
The Tenth Amendment reserves state sovereignty where the federal government is not constitutionally authorized to act. Although states have the right, under the Tenth Amendment, to challenge federal regulatory schemes that “commandeer” state legislatures, it is unclear whether private citizens have standing to pursue such claims. In Medeiros v. Vincent, the First Circuit Court of Appeals considered whether lobsterman Stephen Medeiros had standing to bring a Tenth Amendment “commandeering” claim against the Atlantic States Marine Fisheries Commission (ASMFC) and the Rhode Island Department of Environmental Management (DEM). Following Supreme Court precedent, the First Circuit held that private citizens do not have standing to challenge federal legislation under the Tenth Amendment.

In 1993, Congress enacted the Atlantic Coastal Fisheries Cooperative Management Act (Act) to oversee and regulate Atlantic coastal fisheries. Pursuant to the Act, the ASMFC adopted conservation plans which all


2. See Printz v. United States, 521 U.S. 898, 935 (1997) (allowing state law enforcement officer to challenge Brady Act with Tenth Amendment commandeering claim); New York v. United States, 505 U.S. 144, 182, 188 (1992) (permitting State’s Tenth Amendment claim and ruling states cannot acquiesce to commandeering federal legislation); see also Adam S. Halpern, Note, New York, Printz, and the Driver’s Privacy Protection Act: Has Congress Commandeered the State Departments of Motor Vehicles?, 51 Hastings L.J. 231, 233-38 (1999) (summarizing Supreme Court’s stance on federal regulatory systems compelling states to implement regulations); infra notes 24, 26 and accompanying text (identifying courts struggling to determine private party standing under Tenth Amendment). See generally Ara B. Gershengorn, Note, Private Party Standing to Raise Tenth Amendment Commandeering Challenges, 100 Colum. L. Rev. 1065 (2000) (discussing uncertainty of private citizen claims under Tenth Amendment and corresponding federal cases).


4. Id. at 33 (describing Tenth Amendment issue case presented).

5. Id. at 35-36 (announcing court’s holding); see also Tenn. Elec. Power Co. v. Tenn. Valley Auth. (TVA), 306 U.S. 118, 144 (1939) (establishing that private parties cannot challenge federal legislation under Tenth Amendment); infra note 14 (explaining how First Circuit used Supreme Court precedent to reach holding).

compact-member states, including Rhode Island, must enforce. In December 1997, the ASMFC adopted Amendment 3 to establish limitations for both trap and non-trap lobster fishing. The Rhode Island State government indicted Medeiros in June 1999 for violating the regulatory scheme when he caught more than 100 lobsters using a non-trap method. The state ultimately dismissed the charge. Medeiros subsequently asserted a commandeering claim against the ASMFC and the DEM, alleging that the Act violated the Tenth Amendment because it impermissibly compelled Rhode Island to implement federal restrictions on lobster fishing within state waters.

The district court considered whether Medeiros had standing to challenge the Act and whether the Tenth Amendment protects the rights of private citizens. The court, citing to Supreme Court decisions addressing Tenth Amendment claims by private litigants, dismissed Medeiros’s claim for lack of standing. The First Circuit affirmed that Medeiros lacked standing to assert a commandeering claim because the Supreme Court has not interpreted the Tenth Amendment to protect the interests of private citizens.

In past decades, the Supreme Court refined its standing doctrine to require that plaintiffs show a personal stake in the corresponding controversy.

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7. See Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. § 5104(b)(1) (mandating implementation and enforcement of coastal fishery management plan); id. at § 5106(c) (requiring United States Secretary of Commerce to declare moratorium in fisheries of noncomplying states); Medeiros v. Atl. States Marine Fisheries Comm’n, 327 F. Supp. 2d 145, 147 (D.R.I. 2004) (observing statutory requirements), aff’d sub nom. Medeiros v. Vincent, 431 F.3d 25 (1st Cir. 2005).
9. 431 F.3d at 28 (setting forth Medeiros’s violation of federal law).
10. Id. (noting disposition of underlying claim).
14. 431 F.3d at 36 (holding TVA binding precedent for private party Tenth Amendment claims in First Circuit). The Supreme Court has instructed circuit courts to follow Supreme Court precedents directly applicable to its case, even where other Supreme Court decisions have subsequently rejected the reasoning. See Rodriguez de Quijaz v. Shearson/Am. Express Inc., 490 U.S. 477, 484 (1989) (noting Supreme Court responsible for overruling its own decisions); see also Tenn. Elec. Power Co. v. Tenn. Valley Auth., 306 U.S. 118, 144 (1939) (dismissing private companies’ Tenth Amendment claim for lack of standing). The TVA Court stated that “appellants, absent the states or their officers, have no standing in this suit to raise any questions under the [Tenth Amendment].” Tenn. Elec. Power Co. v. Tenn. Valley Auth., 306 U.S. 118, 144 (1939).
satisfy the three-part test, a plaintiff must show an “injury-in-fact,” a causal connection between the injury and the defendant’s conduct, and that a favorable decision would likely cure the injury. The Constitution does not authorize federal courts to hear the merits of claims lacking a personal stake because standing is a jurisdictional prerequisite.

In Tennessee Electric Power Co. v. Tennessee Valley Authority (TVA), the Supreme Court suggested that private individuals are unable to challenge federal legislation under the Tenth Amendment. The Court held that private electric corporations lacked standing under the Tenth Amendment to challenge federally chartered power companies unless the state was also a party. The Court discussed the merits of the case, however, which caused many subsequent courts to label the holding as dicta and rely on other sources when resolving the standing issue. Furthermore, in recent decades, the Supreme Court has cast doubt on whether the standing principles suggested in TVA are
still good law. 22

The Supreme Court caused additional confusion regarding private Tenth Amendment claims when, in New York v. United States, 23 it stated that the purpose of dual sovereignty is ultimately to protect the rights of individuals. 24 By striking down federal laws requiring the State of New York to take title of radioactive waste, the New York Court re-established the Tenth Amendment as a substantive limitation on federal power. 25 As a result of the decision in New York, federal circuit courts have decided private party commandeering claims inconsistently and many expressed confusion over the Supreme Court’s position. 26 Among courts considering private commandeering claims after New

22. See Pierce County v. Guillin, 537 U.S. 129, 148 n.10 (2003) (granting certiorari to address split on private commandeering claims but deciding case before reaching issue; United States v. Richardson, 418 U.S. 166, 193 (1974) (Powell, J., concurring) (declaring economic interests, such as those from TVA, have conferred standing in subsequent decisions); see also Gillespie v. City of Indianapolis, 185 F. 3d 693, 700 (7th Cir. 1999) (citing United States v. Richardson, 418 U.S. 166, 193 (1974) (Powell, J., concurring) (pointing out barriers for standing significantly lower since TVA)).


24. New York v. United States, 505 U.S. 144, 181 (1992) (noting government’s “fundamental purpose” is to protect individuals). The Court wrote that, “the Constitution divides authority between federal and state governments for the protection of individuals.” Id. The Court noted that state sovereignty does not merely represent an end in itself, “[r]ather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power.” Id. (quoting Coleman v. Thompson, 501 U.S. 722, 759 (1991) (Blackmun, J., dissenting)) (internal quotations omitted). Some courts have interpreted this language from New York to grant individuals standing to assert their rights under the Tenth Amendment. Compare Gillespie v. City of Indianapolis, 185 F.3d 693, 703 (7th Cir. 1999) (using New York to permit standing and to secure individual rights under Tenth Amendment), and Velazquez v. Legal Services Corp., 349 F. Supp. 2d 566, 582 (E.D.N.Y. 2004) (agreeing with Gillespie court’s analysis of New York and TVA), with City of Roseville v. Norton, 219 F. Supp. 2d 130, 148 (D.D.C. 2002) (finding no possibility New York overruled or changed TVA), aff’d, 348 F.3d 1020 (D.C. Cir. 2003). But see Douglas E. Bechtel, Note, U.S. v. Parker: Will Those with Standing Please Stand Up, 82 DENY. U. L. REV. 479, 492-96 (2005) (arguing Parker court should have relied on New York to find standing). Legal scholars have argued that Parker misapplied circuit precedent because the New York decision rejected the Tenth Circuit’s reasoning before Parker was decided. See id. at 493.


26. See supra note 24 (discussing federal courts’ interpretation of standing issue following New York). Compare Gillespie v. City of Indianapolis, 185 F.3d 693, 707-08 (7th Cir. 1999) (concluding federal firearm regulation compelling state enforcement violated police officer’s rights under Tenth Amendment), and Atlanta Gas Light Co. v. Dep’t of Energy, 666 F.2d 1359, 1368 n.16 (11th Cir. 1982) (suggesting plaintiffs who show
York, only a small minority definitively concluded that TVA continues to be binding authority. In 2003, the Supreme Court granted certiorari to address a circuit split on private party commandeering claims but decided the case before reaching the standing issue.

Medeiros v. Vincent prompted a review of precedent because it marked the first private challenge under the Tenth Amendment in the First Circuit. The First Circuit rejected the suggestion that TVA’s treatment of standing was dictum, concluding that the Supreme Court’s analysis represented an alternative holding and was therefore binding precedent. The First Circuit conceded, however, that New York may have subsequently undermined TVA and that courts could therefore construe it to recognize individual interests under the Tenth Amendment. Nevertheless, the First Circuit reasoned that TVA applied directly to Medeiros’s claim because TVA also involved a private party challenge under the Tenth Amendment, unlike New York, which dealt with a state’s Tenth Amendment challenge.

concrete injury from challenged activity have standing), with Mountain States Legal Found. v. Costle, 630 F.2d 754, 761 (10th Cir. 1980) (deciding only state has standing to protect its sovereignty under Tenth Amendment), and Vt. Assembly of Home Health Agencies v. Shalala, 18 F. Supp. 2d 355, 371 (D. Vt. 1998) (denying standing to non-state actors where injury did not directly result from Tenth Amendment violation).


29. See 431 F.3d at 35-36 (discussing other circuit decisions on whether private parties have standing to bring Tenth Amendment claims); Medeiros v. Atl. States Marine Fisheries Comm’n, 327 F. Supp. 2d 145, 153 (D.R.I. 2004) (stating First Circuit not yet considered standing for private parties under Tenth Amendment), aff’d sub nom. Medeiros v. Vincent, 431 F.3d 25 (1st Cir. 2005).

30. 431 F.3d at 34 (ruling on application of TVA). According to the First Circuit, the Supreme Court reiterated TVA’s holding at least once when it decided Flast v. Cohen. Id. at 34 n.7 (citing Flast to support application of TVA rule); Flast v. Cohen, 392 U.S. 83, 105 (1968) (stating in dicta private citizens cannot “assert the States’ interest in their legislative prerogatives”); see also Bechtel, supra note 24, at 485 (noting Flast reinforced standing principles announced in TVA).

31. 431 F.3d at 35 (holding “plausible interpretation” of New York allows private citizens Tenth Amendment standing). One could interpret that the New York Court intended to validate private Tenth Amendment suits, or that it merely proposed that individuals could petition the state if it refused to prosecute Tenth Amendment claims. Id. The First Circuit decided it did not need to elaborate further on the inconsistencies between New York and TVA. Id. In support of this decision, the court emphasized that fellow federal circuits should follow directly controlling Supreme Court cases, rather than disrupt prior holdings. Id. at 34-35.

32. See id. at 34 (reasoning TVA applied directly to Medeiros’s claim because both involved private challenges).
The First Circuit rejected the reasoning of two other circuits that permitted private claims under the Tenth Amendment and noted that many other courts have expressly held that *TVA* is binding precedent until overruled. 33 The court predicted that parties would inevitably bring more Tenth Amendment claims if courts permitted private citizens standing. 34 The court declined to interpret *New York* as recognizing an individual right of action and adhered to *TVA*, concluding that Medeiros lacked standing to maintain a Tenth Amendment commandeering challenge. 35

The *Medeiros* court’s analysis was deficient because it failed to evaluate Medeiros’s claim under modern standing principles. 36 The court did not assess whether Medeiros had a personal stake in the case or if the Act caused his injury. 37 Furthermore, the court disregarded the fact that the modern principles of standing developed years after *TVA*, despite other circuits expressing great concern over such chronology. 38 As a result, the court failed to confront significant obstacles when it analyzed the viability of *TVA* and neglected to apply Supreme Court standing jurisprudence to the underlying facts of Medeiros’s claim. 39

The court of appeals incorrectly concluded that many courts have interpreted *TVA* to bar Tenth Amendment claims by private citizens until the Supreme Court explicitly overrules that decision. 40 In fact, many circuits expressly questioned whether *TVA* was anything more than dicta and whether it continues to apply today. 41 More troubling is that the court agreed that *New York* may

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33. See id. at 35 (rejecting right to private Tenth Amendment suits). The court discounted the Eleventh Circuit decision because it failed to address *TVA*. Id. In addition, the court cast doubt upon a Seventh Circuit decision that questioned whether a police officer challenged a federal law on behalf of the state or as a private citizen. Id. Further, the court supported its conclusion by citing a Tenth Circuit opinion and two district court cases that denied standing to private citizens. Id. at 36.

34. See id. at 36 (discussing prudence of following precedent).

35. See 431 F.3d at 34-36 (expressing reluctance to second guess *TVA* and leaving issue for Supreme Court to decide); see also supra note 14 and accompanying text (explaining court’s use of Supreme Court precedent to arrive at holding).

36. See id. at 34-36 (lacking discussion of standing elements expressed in *Lujan*).

37. See id. at 34-36 (neglecting to consider *Lujan*’s three-part test); supra note 16 and accompanying text (discussing *Lujan* rule setting forth three elements for federal courts to apply when considering standing).

38. See 431 F.3d at 35 (dismissing other circuits’ reasoning for granting private parties standing); see also Gillespie v. City of Indianapolis, 185 F.3d 693, 700 (7th Cir. 1999) (noting Supreme Court cast doubt on *TVA* and substantially lowered barriers to standing since then); supra note 25 and accompanying text (discussing how *New York* decision re-established limits on federal power).

39. 431 F.3d at 36 (noting many circuits consider *TVA* binding authority); see also supra note 21 (highlighting cases questioning continuing relevance of *TVA*); supra note 22 (noting substantial changes in standing principles since *TVA* decision).

40. See 431 F.3d at 35-36 (supporting position with other decisions “explicitly” holding *TVA* binding precedent on Tenth Amendment issue); supra notes 21, 27 and accompanying text (clarifying decisions court cites do not “explicitly” rely on *TVA*).

41. See supra note 21 and accompanying text (highlighting decisions holding *TVA* ruling dicta on private party standing). Compare Gillespie v. City of Indianapolis, 185 F.3d 693, 707-08 (7th Cir. 1999) (concluding federal firearm regulation violated police officer’s Tenth Amendment rights), with Mountain States Legal
have undermined TVA yet still failed to provide guidance to future courts by clarifying the contradiction.\(^{42}\) The court ignored that the Tenth Amendment’s substantive limitations on federal power, recognized in New York, did not exist in the same form when the Supreme Court decided TVA.\(^{43}\) Consequently, federal regulations that violate the Tenth Amendment will stand uncontested unless a state brings suit.\(^{44}\)

Although the First Circuit avoided analyzing the complex issues presented in the case, the court prudently followed Supreme Court precedent that most directly reflected Medeiros’s claim.\(^{45}\) The TVA decision, regardless of whether it was dicta, remains the only Supreme Court case to squarely address private party standing under the Tenth Amendment.\(^{46}\) Further, the First Circuit strengthened its holding by citing subsequent Supreme Court language reinforcing the standing principles alluded to in TVA, a detail courts that have found standing have failed to address.\(^{47}\) The fact that courts have expressed confusion over the application of New York illustrates the unsettled nature of the standing issue.\(^{48}\) Thus, the decision conservatively conformed to precedent and reserved the duty of explaining the modern implications of TVA to the Supreme Court.\(^{49}\)

In Medeiros v. Vincent, the First Circuit considered whether private citizens have standing to challenge federal legislation under the Tenth Amendment. The court failed to consider whether Medeiros’s claim satisfied the three-part standing test established by the Supreme Court. In doing so, the court dismissed the case on precedent regarded as outdated and contradicted by other decisions. On the other hand, by following Supreme Court precedent, the court abstained on an issue that is best left to the Supreme Court. The confounding

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\(^{42}\) 431 F.3d at 35 (considering whether and to what extent New York undermined TVA); see supra note 31 and accompanying text (explaining how court addressed interplay between New York and TVA but declined to draw any conclusions); see also supra note 24 and accompanying text (discussing how circuits resolved conflicting points in New York and TVA).

\(^{43}\) See 431 F.3d at 33-36 (omitting discussion of changes to Supreme Court’s Tenth Amendment jurisprudence); supra note 25 and accompanying text (outlining history of Tenth Amendment’s application by Supreme Court).

\(^{44}\) 431 F.3d at 33-36 (concluding standing for Tenth Amendment claims limited to states and not private citizens).

\(^{45}\) See supra note 14 and accompanying text (noting Medeiros court followed Supreme Court’s direction for circuit courts to follow directly controlling precedent).

\(^{46}\) See Gershengorn, supra note 2, at 1072-74 (detailing Supreme Court guidance on private party commandeering claims).

\(^{47}\) See supra note 30 and accompanying text (noting Medeiros stated Flast reiterated private citizens cannot assert interest in states’ legislative privileges).

\(^{48}\) See supra note 24 and accompanying text (highlighting confusion in circuits over New York’s interpretation of Tenth Amendment).

\(^{49}\) 431 F.3d at 36 (relying on TVA to reach conclusion); supra note 14 and accompanying text (explaining application of Supreme Court precedent to arrive at holding).
issue of an individual’s right of action under the Tenth Amendment remains uncertain and will remain so until the Supreme Court clarifies its position.

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