



## Supreme Court: Individuals May Challenge Laws on 10th Amendment Grounds

The case at hand involved a Pennsylvania woman, Carol Anne Bond, who, upon finding that her best friend, Myrlinda Haynes, had given birth to a child by Bond's husband, decided to exact revenge. She began by harassing and threatening her former friend. Later she tried to poison Haynes with a caustic chemical by smearing it all over Haynes's possessions. Haynes managed to avoid all but a tiny amount of the poison, suffering a small burn on her thumb but otherwise escaping unscathed. Getting no help from local authorities in putting an end to this horrific situation, she turned to the U.S. Postal Service, which presumably got involved because her mailbox was one of the things Bond had contaminated. The Postal Service turned out to be far more helpful than the local police: Its surveillance cameras caught Bond in the act, whereupon she was arrested and charged with violating a federal law implementing the 1993 Chemical Weapons Convention.



With the video evidence clearly identifying her as the perpetrator, Bond spent little effort arguing in court that she was innocent of any wrongdoing. In fact, she pleaded guilty but reserved the right to appeal, which she did, on the grounds that the law under which she had been charged exceeded the federal government's enumerated powers, specifically the Article II treaty power. The appeals court, however, decided that her challenge really fell under the 10th Amendment, which reserves to the states or the people all powers not delegated to the federal government. The court then turned around and ruled that as an individual, not a state, Bond did not have standing to mount a 10th Amendment challenge — the argument the federal government had made.

The Supreme Court chose to take up Bond's case when she appealed. In an interesting twist, by the time the case reached the Supreme Court, the federal government had actually come to agree with Bond that she did indeed have standing to challenge the law's constitutionality, albeit not on the grounds of the 10th Amendment (because Bond is not a state government) but on the grounds that it exceeds Congress' enumerated powers. The court rejected the government's narrow view and ruled that individuals do have standing to challenge federal laws under the 10th Amendment.

Wrote Justice Anthony Kennedy:

Federalism secures the freedom of the individual. It allows States to respond, through the enactment of positive law, to the initiative of those who seek a voice in shaping the destiny of



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their own times without having to rely solely upon the political processes that control a remote central power.... The individual liberty secured by federalism is not simply derivative of the rights of the States.

An individual has a direct interest in objecting to laws that upset the constitutional balance between the National Government and the States when the enforcement of those laws causes injury that is concrete, particular, and redressable. Fidelity to principles of federalism is not for the States alone to vindicate.

Similarly, Justice Ruth Bader Ginsburg, in a concurring opinion with Justice Stephen Breyer, remarked: "Bond, like any other defendant, has a personal right not to be convicted under a constitutionally invalid law."

The Supreme Court found that the precedent on which the appeals court, following the lead of other appeals courts, had based its ruling — a single sentence in the 1939 case *Tennessee Elec. Power Co. v. TVA* — might not even apply to the term *standing* as it was now understood. But even if it did, the court said, the sentence "should be deemed neither controlling nor instructive on the issue of standing as that term is now defined and applied."

The court's decision does not necessarily mean that Bond's six-year prison sentence will be commuted or that the law she is challenging will be found unconstitutional. It merely means that she now has the right to challenge it. That challenge will take place back in the court of appeals, to which the Supreme Court remanded the case.

Indeed, the law professor who was drafted, so to speak, by the Supreme Court to defend the appeals court's decision once the federal government more or less came around to Bond's position, made a good case that the law is constitutional. The *Atlantic's* [Garrett Epps](#) summarizes it thus:

The statute at issue was passed in fulfillment of a treaty obligation, and is justified by the Treaty Power — long considered broader than Congress's ordinary domestic powers — augmented by the "necessary and proper" clause. The chemical weapons treaty *requires* the United States to pass criminal laws against use of these compounds by private citizens. Cutting back on Congress's power to fulfill treaties could threaten the nation's foreign relations — and undercut a key purpose for which the Constitution was adopted. [Emphasis in original.]

Whether or not Bond succeeds in getting the courts to overturn the chemical weapons law, the Supreme Court has done liberty a favor by opening the door to individual challenges to federal laws on the basis that they violate the 10th Amendment — an opening that freedom-oriented institutions such as the Goldwater Institute are already preparing to exploit as they battle ObamaCare. On the other hand, Timothy Sandefur of the Pacific Legal Foundation cautions that the ruling could also have a negative effect on state lawsuits against ObamaCare because "the lower courts may interpret this as meaning that individual plaintiffs have sufficient alternative ways of raising arguments against the Individual Mandate."

Furthermore, the ruling does not clear a path for anyone and everyone wishing to sue to overturn various federal laws on 10th Amendment grounds, as Justice Kennedy made clear:

An individual who challenges federal action on these grounds is, of course, subject to the Article III requirements, as well as prudential rules, applicable to all litigants and claims. Individuals have "no standing to complain simply that their Government is violating the law." *Allen v. Wright*, 468 U.S. 737, 755 (1984). It is not enough that a litigant "suffers in some indefinite way in



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common with people generally.” *Frothingham v. Mellon*, 262 U.S. 447, 488 (1923) (decided with *Massachusetts v. Mellon*). If, in connection with the claim being asserted, a litigant who commences suit fails to show actual or imminent harm that is concrete and particular, fairly traceable to the conduct complained of, and likely to be redressed by a favorable decision, the Federal Judiciary cannot hear the claim.

Still, the overall thrust of the ruling is decisively in favor of more individual claims of injury as a result of unconstitutional federal laws, which will certainly come in handy in fighting ObamaCare and myriad other statutes. Whether the courts will find the laws in question unconstitutional remains to be seen. But even if they don’t, there’s something to be said for keeping Uncle Sam on the defensive and keeping his lawyers occupied.



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