

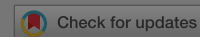
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Articles

Waivers, Federalism, and the Rule of Law

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Abstract

Waivers from legislation have been praised as the foundation for a new era of collaborative federalism. But these exceptions of law, often made without clear statutory authority, undermine the necessary basis for collaboration among governmental entities. That basis is law. Waivers in effect dispense from or even change laws in the interests of administrative flexibility. And, while some commentators have lauded this increased flexibility as empowering for state governments in particular, the real effect is to reduce relations based on law to a condition of perpetual bargaining. Even law is not sacrosanct. State agencies or their representatives may gain arbitrariness for their future actions provided by the rules and agencies provided by

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Notes

1. 567 U.S.____ (2012), 132 S.Ct 2566.
2. 132 S. Ct. at 2602.
3. I rely, here, on the analysis provided in Eloise Pasachoff, Conditional Spending After NFIB v. Sebelius: The Example of Federal Education Law, 62 Am. U. L. Rev. 577 (2013) 593.
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6. Ibid.
7. Pasachoff at 659. I should note that Pasachoff is expressing skepticism concerning these arguments that the NFIB decision will result in federal programs being deemed coercive by the courts.
8. Pasachoff at 616. Waivers are granted pursuant to NCLB tit. IX, § 9401, 20 U.S.C. § 7861(2006).
9. Pasaschoff at 616.
10. Pasaschoff at 659.
11. Pasaschoff at 659.
12. Lon L. Fuller, The Morality of Law, 1st ed. (New Haven, CT: Yale University Press, 1964), 46-49
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15. See
Philosophy

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26. No Child Left Behind Act, Pub. L. 107-110, 20 U.S.C.A. § 7801 (2011).

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