Constitutional Law—The First Circuit Denies Private Parties Standing to Assert Tenth Amendment Commandeering Claims—*Medeiros v. Vincent*, 431 F.3d 25 (1st Cir. 2005), *cert. denied*, 126 S. Ct. 2968 (2006).

The Tenth Amendment reserves state sovereignty where the federal government is not constitutionally authorized to act.[1] 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.[2] In *Medeiros v. Vincent*,[3] 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).[4] Following Supreme Court precedent, the First Circuit held that private citizens do not have standing to challenge federal legislation under the Tenth Amendment.[5]

In 1993, Congress enacted the Atlantic Coastal Fisheries Cooperative Management Act (Act) to oversee and regulate Atlantic coastal fisheries.[6] Pursuant to the Act, the ASMFC adopted conservation plans which all

1. U.S. CONST. amend. X (describing powers reserved for states). "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively . . . ." *Id.*; *see also* Printz v. United States, 521 U.S. 898, 918-19 (1997) (quoting THE FEDERALIST NO. 39, at 245 (James Madison) (Clinton Rossiter ed., 1999) (acknowledging states retain "residuary and inviolable sovereignty" in dual sovereignty system).

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).

3. 431 F.3d 25 (1st Cir. 2005), *cert. denied*, 126 S. Ct. 2968 (2006).

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).

6. Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. §§ 5101-5108 (2000) (implementing regulations); *see also* Medeiros v. Atl. States Marine Fisheries Comm'n, 327 F. Supp. 2d 145, 147 (D.R.I. 2004) (outlining requirements of act), *aff'd sub nom.* Medeiros v. Vincent, 431 F.3d 25 (1st Cir. 2005).

compact-member states, including Rhode Island, must enforce.[7] In December 1997, the ASMFC adopted Amendment 3 to establish limitations for both trap and non-trap lobster fishing.[8] 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.[9] The state ultimately dismissed the charge.[10] 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.[11]

The district court considered whether Medeiros had standing to challenge the Act and whether the Tenth Amendment protects the rights of private citizens.[12] The court, citing to Supreme Court decisions addressing Tenth Amendment claims by private litigants, dismissed Medeiros's claim for lack of standing.[13] 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.[14]

In past decades, the Supreme Court refined its standing doctrine to require that plaintiffs show a personal stake in the corresponding controversy.[15] To

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).

8. *See* Medeiros v. Atl. States Marine Fisheries Comm'n, 327 F. Supp. 2d 145, 147-48 (D.R.I. 2004) (discussing limitations set by new amendment), *aff'd sub nom.* Medeiros v. Vincent, 431 F.3d 25 (1st Cir. 2005); FRANK LOCKHART & BRUCE ESTRELLA, ATLANTIC STATES MARINE FISHERIES COMMISSION, AMENDMENT 3 TO THE INTERSTATE FISHERY MANAGEMENT PLAN FOR AMERICAN LOBSTER 20 (1997), *available at* http://www.asmfc.org/speciesDocuments/lobster/fmps/lobsterAmendment3.pdf (providing 100 lobster limit per vessel per day for fisherman using non trap methods).

9. 431 F.3d at 28 (setting forth Medeiros's violation of federal law).

10. *Id.* (noting disposition of underlying claim).

11. *See* Medeiros v. Atl. States Marine Fisheries Comm'n, 327 F. Supp. 2d 145, 152 (D.R.I. 2004) (setting forth Medeiros's challenge), *aff'd sub nom.* Medeiros v. Vincent, 431 F.3d 25 (1st Cir. 2005). The Rhode Island Marine Fisheries Council repealed the Rhode Island regulation in June 2000, but in March 2001, the DEM reinstated it to avoid federal imposition of a moratorium on fishing. *Id.* at 148.

12. *See* Medeiros v. Atl. States Marine Fisheries Comm'n, 327 F. Supp. 2d 145, 152-53 (D.R.I. 2004) (discussing decisions from other circuits and analyzing *New York* alongside *TVA*), *aff'd sub nom.* Medeiros v. Vincent, 431 F.3d 25 (1st Cir. 2005).

13. Medeiros v. Atl. States Marine Fisheries Comm'n, 327 F. Supp. 2d 145, 153-54 (D.R.I. 2004) (following *TVA* Court), *aff'd sub nom.* Medeiros v. Vincent, 431 F.3d 25 (1st Cir. 2005).

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 A]mendment." Tenn. Elec. Power Co. v. Tenn. Valley Auth., 306 U.S. 118, 144 (1939).

15. *See* Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (describing three elements federal

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.[16] The Constitution does not authorize federal courts to hear the merits of claims lacking a personal stake because standing is a jurisdictional perquisite.[17]

In *Tennessee Electric Power Co. v. Tennessee Valley Authority* (*TVA*),[18] the Supreme Court suggested that private individuals are unable to challenge federal legislation under the Tenth Amendment.[19] 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.[20] 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.[21] Furthermore, in recent decades, the Supreme Court has cast doubt on whether the standing principles suggested in *TVA* are

courts use to decide standing issues); Baker v. Carr, 369 U.S. 186, 204 (1962) (stating appellant must have personal stake in outcome of constitutional claim to meet standing requirements); JOHN E. NOWAK & RONALD D. ROTUNDA, CONSTITUTIONAL LAW § 2.12 (7th ed. 2004) (outlining general rules of standing); John C. Reitz, *Standing to Raise Constitutional Issues*, 50 AM. J. COMP. L. 437, 438-59 (2002) (explaining history and background of constitutional and prudential requirements for standing).

16. *See* Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (condensing modern standing principles into three distinct elements).

17. *See* Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 101-02 (1998) (holding threshold inquiry of standing determines presence of case or controversy for federal court jurisdiction); Scott C. Idleman, *The Demise of Hypothetical Jurisdiction in the Federal Courts*, 52 VAND. L. REV. 235, 280-86 (1999) (explaining background of *Steel Co.* and importance of establishing boundaries for federal government, courts included); Reitz, *supra* note 15, at 438 (noting standing incorporates "judicially self-imposed limits on exercise of federal jurisdiction").

18. 306 U.S. 118 (1939).

19. *See* Tenn. Elec. Power Co. v. Tenn. Valley Auth., 306 U.S. 118, 144 (1939) (requiring state participation to proceed with Tenth Amendment challenge). Two years before the *TVA* decision, the Supreme Court addressed the merits of a private commandeering challenge to the Social Security Act without considering prudential limitations. *See* Steward Machine Co. v. Davis, 301 U.S. 548, 585-98 (1937) (upholding federal statute). Decades later, the Supreme Court reinforced *TVA,* again suggesting in dicta that only the states can assert rights under the Tenth Amendment. *See* Flast v. Cohen, 392 U.S. 83, 105 (1968) (noting only states may assert violations of its law-making privileges).

20. *See* Tenn. Elec. Power Co. v. Tenn. Valley Auth., 306 U.S. 118, 144 (1939) (noting state did not object to Valley Authority's actions).

21. *See* Tenn. Elec. Power Co. v. Tenn. Valley Auth., 306 U.S. 118, 146-47 (resolving issue based on merits of case and not on standing issue alone); *see also* U.S. v. Parker, 362 F.3d 1279, 1285 (10th Cir. 2004) (dismissing claim based on circuit precedent and referring to *TVA* as supplementary source); Gillespie v. City of Indianapolis, 185 F.3d 693, 700 (7th Cir. 1999) (identifying statement about standing in *TVA* as "observation in passing"); Nance v. EPA, 645 F.2d 701, 716 (9th Cir. 1981) (dismissing Tenth Amendment claim without mentioning *TVA* where private party's standing "may be seriously questioned"); Velazquez v. Legal Services Corp., 349 F. Supp. 2d 566, 581-82 (E.D.N.Y. 2004) (distinguishing "passing comment" in *TVA* as obiter dictum because Supreme Court reached merits); Michael Abramowicz & Maxwell Stearns, *Defining Dicta*, 57 STAN L. REV. 953, 1065-76 (2005) (suggesting and detailing three elements to differentiate holdings and propositions constituting dicta); Gershengorn, *supra* note 2, at 1073 (noting *TVA* added language in confusing dicta indicating only state can raise Tenth Amendment claim). *But see* City of Roseville v. Norton, 219 F. Supp. 2d 130, 147 (D.D.C. 2002) (applying *TVA* as binding precedent to deny standing to private parties), *aff'd*, 348 F.3d 1020 (D.C. Cir. 2003).

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. Guillen, 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*).

23. 505 U.S. 144 (1992).

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 DENV. 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.

25. *See* New York v. United States, 505 U.S. 144, 149 (1992) (concluding the Constitution does not grant Congress power to compel radioactive waste disposal by states). In 1941, the Supreme Court rejected the notion that the Tenth Amendment confers substantive rights. *See* United States v. Darby, 312 U.S. 100, 124 (1941). No right of action existed until the Court recognized the Tenth Amendment as a substantive limitation on Congressional power in *National League of Cities v. Usery*, 426 U.S. 833, 851-52 (1976) (holding federal government cannot infringe upon states' roles in "traditional government functions"). The Supreme Court reversed its position in *Garcia v. San Antonio Metro Transit Authority* before re-establishing the Tenth Amendment as a source of states' rights again in *New York*. *See* Gershengorn, *supra* note 2, at 1065-71 (outlining chronology of major Supreme Court decisions concerning Tenth Amendment limitations); *see also,* Richard H. Fallon, Jr., *The "Conservative" Paths of the Rehnquist Court's Federalism Decisions*, 69 U. CHI. L. REV. 429, 477-93 (2002) (exploring resurgence of federalism since Justice Thomas's appointment and future implications on federal power). *Compare* New York v. United States, 505 U.S. 144, 149 (1992) (ruling Congress without power to compel state legislation), *with* Garcia v. San Antonio Metro. Transit Auth., 469 U.S. 528, 552 (1985) (holding procedural safeguards in federal system, rather than judicially created limitations, protect state sovereignty).

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.[27] 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.[28]

Medeiros v. Vincent prompted a review of precedent because it marked the first private challenge under the Tenth Amendment in the First Circuit.[29] 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.[30] 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.[31] 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.[32]

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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).

27. *See* City of Roseville v. Norton, 219 F. Supp. 2d 130, 147-48 (D.D.C. 2002) (stating "impossible" to interpret New York as overruling *TVA* holding), *aff'd*, 348 F.3d 1020 (D.C. Cir. 2003); *see also* United States v. Parker, 362 F.3d 1279, 1284-85 (10th Cir. 2004) (deciding standing issue under circuit precedent with supplemental reference to *TVA*); Vt. Assembly of Home Health Agencies v. Shalala, 18 F. Supp. 2d 355, 370 (D. Vt. 1998) (noting Second Circuit decided standing issue without addressing *TVA*). The *Norton* court denied private parties standing based on a brief D.C. Circuit analysis of *TVA*. City of Roseville v. Norton, 219 F. Supp. 2d 130, 147-48 (D.D.C. 2002). It is important to note, however, that the D.C. Circuit actually declined to decide whether private parties have standing under the Tenth Amendment. *See* Lomont v. O'Neill, 285 F.3d 9, 13 n.3 (D.C. Cir. 2002) (noting *TVA* Court held private company lacked standing under Tenth Amendment). One could argue that the *Norton* court decided an issue that the D.C. Circuit merely posed when considering *TVA*'s current application. *See* City of Roseville v. Norton, 219 F. Supp. 2d 130, 147-48 (D.D.C. 2002).

28. *See* Pierce County v. Guillen, 537 U.S. 129, 148 n.10 (2003) (noting Court granted certiorari for purpose of addressing private party standing under Tenth Amendment).

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

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

Found. v. Costle, 630 F.2d 754, 761 (10th Cir. 1980) (deciding only state has standing to protect its sovereignty under Tenth Amendment).

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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