

1986

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Recommended Citation

Blodgett, William, "Just You Wait, Harry Blackmun" (1986). *Constitutional Commentary*. 1125.
<https://scholarship.law.umn.edu/concomm/1125>

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JUST YOU WAIT, HARRY BLACKMUN

William Blodgett

In 1976 the Supreme Court, by a sharply divided vote, ruled that the commerce clause does not empower Congress to enforce the minimum-wage and overtime provisions of the Fair Labor Standards Act against the states "in areas of traditional governmental functions." Justice Rehnquist wrote the majority opinion; Justice Blackmun concurred on the understanding that Rehnquist's opinion adopted a "balancing approach." In subsequent cases the Court refused to extend this holding to other federal regulations. Finally, in *Garcia v. San Antonio Metropolitan Transit Authority*, the Court overruled *Usery*. The *Garcia* opinion was written by Justice Blackmun. Justice Rehnquist's brief dissent noted delicately that a "balancing" approach would have led to invalidation of the federal law. Rehnquist predicted without elaboration that the *Usery* principle "will, I am confident, in time again command the support of a majority of this Court."

William Blodgett of the Class of 1988 has adapted Justice Rehnquist's sentiments to a familiar tune from *My Fair Lady*.

Just you wait, Harry Blackmun, just you wait,
You've undermined the power of every state.
With your commerce clause gone crazy,
You're so doctrinally hazy,
That this Court and Ronald Reagan have a date.
Your majority position is insecure—
And I doubt you'll have the will to endure.
None stay on this Court forever,
And Mr. Reagan's awfully clever,
So for *Garcia*, I know we'll find a cure.
My arguments are already well-tooled,
In *National League of Cities* I'm well-schooled,
We'll forget *Heart of Atlanta Motel*
And go straight back to *Hodel*,
Then *you'll* know how it feels to be overruled.