In EEOC v. Wyoming, 460 U. S. 226 (1983), lower courts. E. g., in United States v. Best, 573 F. 2d 1086 (CA9 1978) and Hybud Equipment Corp. v. City of Akron, 654 F. 2d 1187 (CA6 1981). Moreover, rather than carefully analyzing the case law, the Court simply lists various functions thought to be protected or unprotected by courts interpreting National League of Cities. Ante, at 9–10. In the cited cases, however, the courts considered the issue of State immunity on the specific facts at issue; they did not make blanket pronouncements that particular things inherently qualified as traditional governmental functions or did not. Having thus considered the cases out of context, it was not difficult for the Court to conclude that there is no "organizing principle" among them. See ante, at 10.

In undertaking such balancing, we have considered, on the one hand, the strength of the federal interest in the challenged legislation and the im-
for example, the Court stated that “[t]he principle of immunity articulated in National League of Cities is a functional doctrine . . . whose ultimate purpose is not to create a sacred province of state autonomy, but to ensure that the unique benefits of a federal system . . . not be lost through undue federal interference in certain core state functions.” *Id.*, at 236. See also *Hodel v. Virginia Surface Mining & Reclamation Ass'n*, 452 U. S. 264 (1981). In overruling *National League of Cities*, the Court incorrectly characterizes the mode of analysis established therein and developed in subsequent cases. 6

Moreover, the statute at issue in this case, the FLSA, is the identical statute that was at issue in *National League of
EEOC v. Wyoming*, 460 U. S. 226, 244 (JUSTICE STEVENS, concurring). *E. g.* *United Transportation Union v. Long Island Rail Road Co.*, 455 U. S. 678, 688 (1982) (“Congress long ago concluded that federal regulation of railroad labor services is necessary to prevent disruptions in vital rail service essential to the national economy.”); *FERC v. Mississippi*, 456 U. S. 742, 757 (1982), (“it is difficult to conceive of a more basic element of interstate commerce than electric energy . . . .”). Similarly, we have considered whether exempting States from federal regulation would undermine the goals of the federal program. See *Fry v. United States*, 421 U. S. 542 (1975). See also *Hodel*, 452 U. S. at 282 (national surface mining standards necessary to insure competition among States does not undermine States' efforts to maintain adequate intrastate standards). On the other hand, we have assessed the injury done to the States if forced to comply with federal Commerce Clause enactments. See *National League of Cities*, 426 U. S., at 846-851.

In addition, reliance on the Court's difficulties in the tax immunity field is misplaced. Although the Court has abandoned the “governmental/proprietary” distinction in this field, see *New York v. United States*, 326 U. S. 572 (1946), it has not taken the drastic approach of relying solely on the structure of the federal government to protect the States' immunity from taxation. See *Massachusetts v. United States*, 435 U. S. 444 (1978). Thus, faced with an equally difficult problem of defining constitutional boundaries of federal action directly affecting the States, we did not adopt the view many would think naive, that the federal government itself will protect whatever rights the States may have.
Cities. Although JUSTICE BLACKMUN's concurrence noted that he was "not untroubled by certain possible implications of the Court's opinion" in National League of Cities, it also stated that "the result with respect to the statute under challenge here [the FLSA] is necessarily correct." 426 U. S., at 856 (emphasis added). His opinion for the Court today does not discuss the statute, nor identify any changed circumstances that warrant a different holding.

B

Today's opinion does not explain how the States' role in the electoral process guarantees that particular exercises of the Commerce Clause power will not infringe on residual State sovereignty. Members of Congress are elected from the various States, but once in office they are members of the federal government. Although the States participate in the Electoral College, this is hardly a reason to view the President as a representative of the States' interest against fed-

1 Late in its opinion, the Court suggests that after all there may be some "affirmative limits the constitutional structure might impose on federal action affecting the States under the Commerce Clause." Ante, at 27. The Court asserts that "[i]n the factual setting of these cases the internal safeguards of the political process have performed as intended." Ibid. The Court does not explain the basis for this judgment. Nor does it identify the circumstances in which the "political process" may fail and "affirmative limits" are to be imposed. Presumably, such limits are to be determined by the Judicial Branch even though it is "unelected." Today's opinion, however, has rejected the balancing standard and suggests no other standard that would enable a court to determine when there has been a malfunction of the "political process." The Court's failure to specify the "affirmative limits" on federal power, or when and how these limits are to be determined, may well be explained by the transparent fact that any such attempt would be subject to precisely the same objections on which it relies to overrule National League of Cities.

8 One can hardly imagine this Court saying that because Congress is composed of individuals, individual rights are amply protected by the political process. Yet, the position adopted today is indistinguishable in principle. The Tenth Amendment was adopted as an essential part of the Bill of Rights, and should be viewed as such. See infra, at --.
eral encroachment. We noted recently "the hydraulic pressure inherent within each of the separate Branches to exceed the outer limits of its power . . . ." *Immigration and Naturalization Service v. Chadha*, 462 U. S. 919, — (1983). The Court offers no reason to think that this pressure will not operate when Congress seeks to invoke its powers under the Commerce Clause, notwithstanding the electoral role of the States.¹

¹At one time in our history, the view that the structure of the federal government sufficed to protect the States might have had somewhat more practical, although not more logical, basis. Professor Wechsler, whose seminal article in 1954 proposed the view adopted by the Court today, predicated his argument on assumptions that simply do not accord with current reality. Professor Wechsler wrote: "National action has . . . always been regarded as exceptional in our polity, an intrusion to be justified by some necessity, the special rather than the ordinary case." Wechsler, *The Political Safeguards of Federalism: The Role of the States in the Composition and Selection of the National Government*, 54 Colum. L. Rev. 643, 544 (1954). Not only is the premise of this view clearly at odds with the proliferation of national legislation over the past 30 years, but "a variety of structural and political changes in this century have combined to make Congress particularly insensitive to state and local values." Advisory Comm'n on Intergovernmental Relations [ACIR], *Regulatory Federalism: Policy, Process, Impact and Reform* 50 (1984). The adoption of the Seventeenth Amendment (providing for direct election of senators), the weakening of political parties on the local level, and the rise of national media, among other things, have made Congress increasingly less representative of State and local interests, and more likely to be responsive to the demands of various national constituencies. *Id.*, at 50–51. As one observer explained, "As Senators and members of the House develop independent constituencies among groups such as farmers, businessmen, laborers, environmentalists, and the poor, each of which generally supports certain national initiatives, their tendency to identify with state interests and the positions of state officials is reduced." Kaden, "Federalism in the Courts: Agenda for the '80s," in ACIR, *The Future of Federalism in the '80s* 97 (1981).

See also Kaden, Politics, Money, and State Sovereignty: The Judicial Role, 79 Colum. L. Rev. 847 (1979) (changes in political practices and the breadth of national initiatives mean that the political branches "may no longer be as well suited as they once were to the task of safeguarding the
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10 GARCIA v. SAN ANTONIO METRO. TRANSIT AUTH.

The Court apparently thinks that the States' success at obtaining federal funds for various projects and exemptions from the obligations of some federal statutes is indicative of the "effectiveness of the federal political process in preserving the States' interests. . . ." Ante, at 23–24. But political success is not relevant to the question whether the political processes are the proper means of enforcing constitutional limitations. The fact that Congress generally does not transgress constitutional limits on its power to reach State activities does not make judicial review any less necessary to rectify the infrequent cases in which it does so.

role of the states in the federal system and protecting the fundamental value of federalism..." and ACIR, Regulatory Federalism, supra, at 1–24 (detailing the "dramatic shift" in kind of federal regulation applicable to the States over the past two decades). Thus, even if one were to ignore the numerous problems with the Court's position in terms of constitutional theory, there would remain serious questions as to its factual premises.

"The Court believes that the significant financial assistance afforded the States and localities by the federal government is relevant to the constitutionality of extending Commerce Clause enactments to the States. See ante, at 23–24, 25. This Court has never held, however, that the mere disbursement of funds by the federal government establishes a right to control activities that benefit from such funds. See Pennhurst State School v. Halderman, 461 U.S. 1, 17–18 (1981). Regardless of the willingness of the federal government to provide federal aid, the constitutional question remains the same: whether the federal statute violates the sovereign powers reserved to the States by the Tenth Amendment.

Apparent in an effort to reassure the States, the Court identifies several major statutes that thus far have not been made applicable to State governments: the Federal Power Act, 16 U. S. C. 824(f); the Labor Management Relations Act, 29 U. S. C. § 158(2); the Labor-Management Reporting and Disclosure Act, 29 U. S. C. § 402(e); the Occupational Safety and Health Act, 29 U. S. C. § 652(5); the Employee Retirement Income Security Act, 29 U. S. C. §§ 1002(32), 1003(b)(1); and the Sherman Act, Parker v. Brown, 317 U. S. 341 (1945). Ante, at 24. The Court does not suggest that this restraint will continue after its decision is understood. Indeed, it is unlikely that special interest groups will fail to accept the Court's open invitation to urge Congress to extend these and other statutes to apply to the States and their local subdivisions.

This Court has never before abdicated responsibility for assessing the constitutionality of challenged action on the ground that affected parties
The States' role in our system of government is a matter of constitutional law, not of legislative grace. "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." U. S. Const., Amend. 10.

More troubling than the logical infirmities in the Court's reasoning is the result of its holding, i. e., that federal political officials, invoking the Commerce Clause, are the sole judges of the limits of their own power. This result is inconsistent with the fundamental principles of our constitutional system. See, e. g., The Federalist No. 78 (Hamilton). At least since Marbury v. Madison it has been the settled province of the federal judiciary "to say what the law is" with respect to the constitutionality of acts of Congress. In rejecting the role of the judiciary in protecting the States from federal overreaching, the Court's opinion offers no explanation for ignoring the teaching of the most famous case in our history. 13

theoretically are able to look out for their own interests through the electoral process. As the Court noted in National League of Cities, a much stronger argument as to inherent structural protections could have been made in either Buckley v. Valeo, 424 U. S. 1 (1976) or Myers v. United States, 272 U. S. 52 (1926), than can be made here. In these cases, the President signed legislation that limited his authority with respect to certain appointments and thus arguably "it was no concern of this Court that the law violated the Constitution." 426 U. S., at 841-842 n. 12. The Court nevertheless held the laws unconstitutional because they infringed on presidential authority, the President's consent notwithstanding. The Court does not address this point; nor does it cite any authority for its contrary view. 14 The Court states that the decision in National League of Cities "invite[s] an unelected federal judiciary to make decisions about which state policies it favors and which ones its dislikes." Curiously, the Court then suggests that under the application of the "traditional" governmental function analysis, "the states cannot serve as laboratories for social and economic experiment." Ante, at 17, citing Justice Brandeis' famous observation in New State Ice Co. v. Liebhmann, 285 U. S. 262, 311 (1932) (Justice Brandeis, dissenting). Apparently the Court believes that when "an unelected federal judiciary" makes decisions as to whether a particular function is one for the federal or state governments, the States no longer may
In our federal system, the States have a major role that cannot be preempted by the national government. As contemporaneous writings and the debates at the ratifying conventions make clear, the States' ratification of the Constitution was predicated on this understanding of federalism. Indeed, the Tenth Amendment was adopted specifically to ensure that the important role promised the States by the proponents of the Constitution was realized.

Much of the initial opposition to the Constitution was rooted in the fear that the national government would be too powerful and eventually would eliminate the States as viable political entities. This concern was voiced repeatedly until proponents of the Constitution made assurances that a bill of rights, including a provision explicitly reserving powers in the States, would be among the first business of the new Congress. Samuel Adams argued, for example, that if the several States were to be joined in "one entire Nation, under one Legislature, the Powers of which shall extend to every Subject of Legislation, and its Laws be supreme & controul the whole, the Idea of Sovereignty in these States must be lost." Letter from Samuel Adams to Richard Henry Lee (Dec. 3, 1787), reprinted in Anti-Federalists versus Federalists 159 (J. Lewis ed. 1967). Likewise, George Mason feared that "the general government being paramount to, and in every respect more powerful than the state governments, the latter must give way to the former." Address in the Ratifying Convention of Virginia (June 4-12 1788), reprinted in Anti-Federalists versus Federalists, supra, at 208-209.

engage in "social and economic experiment." Ante, at 17. The Court's decision putting federal Commerce Clause enactments beyond judicial review, however, surely does not enhance the States' opportunities to serve as "laboratories."
Antifederalists raised these concerns in almost every State ratifying convention.\textsuperscript{14} See generally Elliot, Debates in the Several State Conventions on the Adoption of the Federal Constitution (1834). As a result, eight States voted for the Constitution only after proposing amendments to be adopted after ratification.\textsuperscript{15} All eight of these included among their recommendations some version of what later became the Tenth Amendment.\textit{Ibid.} So strong was the concern that the proposed Constitution was seriously defective without a specific bill of rights, including a provision reserving powers to the States, that in order to secure the votes for ratification, the Federalists eventually conceded that such provisions were necessary. See Schwartz, A Documentary History of the Bill of Rights, \textit{supra}, at 506 and \textit{passim}. It was thus generally agreed that consideration of a bill of rights would be among the first business of the new Congress. See generally 1 Annals of Congress 432–437 (June 8, 1789) (remarks of James Madison). Accordingly, the ten amendments that we know as the Bill of Rights were proposed and adopted early in the first session of the First Congress. Schwartz, A Documentary History of the Bill of Rights, \textit{supra}, 983–1167.

This history, which the Court simply ignores, documents the integral role of the the Tenth Amendment in our constitutional theory. It exposes as well, I believe, the fundamental character of the Court’s error today. Far from being “unsound in principle,” \textit{ante}, at 18, judicial enforcement of the

\textsuperscript{14} Opponents of the Constitution were particularly dubious of the Federalist claim that the States retained powers not delegated to the United States in the absence of an express provision so providing. For example, James Winthrop wrote that “[i]t is a mere fallacy ... that what rights are not given are reserved.” \textit{Letters of Agrippa}, reprinted in Schwartz, The Bill of Rights, \textit{supra}, at 510, 511.

\textsuperscript{15} Indeed, the Virginia legislature came very close to withholding ratification of the Constitution until the adoption of a bill of rights that included, among other things, the substance of the Tenth Amendment. See Schwartz, The Bill of Rights, \textit{supra}, at 762–766 and \textit{passim}. 
Tenth Amendment is essential to maintaining the federal system so carefully designed by the Framers and adopted in the Constitution.

The Framers had definite ideas about the nature of the Constitution’s division of authority between the federal and state governments. In The Federalist No. 39, for example, Madison explained this division by drawing a series of contrasts between the attributes of a “national” government and those of the government to be established by the Constitution. While a national form of government would possess an “indefinite supremacy over all persons and things,” the form of government contemplated by the Constitution instead consisted of “local or municipal authorities [which] form distinct and independent portions of the supremacy, no more subject within their respective spheres to the general authority than the general authority is subject to them, within its own sphere.” The Federalist No. 39, p. 256 (J. Cooke ed. 1961). Under the Constitution, the sphere of the proposed government extended to jurisdiction of “certain enumerated objects, only, . . . leav[ing] to the several States a residuary and inviolable sovereignty over all other objects.” Id.

Madison elaborated on the content of these separate spheres of sovereignty in The Federalist No. 46:

“The powers delegated by the proposed Constitution to the Federal Government are few and defined. Those which are to remain in the State Governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; . . . . The powers reserved to the several States will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties and properties of the people; and the internal order, improvement, and prosperity of the State.”
Id., at 313. Madison considered that the operations of the federal government would be “most extensive and important in times of war and danger; those of the State Governments in times of peace and security.” Ibid. As a result of this division of powers, the State governments generally would be more important than the federal government. Ibid.

The Framers believed that the separate sphere of sovereignty reserved to the States would ensure that the States would serve as an effective “counterpoise” to the power of the federal government. The States would serve this essential role because they would attract and retain the loyalty of their citizens. The roots of such loyalty, the Founders thought, were found in the objects peculiar to State government. For example, Hamilton argued that the States “regulate[e] all those personal interests and familiar concerns to which the sensibility of individuals is more immediately awake . . . .” The Federalist No. 17, supra, p. 107. Thus, he maintained that the people would perceive the States as “the immediate and most visible guardian of life and property,” a fact which “contributes more than any other circumstance to impressing upon the minds of the people affection, esteem and reverence towards the government.” Ibid.

Madison took the same position, explaining that “the people will be more familiarly and minutely conversant” with the business of State governments, and “with the members of these, will a greater proportion of the people have the ties of personal acquaintance and friendship, and of family and party attachments . . . .” The Federalist No. 46, p. 316. Like Hamilton, Madison saw the States' involvement in the everyday concerns of the people as the source of their citizens' loyalty. Id. See also Nagel, Federalism as a Fundamental Value: National League of Cities in Perspective, 1981 Sup. Ct. Rev. 81 (1981).

Thus, the harm to the States that results from federal overreaching under the Commerce Clause is not simply a matter of dollars and cents. National League of Cities, 428
U.S., at 846–851. Nor is it a matter of the wisdom or folly of certain policy choices. Cf. ante, at 17. Rather, by usurping functions traditionally performed by the States, federal overreaching under the Commerce Clause undermines the constitutionally mandated balance of power between the States and the federal government, a balance designed to protect our fundamental liberties.

C

The emasculation of the powers of the States that can result from the Court’s decision is predicated on the Commerce Clause as a power “delegated to the United States” by the Constitution. The relevant language states: “Congress shall have power . . . to regulate commerce with foreign nations and among the several states and with the Indian tribes.” Art. I, § 8. Section eight identifies a score of powers, listing the authority to lay taxes, borrow money on the credit of the United States, pay its debts, and provide for the common defense and the general welfare before its brief reference to “Commerce.” It is clear from the debates leading up to the adoption of the Constitution that the commerce to be regulated was that which the states themselves were powerless to regulate. See, e.g., 1 M. Farrand, The Records of the Federal Convention of 1787 (rev. ed. 1937); The Federalist Nos. 7, 11, 22, 42, 45. See also EEOC v. Wyoming, 460 U.S. 226, 265 (1983) (JUSTICE POWELL, dissenting). Indeed, the language of the clause itself focuses on activities that only a national government could regulate: commerce with foreign nations and Indian tribes and “among” the several states.

To be sure, this Court has construed the Commerce Clause to accommodate unanticipated changes over the past two centuries. As these changes have occurred, the Court has had to decide whether the federal government has exceeded its authority in regulating activities beyond the capability of a single state to regulate or beyond legitimate federal interests that outweighed the authority and interests of the States.
In so doing, however, the Court properly has been mindful of the essential role of the States in our federal system.

The opinion for the Court in National League of Cities was faithful to history in its understanding of federalism. The Court observed that "our federal system of government imposes definite limits upon the authority of Congress to regulate the activities of States as States by means of the commerce power." 426 U. S., at 842. The Tenth Amendment was invoked to prevent Congress from exercising its "power in a fashion that impairs the States' integrity or their ability to function effectively in a federal system." Id., at 842–843, quoting Fry v. United States, 421 U. S. 542, 547 n. 7 (1975).

This Court has recognized repeatedly that State sovereignty is a fundamental component of our system of government. More than a century ago, in Lane County v. Oregon, 74 U. S. (7 Wall.) 71 (1868), the Court stated that the Constitution recognized "the necessary existence of the States, and, within their proper spheres, the independent authority of the States." It concluded, as Madison did, that this authority extended to "nearly the whole charge of interior regulation . . .; to [the States] and to the people all powers not expressly delegated to the national government are reserved." Id., at 76. Recently, in Community Communications Co. v. City of Boulder, 455 U. S. 40, 53 (1982), the Court recognized that the state action exemption from the antitrust laws was based on State sovereignty. Similarly, in United Transportation Union v. Long Island Railroad Co., 455 U. S. 678, 683 (1982), although finding the Railway Labor Act applicable to a state-owned railroad, the unanimous Court was careful to say that the States possess constitutionally preserved sovereign powers.

Again, in Federal Regulatory Commission v. Mississippi, 456 U. S. 742, 752 (1982), in determining the constitutionality of the Public Utility Regulatory Policies Act, the Court explicitly considered whether the Act impinged on state sovereignty in violation of the Tenth Amendment. These repre-
sent only a few of the many cases in which the Court has recognized not only the role, but the importance, of state sovereignty. See also, e.g., United States v. Fry, supra; Metcalf & Eddy v. Mitchell, 269 U. S. 514 (1926); Coyle v. Oklahoma, 221 U. S. 559 (1911). As Justice Frankfurter noted, the States are not merely a factor in the “shifting economic arrangements” of our country. Kovacs v. Cooper, 336 U. S. 77, 95 (1949) (Justice Frankfurter, concurring), but constitute a “coordinate element in the system established by the Framers for governing our Federal Union.” National League of Cities, supra, at 849.

D

In contrast, the Court today propounds a view of federalism that pays only lip service to the role of the States. Although it says that the States “unquestionably do ‘retain[n] a significant measure of sovereign authority,’” ante, at 20 (quoting EEOC v. Wyoming, 460 U. S. 226, 269 (POWELL, J., dissenting)), it fails to recognize the broad, yet specific areas of sovereignty that the Framers intended the States to retain. Indeed, the Court barely acknowledges that the Tenth Amendment exists. That Amendment states explicitly that “[t]he powers not delegated to the United States . . . are reserved to the States.” U. S. Const., Amend. 10. The Court recasts this language to say that the States retain their sovereign powers “only to the extent that the Constitution has not divested them of their original powers and transferred those powers to the Federal Government.” Ante, at 20. This rephrasing is not a distinction without a difference; rather, it reflects the Court’s unprecedented view that Congress is free under the Commerce Clause to assume a State’s traditional sovereign power without judicial review of its action. Indeed, the Court’s view of federalism appears to

*The Court’s opinion mentions the Tenth Amendment only once, when it restates the question put to the parties for reargument in this case. See ante, at 5.*
relegate the States to precisely the trivial role that opponents of the Constitution feared they would occupy. 17

In National League of Cities, we spoke of fire prevention, police protection, sanitation, and public health as "typical of the services performed by state and local governments in discharging their dual functions of administering the public law and furnishing public services." 426 U. S., at 851. Not only are these activities remote from any normal concept of interstate commerce, they are also activities that epitomize the concerns of local, democratic self-government. See supra n. 5. In emphasizing the need to protect traditional governmental functions, we identified the kinds of activities engaged in by state and local governments that affect the everyday lives of people. These are services that people have the ability to understand and evaluate as well as the right, in a democracy, to oversee. 18 We recognized that "it is func-

"As the amici argue, "the ability of the [S]tates to fulfill their role in the constitutional scheme is dependent solely upon their effectiveness as instruments of self-government." Brief of Twenty-Four States as Amicus Curiae 50. See also Brief of the National League of Cities et al as Amicus Curiae (a brief on behalf of every major organization representing the concerns of State and local governments).

"The Framers recognized that the most effective democracy occurs at local levels of government, where people with first hand knowledge of local problems have more ready access to public officials responsible for dealing with them. E. g., The Federalist No. 17, at 107; No.45, at 816. This is as true today as it was when the Constitution was adopted. "Participation is likely to be more frequent, and exercised at more different stages of a governmental activity at the local level, or in regional organizations, than at the state and federal levels. [Additionally,] the proportion of people actually involved from the total population tends to be greater, the lower the level of government, and this, of course, better approximates the citizen participation ideal." ACIR, Citizen Participation in the American Federal System 95 (1979).

Moreover, we have witnessed in recent years the rise of numerous special interest groups that engage in sophisticated lobbying, and make substantial campaign contributions to some members of Congress. These groups are thought to have significant influence in the shaping and enactment of certain types of legislation. Contrary to the Court's view, a
tions such as these which governments are created to provide..." and that the states and local governments are better able than the national government to perform them. 426 U. S., at 851.

The Court maintains that the standard approved in *National League of Cities* "disserves principles of democratic self government." *Ante*, at 18. In reaching this conclusion, the Court looks myopically only to persons elected to positions in the federal government. It disregards entirely the far more effective role of democratic self-government at the state and local levels. One must compare realistically the operation of the state and local governments with that of the federal government. Federal legislation is drafted primarily by the staffs of the congressional committees. In view of the hundreds of bills introduced at each session of Congress and the complexity of many of them, it is virtually impossible for even the most conscientious legislators to be truly familiar with many of the statutes enacted. Federal departments and agencies typically are authorized to write regulations. Often these are more important than the text of the statutes. Like the original legislation, these are drafted largely by staff personnel. Thus, the administration and enforcement of federal laws and regulations necessarily are largely in the hands of staff and civil service employees. These employees may have little or no knowledge of the States and localities that will be affected by the statutes and regulations for which they are responsible. In any case, they hardly are as accessible and responsive as those who occupy analogous positions in State and local governments.

In drawing this contrast, I imply no criticism of these federal employees or the officials who are ultimately in charge. The great majority are conscientious and faithful to their duties. My point is simply that members of the immense federal bureaucracy are not elected, know less about the "political process" that functions in this way is unlikely to safeguard the sovereign rights of States and localities.
services traditionally rendered by states and localities, and are inevitably less responsive to recipients of such services, than are state legislatures, city councils, and boards of supervisors of local agencies. Thus, while I share the Court's concern with "principles of democratic self-government," I think they are better served by National League of Cities than the Court's position today.

IV

The question presented in this case is whether the extension of the FLSA to the wages and hours of employees of a city-owned transit system unconstitutionally impinges on fundamental state sovereignty. The Court's sweeping holding does far more than simply answer this question in the negative. In overruling National League of Cities, today's opinion apparently authorizes federal control, under the auspices of the Commerce Clause, over the terms and conditions of employment of all state and local employees. Thus, for purposes of federal regulation, the Court rejects the distinction between public and private employers that had been drawn carefully in National League of Cities. The Court's action reflects a serious misunderstanding, if not an outright rejection, of the history of our country and the intention of the Framers of the Constitution. 19

I return now to the balancing test approved in National League of Cities and accepted in Hodel, Long Island R. R., and FERC v. Mississippi. Under this test, the Court should consider whether the service or activity at issue is one that "the states and their political subdivisions have traditionally afforded their citizens." National League of Cities, supra, at 855. See ante, at —. One cannot think of a

19 The opinion of the Court in National League of Cities makes clear that the very essence of a federal system of government is to impose "definite limits upon the authority of Congress to regulate the activities of the States as States by means of the commerce power." See also the Court's opinion in Fry, supra, at 547 n. 7.
more fundamental and traditional activity of a State than
determination of the terms and conditions of employment of
its own employees. Moreover, the Court does not find in
this case that the "federal interest is demonstrably greater."
No such finding could have been made, for the state interest
is compelling. The financial impact on States and localities
of displacing their control over wages, hours, overtime regu­
lations, pensions, and labor relations with their employees
could have serious, as well as unanticipated, effects on State
and local planning, budgeting, and the levying of taxes.20 As
we said in National League of Cities, federal control also
inevitably "displaces state policies regarding the manner in
which [States] will structure delivery of those governmental
services that citizens require." 1d., at 847.

The Court emphasizes that municipal operation of an intra­
city mass transit system is relatively new in the life of our
country. It nevertheless is a classic example of the type of
service traditionally provided by local government. It is
local by definition. It is indistinguishable in principle from
the traditional services of providing and maintaining streets,
public lighting, traffic control, water, and sewerage sys­
tems.21 Services of this kind are precisely those "with which
citizens are more 'familiar[ ] and minutely
conversant.'" The
Federalist, supra, No. 46, p. 316. State and local officials of
course must be intimately familiar with these services and
sensitive to their quality as well as cost. Such officials also
know that their constituents and the press respond to the ade­
equacy, fair distribution, and cost of these services. It is

20 As Justice Douglas observed in his dissent in Maryland v. Wirtz,
supra, extension of the FLSA to the States could "disrupt the fiscal policy
of the states and threaten their autonomy in the regulation of health and
education." Id., at 302.

21 In Long Island R. Co. the unanimous Court recognized that "[t]he
Court's emphasis on traditional governmental functions and traditional as­
pects of state sovereignty was not meant to impose a static historical view
of state functions generally immune from federal regulation." 455 U. S.,
at 886.
this kind of state and local control and accountability that the Framers understood would insure the vitality and preservation of the federal system that the Constitution explicitly requires. See National League of Cities, supra, at 847–852.

V

Although the Court’s opinion purports to recognize that the States retain some sovereign power, it does not identify even a single aspect of state authority that would remain when the Commerce Clause is invoked to justify federal regulation. In Maryland v. Wirtz, 392 U. S. 183 (1968), overruled by National League of Cities and today reaffirmed, the Court sustained an extension of the FLSA to certain hospitals, institutions, and schools. Although the Court’s opinion in Wirtz was comparatively narrow, Justice Douglas, in dissent, wrote presciently that the Court’s reading of the Commerce Clause would enable “the National Government [to] devour the essentials of state sovereignty, though that sovereignty is attested by the Tenth Amendment.” Id., at 205. Today’s decision makes Justice Douglas’s fear once again a realistic one.

As I view the Court’s decision today as rejecting the basic precepts of our federal system and limiting the constitutional role of judicial review, I dissent.