

A CITIZEN'S GUIDE TO THE TENTH AMENDMENT

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What is the Tenth Amendment?

It's the last of the first 10 amendments to the U.S. Constitution, known as the Bill of Rights, proposed by Congress in 1789 and ratified by the legislatures of the several states. The Tenth Amendment affirms the Union is a nation of states. The states cede some of their inherent authority over specific issues (e.g., defense and interstate commerce) to the federal government. All of the rights and responsibilities not specifically delegated to the federal government are reserved to the states or to the people, not the other way around. The Tenth Amendment reinforces, and in fact helps define, the Founding Fathers' plan for a nation with a diversity of power centers, unlike the basically unitary, top-down monarchies of 18th century Europe.

Why is the Tenth Amendment so widely ignored today?

Supreme Court decisions from the early 19th century into the mid-20th century generally encouraged the view that the Constitution limited the power and scope of Congress and the executive branch, leaving states and local communities to legislate their own affairs.

That balance began to shift to the federal side during the Great Depression, as President Franklin D. Roosevelt demanded greater federal efforts in job creation and market regulation. The federal government began work projects, retirement benefits through Social Security, and even tried to micromanage agricultural and livestock supplies. Since then the Tenth Amendment's emphasis on the powers delegated to the federal government has been largely ignored.

Is the Tenth Amendment somehow less important than lower-numbered amendments, starting with the First?

Not one bit. The Founding Fathers knew they had to protect fundamental citizen rights against arbitrary action.

That meant preventing the concentration of power. We needed strong, vigorous state government as a buffer between national government and the people.

But there's a second advantage to the plan: A free people need to look their government in the eye—a feat far easier to bring off at the state or local level than at the national. The people who live closest to particular problems will usually understand those problems better than do people who live hundreds, or thousands, of miles away.

Didn't the Constitution weaken state powers in relation to the power of the U.S. government?

It did and deliberately so. The Articles of Confederation, drafted during the Revolution, didn't provide for much of a central government, which created a number of problems. A stronger version was needed for the sake of an efficient and well-functioning nation. The Constitution supplied that structure, while preserving the role of the states as well as the individual. The Tenth Amendment was essential in clarifying that while the country would have a stronger federal government, it was still a limited government.

Why is the Tenth Amendment important?

No constitutional provision of just 28 words can anticipate or foresee every emergency, crisis or power conflict. The Tenth Amendment lays down a principle in general terms: namely, that states could follow their best judgment in matters the Constitution had neither given the

The Tenth Amendment
The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

national government nor prohibited the states from undertaking. These limits left considerable scope for state activity. Under the Constitution the states were not “To coin Money” or “To declare War.” They could, nevertheless, among other things:

- Regulate their internal affairs;
- Impose their own taxes for their own purposes;
- Build their own highways;
- Operate their own schools;
- Determine how they would hold elections for state and federal candidates; and
- Set up publicly owned institutions for the care of the sick and afflicted.

Their legislatures were in no sense puppets of Congress. State lawmakers could meet whenever they wanted for as long as they wanted, and address issues peculiar to the needs of those who had chosen them. No national “permission” was needed; the Tenth Amendment, in a sense, constituted permission.

Is the Tenth Amendment’s language redundant?

Some claim that the Tenth Amendment simply restates the obvious: that states and the people are free to do what the Constitution doesn’t prohibit. But that notion ignores the proscriptive language in the amendment. Yes, there is the mention that the Constitution “prohibits” states from exercising certain powers. But more importantly, the amendment asserts that those powers not delegated to the federal government don’t belong to it. They belong to the states or the people.

What the Tenth Amendment does is create a balance of power between the states and the federal government, which is what is meant by “federalism.” As Supreme Court Justice Antonin Scalia wrote in *Printz v. New York*:

The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States’ officers, or those of their political subdivisions, to administer or enforce a federal regulatory program. It matters not whether policymaking is involved, and no case by case weighing of the burdens or benefits is necessary; such commands are fundamentally incompatible with our constitutional system of dual sovereignty.

Thus the Tenth Amendment wasn’t an afterthought or an attempt to repeat the obvious. The Founding Fathers were much too deliberate in their choice of words. Rather, the amendment was meant to be an exclamation point at the end of a document—the Constitution and the Bill of Rights—to neutralize what they thought would be inevitable future attempts to grow the federal government and its power far beyond the Founders’ original intent.

Can we restore the Tenth Amendment to its rightful place of limiting federal powers?

For 60 years—and many would say much longer—we have seen the federal government assume more and more powers that were never granted it by the Constitution. As it has assumed more powers, it has had to increase taxes and impose more regulations that the Founding Fathers never envisioned being controlled by Washington. And it has paid for those excesses by borrowing trillions of dollars. Those factors have awakened the public, which is looking for ways to recreate the balance of powers envisioned by the Founders. What can be done?

- The Supreme Court must reaffirm the role and intent of the Tenth Amendment, putting the constitution ahead of improper judicial precedent;
- States must reinvigorate our federalist system by challenging federal violations of the Tenth Amendment, as many are currently doing in challenging the health care reform law’s demand that every American have health insurance or pay a fine;
- Citizens must demand both state and federal elected officials acknowledge the limits to federal power and oppose legislation and regulatory efforts that exceed those constitutional limits; and
- Public interest lawyers who honor the Constitution must contest federal violations of the Tenth Amendment through the courts.

Yes, the Tenth Amendment can be revived and restored, but only when the public realizes that it’s time to get our federal house in order, and that means returning to the Founders’ notion of a limited government of delegated powers.

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