



RQ-0381-9c

COMMITTEE ON HOUSE ADMINISTRATION

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May 2, 2001

The Honorable John Cornyn
Texas Attorney General
Attn: Opinions Committee
P.O. Box 12548
Austin, Texas 78711

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OPINION COMMITTEE

FILE # ML-41986-01
ID. # 41986

Dear General Cornyn:

Please accept this letter as a request for a formal Attorney General's Opinion on the issue as stated below. Please refer to the attached partial copy of *Reno v. Condon*, 155 F.3d 453, for an explanation of the decision that frames this request, and also the provisions of the Driver's Privacy Protection Act of 1994 (DPPA). My questions are as follows:

Does the Drivers Privacy Protection Act of 1994 (18 USC Chapter 12) provide for a penalty against a state for supporting legislation that would permit use of information electronically stored on a state issued driver's license, or from a database supplied by the state which contains the same information, by businesses and citizens of the state for the specific purpose of enrolling the owner of that driver's license into a private club duly licensed by the state and which license requires that the personal data of the person be incorporated into club records, and even though the statute requires that the data be not retained after the licensing agency no longer requires the data be available and that it not be marketed?

Does the passage of such legislation and its subsequent use by businesses and citizens of the state under color and authority of that legislation as supported by the state place those businesses and citizens under threat of the civil penalties provided by the DPPA?

If a person surrenders a driver's license for the purpose of enrollment into a private club, is that an implied consent for that purpose? If so, is the consent also a general consent to the release of that person's personal data?

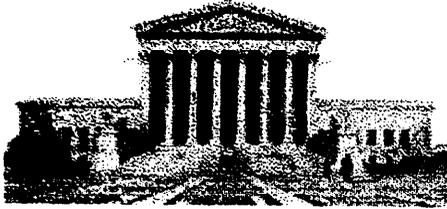
Thank you for your prompt attention to this request. It is a pleasure working with you on behalf of all Texans.

Sincerely,

A handwritten signature in black ink, appearing to read "Tony Goolsby".

Tony Goolsby, Chairman
House Administration

TONY GOOLSBY, CHAIRMAN, VILMA LUNA, VICE-CHAIR
RAY ALLEN, KEVIN BAILEY, WARREN CHISUM, CHARLIE GEREN, HELEN GIDDINGS,
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RENO v. CONDON (98-1464) 155 F.3d 453, reversed.	
Syllabus	Opinion [Rehnquist]
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Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 98—1464

JANET RENO, ATTORNEY GENERAL, et al., PETITIONERS v. CHARLIE CONDON, ATTORNEY GENERAL OF SOUTH CAROLINA, et al.

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

[January 12, 2000]

Chief Justice Rehnquist delivered the opinion of the Court.

The Driver's Privacy Protection Act of 1994 (DPPA or Act), 18 U.S.C. § 2721—2725 (1994 ed. and Supp. III), regulates the disclosure of personal information contained in the records of state motor vehicle departments (DMVs). We hold that in enacting this statute Congress did not run afoul of the federalism principles enunciated in *New York v. United States*, 505 U.S. 144 (1992), and *Printz v. United States*, 521 U.S. 898 (1997).

The DPPA regulates the disclosure and resale of personal information contained in the records of state DMVs. State DMVs require drivers and automobile owners to provide personal information, which may include a person's name, address, telephone number, vehicle description, Social Security number, medical information, and photograph, as a condition of obtaining a driver's license or

registering an automobile. Congress found that many States, in turn, sell this personal information to individuals and businesses. See, e.g., 139 Cong. Rec. 29466, 29468, 29469 (1993); 140 Cong. Rec. 7929 (1994) (remarks of Rep. Goss). These sales generate significant revenues for the States. See *Travis v. Reno*, 163 F.3d 1000, 1002 (CA7 1998) (noting that the Wisconsin Department of Transportation receives approximately \$8 million each year from the sale of motor vehicle information).

The DPPA establishes a regulatory scheme that restricts the States' ability to disclose a driver's personal information without the driver's consent. The DPPA generally prohibits any state DMV, or officer, employee, or contractor thereof, from "knowingly disclos[ing] or otherwise mak[ing] available to any person or entity personal information about any individual obtained by the department in connection with a motor vehicle record." 18 U.S.C. § 2721(a). The DPPA defines "personal information" as any information "that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information," but not including "information on vehicular accidents, driving violations, and driver's status." §2725(3). A "motor vehicle record" is defined as "any record that pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle registration, or identification card issued by a department of motor vehicles." §2725(1).

The DPPA's ban on disclosure of personal information does not apply if drivers have consented to the release of their data. When we granted certiorari in this case, the DPPA provided that a DMV could obtain that consent either on a case-by-case basis or could imply consent if the State provided drivers with an opportunity to block disclosure of their personal information when they received or renewed their licenses and drivers did not avail themselves of that opportunity. §§2721(b)(11), (13), and (d). However, Public Law 106—69, 113 Stat. 986, which was signed into law on October 9, 1999, changed this "opt-out" alternative to an "opt-in" requirement. Under the amended DPPA, States may not imply consent from a driver's failure to take advantage of a state-afforded opportunity to block disclosure, but must rather obtain a driver's affirmative consent to disclose the driver's personal information for use in surveys, marketing, solicitations, and other restricted purposes. See Pub. L. 106—69, 113 Stat. 986 §§350(c), (d), and (e), App. to Supp. Brief for Petitioners 1(a), 2(a).

The DPPA's prohibition of nonconsensual disclosures is also subject to a number of statutory exceptions. For example, the DPPA *requires* disclosure of personal information "for use in connection with matters of motor vehicle or driver safety and theft, motor vehicle emissions, motor vehicle product alterations, recalls, or advisories, performance monitoring of motor vehicles and dealers by motor vehicle manufacturers, and removal of non-owner records from the original owner records of motor vehicle manufacturers to carry out the purposes of titles I and IV of the Anti Car Theft Act of 1992, the Automobile Information Disclosure Act, the Clean Air Act, and chapters 301, 305, and 321—331 of title 49." 18 U.S.C. § 2721(b) (1994 ed., Supp. III) (citations omitted). The DPPA *permits* DMVs to disclose personal information from motor vehicle records for a number of purposes.¹

The DPPA's provisions do not apply solely to States. The Act also regulates the resale and redisclosure of drivers' personal information by private persons who have obtained that information from a state DMV. 18 U.S.C. § 2721(c) (1994 ed. and Supp. III). In general, the Act allows private persons who have obtained drivers' personal information for one of the aforementioned permissible purposes to further disclose that information for any one of those purposes. *Ibid.* If a State has obtained drivers' consent to disclose their personal information to private persons generally and a private person has obtained that information, the private person may redisclose the information for any purpose. *Ibid.* Additionally, a private actor who has obtained drivers' information from DMV

records specifically for direct marketing purposes may resell that information for other direct-marketing uses, but not otherwise. *Ibid.* Any person who rediscloses or resells personal information from DMV records must, for five years, maintain records identifying to whom the records were disclosed and the permitted purpose for the resale or redisclosure. *Ibid.*

The DPPA establishes several penalties to be imposed on States and private actors that fail to comply with its requirements. The Act makes it unlawful for any "person" knowingly to obtain or disclose any record for a use that is not permitted under its provisions, or to make a false representation in order to obtain personal information from a motor vehicle record. §§2722(a) and (b). Any person who knowingly violates the DPPA may be subject to a criminal fine, §§2723(a), 2725(2). Additionally, any person who knowingly obtains, discloses, or uses information from a state motor vehicle record for a use other than those specifically permitted by the DPPA may be subject to liability in a civil action brought by the driver to whom the information pertains. §2724. While the DPPA defines "person" to exclude States and state agencies, §2725(2), a state agency that maintains a "policy or practice of substantial noncompliance" with the Act maybe subject to a civil penalty imposed by the United States Attorney General of not more than \$5,000 per day of substantial noncompliance. §2723(b).

South Carolina law conflicts with the DPPA's provisions. Under that law, the information contained in the State's DMV records is available to any person or entity that fills out a form listing the requester's name and address and stating that the information will not be used for telephone solicitation. S. C. Code Ann. §§56—3—510 to 56—3—540 (Supp. 1998). South Carolina's DMV retains a copy of all requests for information from the State's motor vehicle records, and it is required to release copies of all requests relating to a person upon that person's written petition. §56—3—520. State law authorizes the South Carolina DMV to charge a fee for releasing motor vehicle information, and it requires the DMV to allow drivers to prohibit the use of their motor vehicle information for certain commercial activities. §§56—3—530, 56—3—540.

Following the DPPA's enactment, South Carolina and its Attorney General, respondent Condon, filed suit in the United States District Court for the District of South Carolina, alleging that the DPPA violates the Tenth and Eleventh Amendments to the United States Constitution. The District Court concluded that the Act is incompatible with the principles of federalism inherent in the Constitution's division of power between the States and the Federal Government. The court accordingly granted summary judgment for the State and permanently enjoined the Act's enforcement against the State and its officers. See 972 F. Supp. 977, 979 (1997). The Court of Appeals for the Fourth Circuit affirmed, concluding that the Act violates constitutional principles of federalism. See 155 F.3d 453 (1998). We granted certiorari, 526 U.S. 1111 (1999), and now reverse.

We of course begin with the time-honored presumption that the DPPA is a "constitutional exercise of legislative power." *Close v. Glenwood Cemetery*, 107 U.S. 466, 475 (1883); see also *INS v. Chadha*, 462 U.S. 919, 944 (1983).

The United States asserts that the DPPA is a proper exercise of Congress' authority to regulate interstate commerce under the Commerce Clause, U.S. Const., Art. I, §8, cl. 3.² The United States bases its Commerce Clause argument on the fact that the personal, identifying information that the DPPA regulates is a "thin[g] in interstate commerce," and that the sale or release of that information in interstate commerce is therefore a proper subject of congressional regulation. *United States v. Lopez*, 514 U.S. 549, 558—559 (1995)). We agree with the United States' contention. The motor vehicle information which the States have historically sold is used by insurers, manufacturers, direct

FEDERAL STATUTE

DRIVERS PRIVACY PROTECTION ACT OF 1994 (18 USC CHAPTER 123)

(EMPHASIS ADDED)

Sec. 2721. Prohibition on release and use of certain personal information from State motor vehicle records

(a) **In General.** - Except as provided in subsection (b), a State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity personal information about any individual obtained by the department in connection with a motor vehicle.

(b) **Permissible Uses.** - Personal information referred to in subsection (a) may be disclosed as follows: (3) For use in the normal course of business by a legitimate business ..., but only - (A) to verify the accuracy of personal information submitted by the individual to the business...

Sec. 2723. Penalties

(a) **Criminal fine.** - A person who knowingly violates this chapter shall be fined under this article.

(b) (Provides a state fine of \$5,000 for each day of substantial noncompliance)

Sec. 2724. Civil Action

(a) **Cause of action.** - A person who knowingly obtains, discloses or uses personal information from a motor vehicle record, for a purpose not permitted under this chapter shall be liable to the individual to whom the information pertains, who may bring a civil action in a United States district court.

(b) **Remedies.** - The court may award -

- (1) actual damages, but not less than liquidated damages in the amount of \$2,500;
- (2) punitive damages upon proof of willful or reckless disregard of the law;
- (3) reasonable attorneys' fees and other litigation costs reasonably incurred; and
- (4) such other preliminary and equitable relief as the court determines to be appropriate.

The above federal statute is binding on the state and upheld in RENO v. CONDON 155 F.3rd 453

THE LEGAL QUESTION: Can the surrender of a driver's license for the purpose of preparing an application for membership in a private club be construed as a WAIVER OF PRIVACY PROTECTION afforded under the DPPA?

THE PROBABLE ANSWER IS NO: The DPPA provides that the state may establish a procedure for waiver for any situation not covered in the listing of permissible uses. That procedure would require an actual waiver from the individual. (Sec. 2721(d)). Unrestricted use of the data requires "express consent" from the individual. (Sec. 2721(c))

Use of a driver's license to access and use restricted personal data is very similar to the problem reported in the enclosed Dallas Morning News article, with the added penalty of \$5,000 to the state for each day of substantial noncompliance and individual civil penalties of \$2,500 for each violation