SUPREME COURT OF THE UNITED STATES

No. 01–419

CITY OF COLUMBUS, ET AL., PETITIONERS *v.* OURS GARAGE AND WRECKER SERVICE, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[June 20, 2002]

JUSTICE SCALIA, with whom JUSTICE O'CONNOR joins, dissenting.

The dispute in the present case arises from the fact that a reference to "State" power or authority can be meant to include *all* that power or authority, including the portion exercised by political subdivisions (as, for example, in the ordinary reference to "the State's police power"); but can also be meant to include only that power or authority exercised at the state level (as, for example, in the phrase "State and local governmental authority"). The issue is whether, when 49 U. S. C. §14501(c)(2)(A) (1994 ed., Supp. V) excepts from the preclusionary command of §14501(c)(1) "the safety regulatory authority *of a State* with respect to motor vehicles," it means to except the safety regulatory authority of cities and counties as well. In my view it plainly does not.

I

There are four exceptions to the preclusionary rule of §14501(c)(1), which read as follows:

> "(2) MATTERS NOT COVERED.—[The preemption rule]—
>
> "(A) shall not restrict the safety regulatory *authority of a State* with respect to motor vehicles, the *authority of a State* to impose highway route

controls or limitations based on the size or weight of the motor vehicle or the hazardous nature of the cargo, or the *authority of a State* to regulate motor carriers with regard to minimum amounts of financial responsibility relating to insurance requirements and self-insurance authorization;

"(B) does not apply to the transportation of household goods; and

"(C) does not apply to the *authority of a State or a political subdivision of a State* to enact or enforce a law, regulation, or other provision relating to the price of for-hire motor vehicle transportation by a tow truck, if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle.

"(3) STATE STANDARD TRANSPORTATION PRACTICES.—

"(A) Continuation.—[The preemption rule] shall not affect any *authority of a State, political subdivision of a State, or political authority of 2 or more States* to enact or enforce a law, regulation, or other provision, with respect to the intrastate transportation of property by motor carriers, related to—*[inter alia]* uniform cargo liability rules, . . . if such law, regulation, or provision meets the requirements of subparagraph (B)." §§14501(c)(2), (3) (emphases added).

It is impossible to read this text without being struck by the fact that the term "political subdivision of a State" is *added* to the term "State" in some of the exceptions, §§14501(c)(2)(C), (c)(3), but *not* in the exception at issue here, §14501(c)(2)(A). "'Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'" *Russello* v. *United*

States, 464 U. S. 16, 23 (1983). The only way to impart some purpose and intent here is to assume that the word "State" is used in its narrower sense, so that political subdivisions are not covered by the term. The Court admits that the rule applied in *Russello* "supports an argument of some force," *ante*, at 7, that the exception for the "safety regulatory authority of a State" does not include local safety regulation.

But while the *Russello* argument is strong, it alone does not fully describe the *clarity* with which §14501(c)(2)(A) excludes political subdivisions. For the clarity begins not just with the various exceptions, but with the very preemption rule to which the exceptions are appended. That rule reads:

> "Except as provided [in §§14501(c)(2), (3)], a State, political subdivision of a State, or political authority of 2 or more States may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier . . . or any motor private carrier, broker, or freight forwarder with respect to the transportation of property." 49 U. S. C. §14501(c)(1).

Since the law-making power of a political subdivision of a State is a subset of the law-making power of the State, *Hess* v. *Port Authority Trans-Hudson Corporation,* 513 U. S. 30, 47 (1994); *Wisconsin Public Intervenor* v. *Mortier,* 501 U. S. 597, 607–608 (1991), the preemption rule would have precisely the same scope if it omitted the reference to "political subdivision of a State." It is a well-established principle of statutory construction (and of common sense) that when such a situation occurs, when "two words or expressions are coupled together, one of which generically includes the other, it is obvious that the more general term is used in a meaning excluding the specific one." J. Sutherland, Statutes and Statutory Construction §266,

p. 349 (1891). The only conceivable reason for this specification of "political subdivision" apart from "State" is *to establish*, in the rule, the two *separate categories* of state power—state power exercised through political subdivisions and state power exercised by the State directly—that are later treated differently in the exceptions to the rule.

The situation is comparable to the following hypothetical using the term "football" (which may be used to include soccer, see Webster's New International Dictionary 983 (2d ed. 1950)): Assume a statute which says that "football and soccer shall not be played on the town green" (§14501(c)(1)), except that "football and soccer may be played on Saturdays" (§14501(c)(2)(C)), "football and soccer may be played on summer nights" (14501(c)(3)(A)), and "football may be played on Mondays" (§14501(c)(2)(A)). In today's opinion, the Court says soccer may be played on Mondays. I think it clear that soccer is not to be regarded as a subset of football but as a separate category. And the same is true of "political subdivision" here.

II

The Court reaches the opposite conclusion merely because §14501(c) exhibits uneven drafting. First the Court notes that §14501(c)(2)(A) does not "trac[k] the language and structure of the general preemption rule." *Ante*, at 8. Whereas other exceptions to the rule refer to the authority of a State or other political entity "to enact or enforce a law, regulation, or other provision," §14501(c)(2)(A) merely refers to the "safety regulatory authority of a State." Second, the Court notes that another exception to the preemption rule, §14501(c)(2)(B), is "stated with similar economy." *Ante*, at 8. It addresses merely the *subject* of regulation (transportation of household goods) instead of both the subject and the *source* of regulation (a State, political subdivision, or political authority of 2 or more States). This has, the Court notes, the same effect as its

neighbor, §14501(c)(2)(C), of permitting both state and local regulation.[1] *Ibid.* These inconsistencies in the statute's drafting style, the Court contends, undermine the conclusion we would ordinarily draw from the absence of the term "political subdivision" in §14501(c)(2)(A). *Ante*, at 9.

The weakness of this argument should be self-evident. How can inconsistencies of style, *on points that have nothing to do with the issue of separating state and local authority*, cause the text's crystal-clear distinction between state and local authority to disappear? It would certainly reflect more orderly draftsmanship if the statute consistently used the formulation "to enact or enforce a law, regulation, or other provision," rather than replacing it in §14501(c)(2)(A) with the equivalent phrase "regulatory authority of a State"; and if the statute referred to subject matter alone (à la §14501(c)(2)(B)) either never at all, or else *whenever* the exception applied to all three categories of States, subdivisions of States, and political authorities of 2 or more States. But it is impossible to imagine how this imperfect draftsmanship in unrelated matters casts any doubt upon the precise meaning of the subject-matter-plus-source provisions where they appear. Unless the Court is appealing to some hitherto unknown canon of interpretation—perhaps (borrowed from the law of evidence) *negligens in uno, negligens in omnibus*—the diverse styles of §14501(c)'s exceptions have nothing to do with whether we should take seriously the references to

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[1] Not only is this point (as the text proceeds to discuss) irrelevant in principle; it is misleading in its description of fact, suggesting that the two neighboring sections produce the same result with different language. It is true enough that §14501(c)(2)(C), like §14501(c)(2)(B), permits both state and local regulation. But 14501(c)(2)(C), *unlike* §14501(c)(2)(B), also permits regulation by a "political authority of 2 or more States."

States and subdivisions of States where they appear.

What is truly anomalous here is not the fact that the terminology of §14501(c) is diverse with regard to presently irrelevant matters, but the fact that the Court has today come up with a judicial interpretation of §14501(c) that renders the term "political subdivision of a State," which appears throughout, *utterly superfluous* throughout. Although the Court claims that the "*Russello* presumption . . . grows weaker with each difference in the formulation of the provisions under inspection," *ante*, at 9, it cites no authority for that proposition—nor could it, because we have routinely applied the *Russello* presumption in cases where a statute employs different "verbal formulation[s]" in sections that include particular language and in sections that omit such language. See, *e.g., Barnhart* v. *Sigmon Coal Co.,* 534 U. S. 438, __ (2002) (slip op., at 12–13); *Duncan* v. *Walker,* 533 U. S. 167, 173–174 (2001); *Hohn* v. *United States,* 524 U. S. 236, 249–250 (1998); *United States* v. *Gonzales,* 520 U. S. 1, 5 (1997).

III

Lacking support in the text of the statute, the Court invokes federalism concerns to justify its decision. "Absent a basis more reliable than statutory language insufficient to demonstrate a 'clear and manifest purpose' to the contrary," the Court reasons, "federal courts should resist attribution to Congress of a design to disturb a State's decision on the division of authority between the State's central and local units over safety on municipal streets and roads." *Ante*, at 13. Well of course we think there is "clear and manifest purpose here"; but besides that, the Court's federalism concerns are overblown. To begin with, it should not be thought that the States' power to control the relationship between themselves and their political subdivisions—their "traditional prerogative . . . to dele-

gate" (or to refuse to delegate) "their authority to their constituent parts," *ante,* at 2—has hitherto been regarded as sacrosanct. To the contrary. To take only a few examples,[2] the Federal Government routinely gives directly to municipalities substantial grants of funds that cannot be reached or directed by "the politicians upstate" (or "downstate"), see, *e.g.,* Office of Management and Budget, 2001 Catalog of Federal Domestic Assistance AEI–1 to AEI–29; *Lawrence County* v. *Lead-Deadwood School Dist. No. 40–1,* 469 U. S. 256, 270 (1985); and many significant federal programs require laws or regulations that must be adopted by the state government and cannot be delegated to political subdivisions, see, *e.g.,* 42 U. S. C. §1396a(a) (1994 ed. and Supp. V) (Medicaid); 23 U. S. C. §§153, 158 (Federal-Aid Highway System); 42 U. S. C. §§7407(a), 7410 (1994 ed.) (Clean Air Act).[3] This "interference" of the Federal Government with the States' "traditional prerogative . . . to delegate their authority to their constituent

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[2] The Court thinks these examples are "hardly comparable" to §14501(c) because many involve Spending Clause legislation. *Ante*, at 11–12. A sufficient answer is that one of them does not, see 42 U. S. C. §7410 (1994 ed.) (Clean Air Act), and that other examples not involving Spending Clause legislation could be added, see, *e.g.,* 33 U. S. C. §§1313(d), 1362(3) (Clean Water Act). But in any event, a siphoning off of the States' "historic powers" to delegate has equally been achieved, whether it has come about through the coercion of deprivation of Spending Clause funds or through other means. The point is that it is not unusual for Congress to interfere in this matter.

[3] The Court thinks the Clean Air Act is a bad example merely because a State can rely on political subdivisions to *enforce* the State's implementation plan. *Ante*, at 12–13, n. 4; see 42 U. S. C. §§7407(a), 7410(a)(2)(E)(iii). So what? Only *States* may adopt implementation plans; this duty cannot be delegated to localities. Moreover, as I explain n. 4, *infra*, the statute at issue here is no different. Under 49 U. S. C. §§14501(c)(1) and (c)(2)(A), a State may enact regulations pursuant to its "safety regulatory authority" and rely on localities to *enforce* those regulations.

parts" has long been a subject of considerable debate and controversy. See, *e.g.*, Hills, Dissecting the State: The Use of Federal Law to Free State and Local Officials from State Legislatures' Control, 97 Mich. L. Rev. 1201 (1999).

With such major impositions as these already on the books, treating §14501(c)(1) as some extraordinary federal obstruction of state allocation of power is absurd. That provision preempts the authority of political subdivisions to regulate "a price, route, or service of any motor carrier . . . or any motor private carrier, broker, or freight forwarder *with respect to the transportation of property*." (Emphasis added.) The italicized language massively limits the scope of preemption to include only laws, regulations, and other provisions that single out for special treatment "motor carriers of property." §14501(c). States *and political subdivisions* remain free to enact and enforce general traffic safety laws, general restrictions on the weight of cars and trucks that may enter highways or pass over bridges, and other regulations that do not target motor carriers "with respect to the transportation of property." In addition, the exception contained in §14501(c)(2)(A) allows a State—but not a political subdivision—to apply special safety rules (rules adopted under its "safety regulatory authority") to motor carriers of property.[4]

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[4] This interpretation of the statutory scheme "introduces an interpretive conundrum of another kind," the Court asserts, because §14501(c)(1) declares that a political subdivision may not "enact or *enforce*" laws, regulations, or other provisions relating to motor carriers of property. *Ante*, at 9. In the Court's view, if the term "State" does not include "subdivision of a State," §14501(c)(1) will prevent a State from relying on localities to "enforce" rules adopted under its "safety regulatory authority." *Ibid.* But the conclusion that §14501(c)(1) prevents a political subdivision from enforcing regulations *enacted by the State* can only be reached by ignoring (for this issue) the rule that the Court is so insistent upon elsewhere: that federal interference with the "historic powers of the States" must be evinced by a "plain statement," *Gregory* v.

This relatively modest burden on the "historic powers of the States" to delegate authority to political subdivisions, *Gregory* v. *Ashcroft,* 501 U. S. 452, 461 (1991) (internal quotation marks omitted), is unambiguously imposed by the statute. The Court repeatedly emphasizes the fact that §14501(c)(2)(A) declares that §14501(c)(1) shall "not restrict the safety regulatory authority of a State," *ante*, at 11, 13—which, it says, "includes the choice to delegate . . . to localities," *ante,* at 13. This entirely begs the question, which is *precisely* whether the statute's reference to the authority of a "State" includes authority possessed by a municipality on delegation from the State. As I have described, the text and structure of the statute leave no doubt that it does not—that "State" does not include "subdivision of a State." Even when we are dealing with the traditional powers of the States, "[e]vidence of pre-emptive purpose is sought in the *text and structure* of the statute at issue." *CSX Transp., Inc.* v. *Easterwood,* 507 U. S. 658, 664 (1993) (emphasis added); see also *Rice* v. *Santa Fe Elevator Corp.,* 331 U. S. 218, 230 (1947).

* * *

I believe the text and structure of §14501(c) show plainly that "the safety regulatory authority of a State"

Ashcroft, 501 U. S. 452, 461 (1991). A natural reading of the phrase "a . . . political subdivision of a State . . . may not enact or enforce a law"—and a reading faithful to *Gregory*'s plain statement rule—is that a political subdivision may not enact new laws or enforce *its previously enacted laws*. The Court believes this reading "raises the startling possibility," *ante*, at 10, n. 3, that §14501(c)(1) prevents States but not political subdivisions from enforcing *previously enacted State regulations* relating to motor carriage of property. I think not. A possibility so startling (and unlikely to occur) is well enough precluded by the rule that a statute should not be interpreted to produce absurd results. The municipalities' reserved power to enforce state law does not include the power to enforce state law that the State has no continuing power to enact or enforce.

does not encompass the authority of a political subdivision. For this reason, I respectfully dissent.