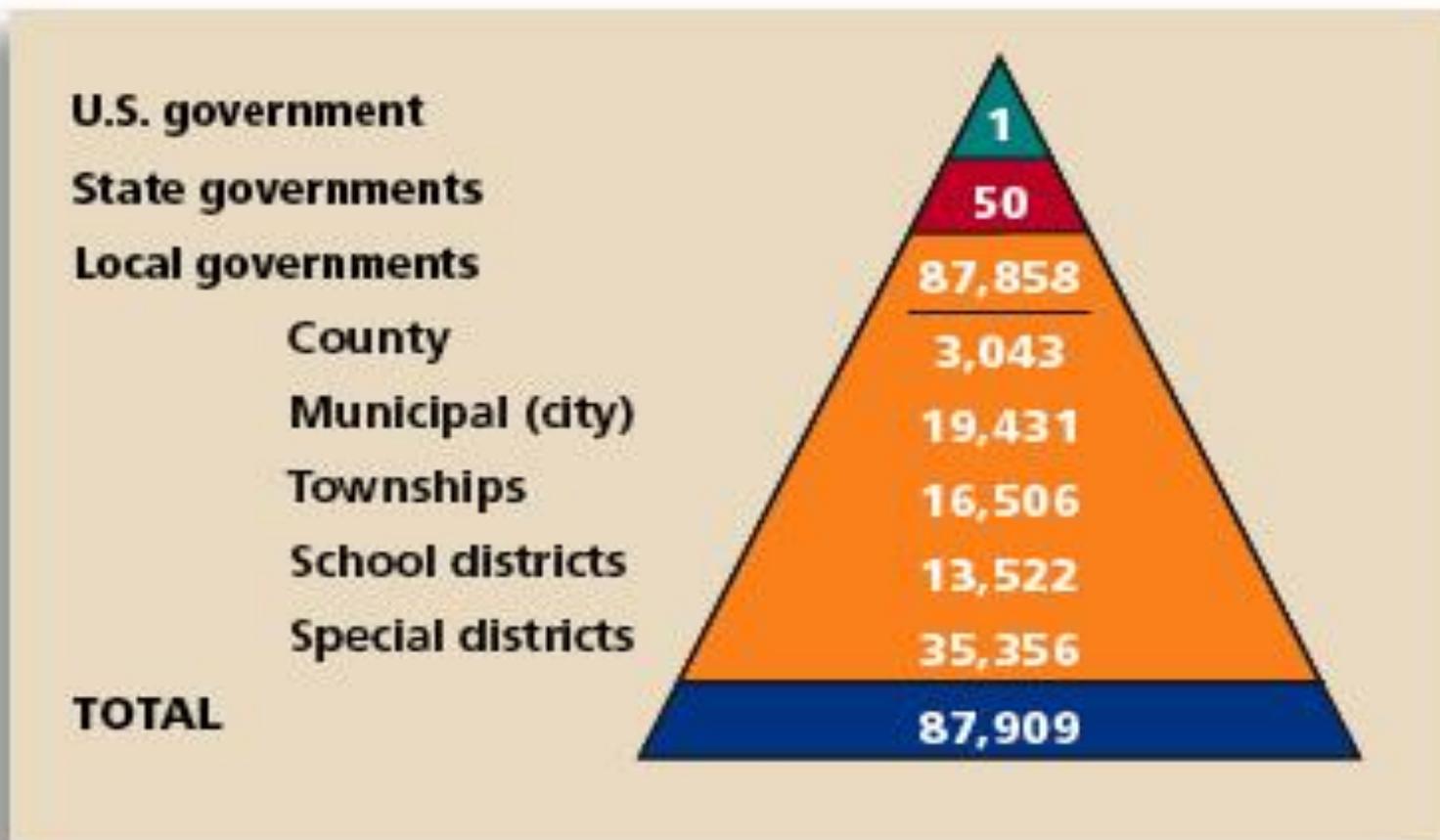


Chapter 3

Federalism

American Government: Continuity and Change

FIGURE 3.1 NUMBER OF GOVERNMENTS IN THE UNITED STATES



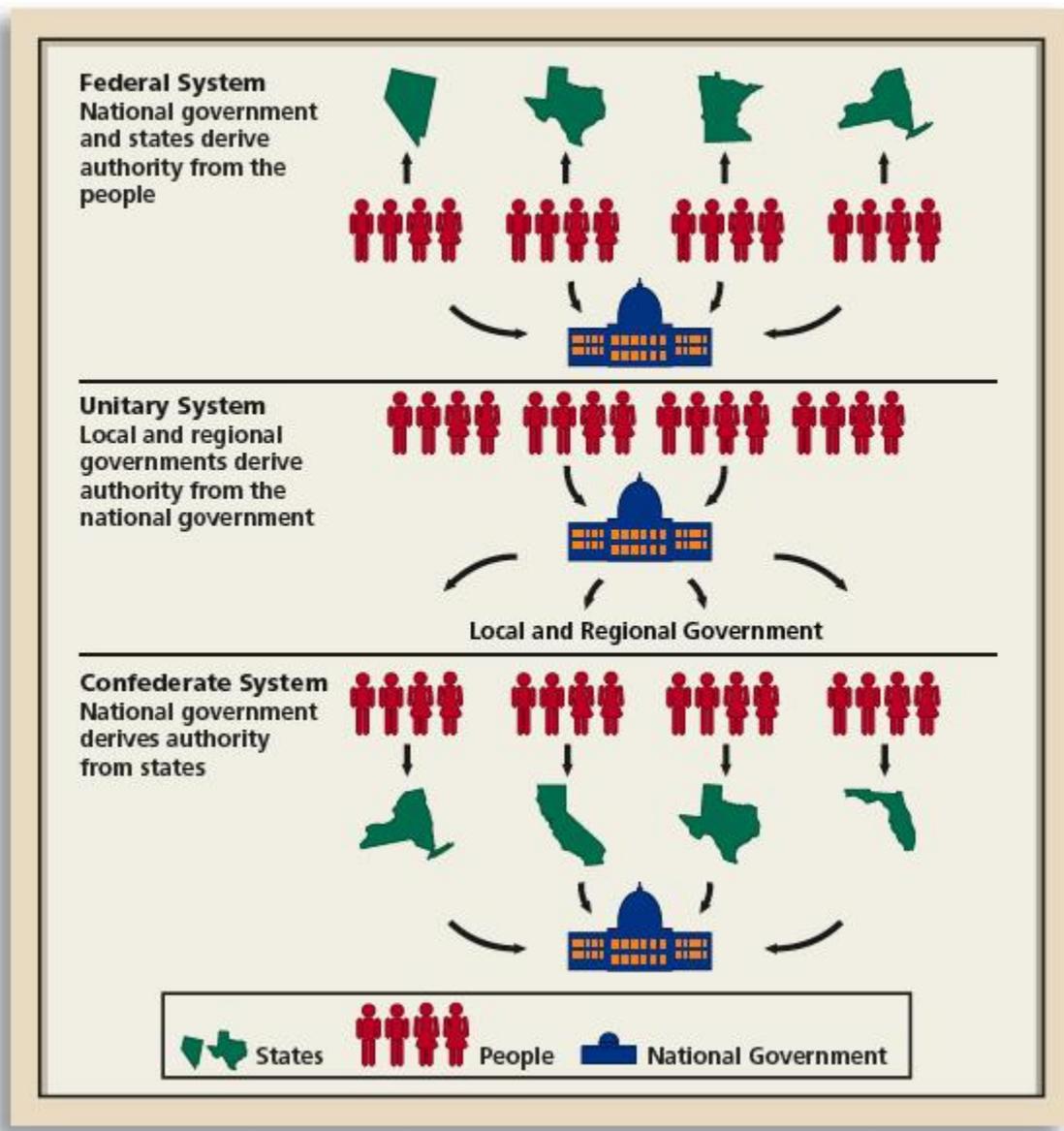
Source: U.S. Census Bureau, <http://ftp2.census.gov/govs/cog/2002cogprelim.report.pdf>.

Origins of the Federal System

- Under the Articles, the U.S. was governed by a **confederation**.
 - National government derives power from states
 - Led to weak national government
 - Framers remedied problems with a federal system
- **Federal system**
 - U.S. was the first country to adopt a federal system of government
 - The national government and state governments derive all authority from the people.
 - Different from **unitary system**
 - The local and regional governments derive all authority from a strong national government.

FIGURE 3.2 THE FEDERAL, UNITARY, AND CONFEDERATE SYSTEMS OF GOVERNMENT

The source of governmental authority and power differs dramatically in various systems of government.



National Powers Under the Constitution

- ❑ Enumerated Powers
 - 17 specific powers granted to Congress
 - ❑ Article 1, section 8 of the U.S. Constitution
 - ❑ Taxation
 - ❑ Coinage of money
 - ❑ Regulation of commerce
 - ❑ National defense
 - Necessary and Proper Clause
 - ❑ Implied Powers
 - Supremacy Clause
 - ❑ Mandates that national law is supreme to all other laws passed by the states or by any other subdivision of government



State Powers Under the Constitution

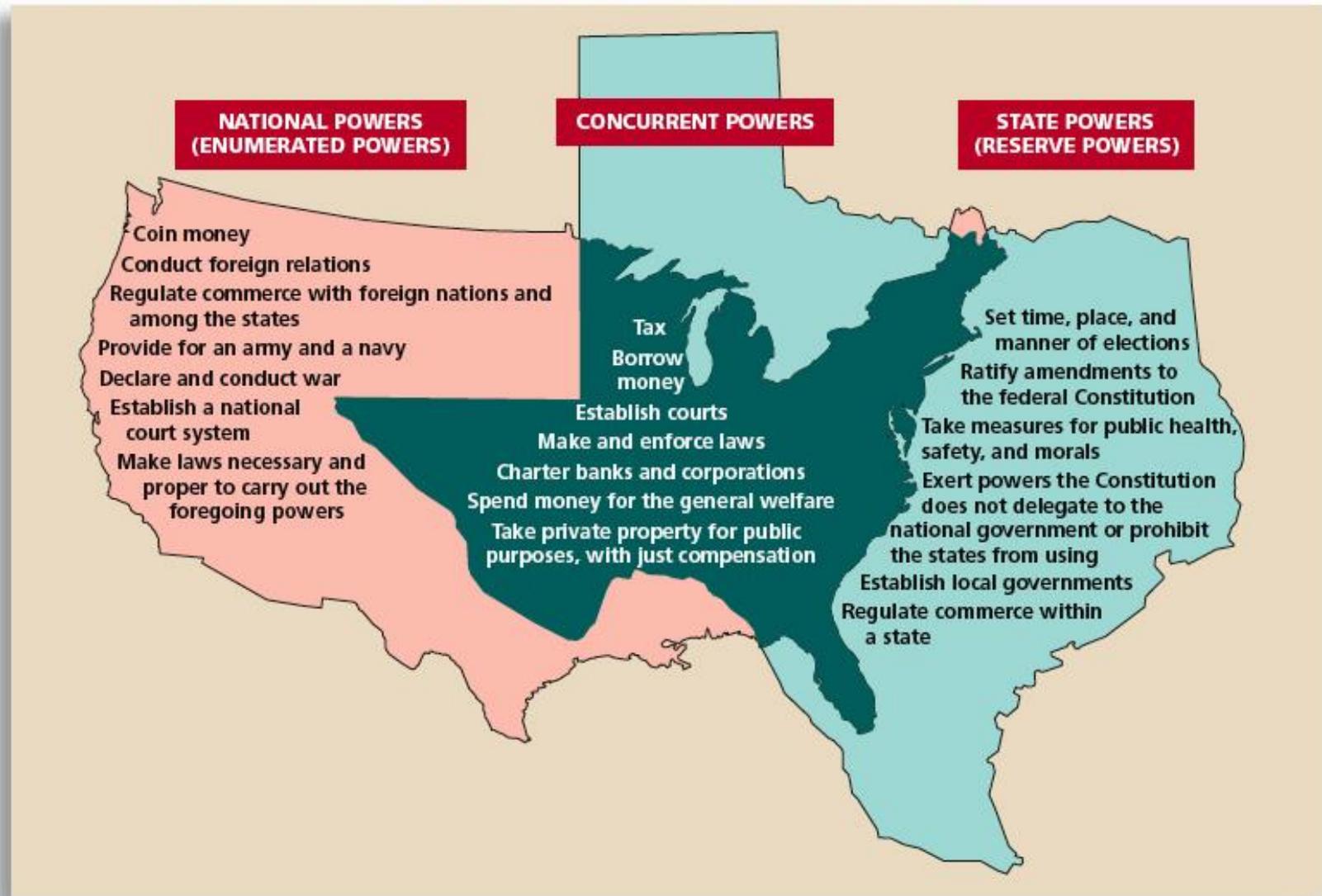
- Article 1
 - Allows states to determine time, place, and manner of elections for House Representatives and Senators
- Article II
 - Requires that each state appoint electors to vote for president
- Article IV
 - Privileges and immunities clause
 - Republican form of government
 - Protection against foreign attacks and domestic rebellion
- Tenth Amendment
 - States' powers described here
 - Reserve (or police) powers



Concurrent Powers

- Concurrent powers
 - Authority possessed by both state and national governments and exercised concurrently (at the same time) as long as that power is not exclusively within the scope of national power or in conflict with national law
 - Power to tax (states already had this one)
 - Right to borrow money
 - Establish courts
 - Make and enforce laws to carry out these powers

FIGURE 3.3 THE DISTRIBUTION OF GOVERNMENTAL POWER IN THE FEDERAL SYSTEM



Denied Powers

States cannot

- Enter into treaties
- Coin money
- Impair obligation of contracts
- Cannot enter into compacts with other states without congressional approval
- Denied the authority to take arbitrary actions affecting constitutional rights and liberties
- Cannot pass a bill of attainder
- No ex post facto laws

Congress cannot

- Favor one state over another in regulating commerce
- Cannot lay duties on items exported from any state
- Cannot pass a bill of attainder
- No ex post facto laws



Relations Among the States

- Mechanisms for interstate disputes
 - Directly settled by U.S. Supreme Court under its original jurisdiction
 - Full Faith and Credit Clause
 - Ensures judicial decrees and contracts made in one state will be binding and enforceable in others
 - States can vary considerably on social issues- implications?
 - Privileges and Immunities Clause
 - Extradition Clause
 - Interstate compacts
 - Over 200 exist today
 - Contracts between states that carry the force of law - Drivers License Compact
 - Consent of Congress



TABLE 3.1 COMPACTS BY THE NUMBERS

Interstate compacts with 25 or more members	13
Least compact memberships by a state (HI & WI)	14
Most compact memberships by a state (NH & VA)	42
Average compact memberships by a state	27
Compacts developed prior to 1920	36
Compacts developed since 1920	150+
Interstate compacts currently in operation	200+

Source: Council of State Governments, <http://www.csg.org>.

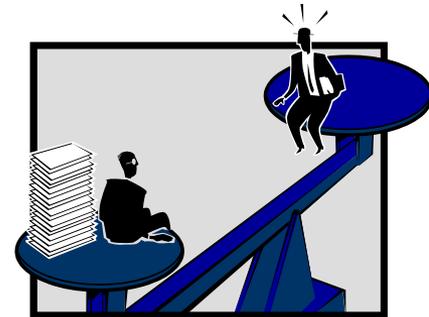
Relations Within the States: Local Government

- Local governments' authority not granted by the people but through state governments
 - States establish or charter their administrative subdivisions.
 - Local governments carry out or execute the duties of state governments on smaller scale.



Federalism and the Marshall Court

- Two rulings in the early 1800s had a major impact on the balance of power between national and state governments.
 - *McCulloch v. Maryland* (1819)
 - Upheld power of national government and denied the right of state to tax national bank
 - *Gibbons v. Ogden* (1824)
 - Upheld broad congressional power to regulate interstate commerce



Dual Federalism: The Taney Court, Slavery, and the Civil War

□ Dual Federalism

- Belief that having separate and equally powerful levels of government works best
- Implication: National government should not exceed its constitutionally enumerated powers and all other powers are, and should be, reserved to the states or the people.

□ *Dred Scott v. Sandford* (1857)

- Declared the Missouri Compromise unconstitutional
- Congress lacked the authority to ban slavery in the territories.

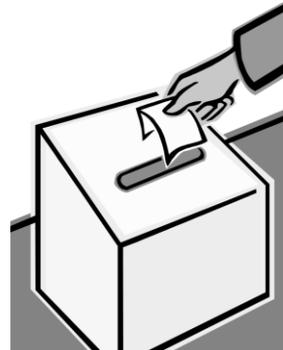


The Civil War, Its Aftermath, and the Continuation of Dual Federalism

- National government grew in size and powers after Civil War (1861-1865)
 - 13th, 14th, and 15th Amendments
 - Prohibited slavery and granted civil and political rights to African Americans
 - Supreme Court adhered to concept of dual federalism
 - *Plessy v. Ferguson* (1896)
 - Confusion over regulation of commerce
 - Inconsistent rulings on scope of national power

Setting the Stage for a Stronger National Government

- Sixteenth Amendment (1911)
 - Authorized Congress to enact a national income tax
 - Supreme Court had found congressional legislation in this area unconstitutional
- Seventeenth Amendment (1913)
 - Made senators directly elected by the people
 - Removed their selection from state legislatures



Cooperative Federalism: New Deal and Growth of National Government

- Great Depression
 - Bank failures (1920s)
 - 1921 slump in agricultural prices
 - 1926 construction industry went into decline
 - 1929 (summer) inventories of consumer goods and cars were at an all-time high
 - October 29, 1929, stock market crashed



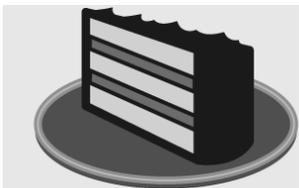
Cooperative Federalism: New Deal and Growth of National Government

- The New Deal (1933-1939)
 - Intense governmental activity on the national level
 - Response to Great Depression required the exercise of tremendous national authority
 - New agencies and programs
 - Supreme Court worried about scope of these programs in terms of regulating commerce and the economy
 - Court-packing plan response to anti-New Deal court decisions
 - New programs required cooperation across all levels of government.



The Changing Nature of Federalism: From Layer Cake to Marble Cake

- Layer cake federalism
 - Each layer, national, state and local, had clearly defined powers and responsibilities.
 - After the New Deal, the nature of the federal system changed.
 - Marble cake metaphor
 - Cooperative federalism
 - The relationship between the national and state governments that began with the New Deal



Federal Grants and National Efforts to Influence the States

- Morrill Land Grant Act of 1862
- New Deal
- Most grants were **categorical grants**.
 - Grant for which Congress appropriates funds for a specific purpose
- 1960s War on Poverty
 - Direct assistance to states, local governments, and citizen groups
 - Grants used to push national agenda rather than respond to state demands

New Federalism: Returning Power to the States

New Federalism

- Federal/state relationship proposed by Reagan administration during the 1980
- Return administrative powers to the state governments

Reagan Revolution

- Block grants
 - Broad grant with few strings attached
 - Given to states by federal government for activity in specified area (education or health services, for example)

New Federalism: Returning Power to the States

□ The Devolution Revolution

- Contract with America

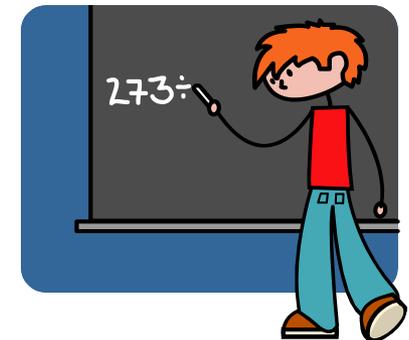
- Unfunded Mandates

- National laws that direct states or local governments to comply with federal rules and regulations but contain no federal funding to help pay the cost of meeting those requirements

- Personal Responsibility and Work Opportunity Reconciliation Act of 1996

New Federalism: Returning Power to the States

- Federalism Under the Bush Administration
 - Budget shortfalls at federal and state level
 - States raised taxes and cut services; received aid from federal government
 - Federal government expanded post 9/11
 - Department of Homeland Security
 - No Child Left Behind
 - Example of preemption
 - Viewed by many as an unprecedented usurpation of state and local powers





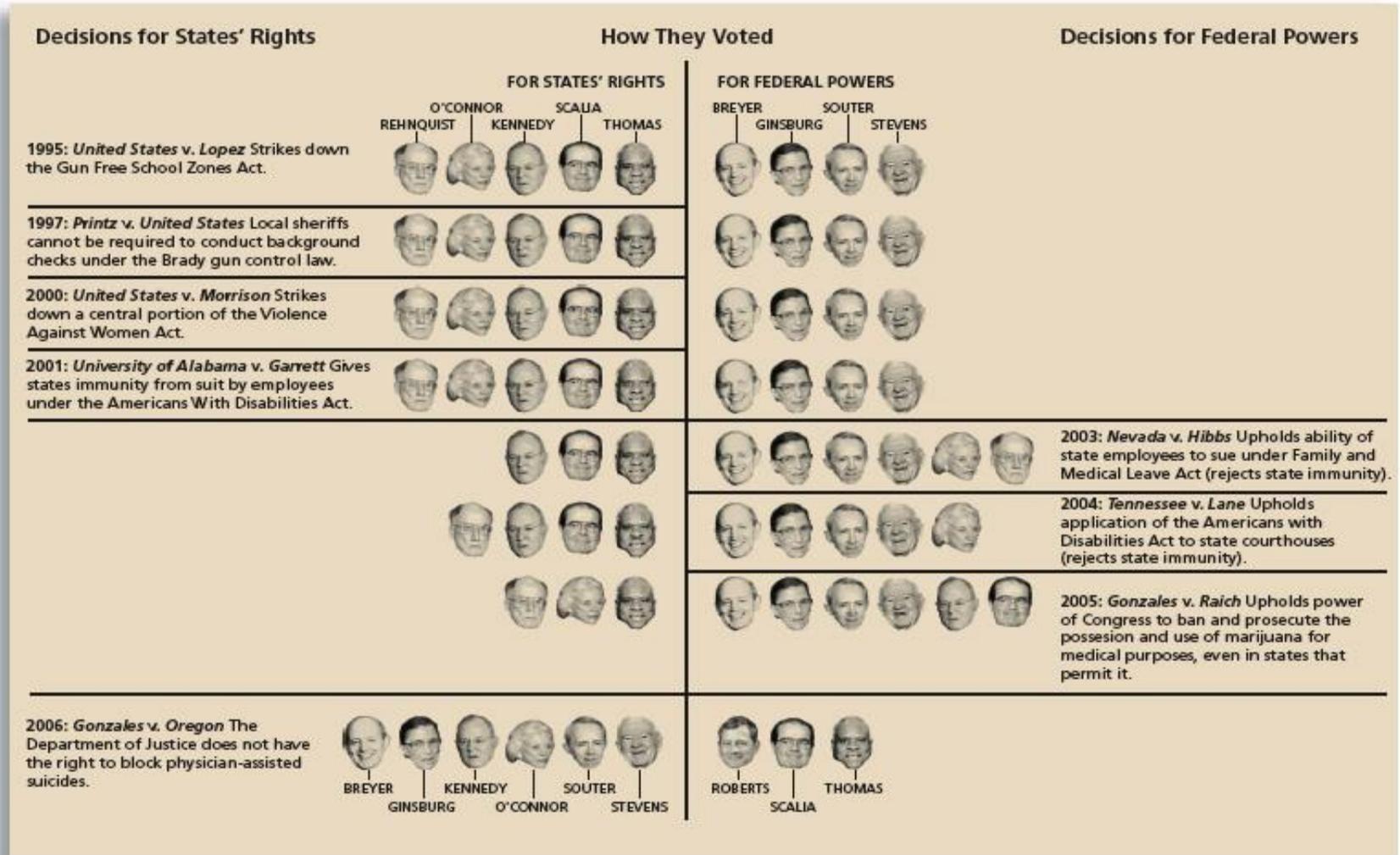
Source: NARAL Pro-Choice America/NARAL Foundation, "Who Decides? A State-by-State Review of Abortion and Reproductive Rights, 2006," <http://www.prochoiceamerica.org>. Reprinted by permission.

The Supreme Court: A Return to States' Rights?

- From New Deal to 1980s: Court has generally expanded national authority at the expense of the states
- Beginning in 1980s: Court interpretations altered
 - Willingness to allow Congress to regulate in a variety of areas waned
 - *Webster v. Reproductive Health Services* (1989)
 - *Stenberg v. Carhart* (2000)
 - *U.S. v. Lopez* (1995)
 - Sovereign immunity
 - Right of a state to be free from lawsuit unless it gives permission to the suit
 - Under the 11th Amendment, all states are considered sovereign.
 - Questions regarding the Courts' future direction



FIGURE 3.4 THE REHNQUIST AND ROBERTS COURTS AND FEDERALISM



Source: *New York Times* (June 12, 2005): 3; *New York Times* (July 2, 2006): A18; Legal Information Institute at Cornell University Law School.