

The tenth
amendment acts as a
limit on congressional
powers



A Modern Day Analysis of the Tenth Amendment

Abstract

This paper examines some of the history of the Tenth Amendment as well as the various ways in which it is interpreted and expressed today. By utilizing four sources that address this subject and examining the actual words of the amendment, this paper takes a look at its original intent and then jumps to more current examples of its use. This paper will examine how the Tenth Amendment is viewed in modern times, whether through the U. S. Supreme Court, the threat of increased Congressional authority, state activities and policies and various organizations working to maintain its historical intent. The reader will also find a critical look at the ways in which the Tenth Amendment is expressed in our daily lives, whether directly or indirectly.

Keywords: Tenth Amendment, Constitution, Congress

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Thomas Jefferson called the Tenth Amendment “ the foundation of the Constitution” (Hall 1992). Historically, the amendment was designed to limit the powers of the federal government, a concern highlighted by the tyrannical rule of King George III of England. While the wording of the amendment is simple and seemingly precise, its historical significance--and modern interpretation and use--continues to be a source of debate regarding its true meaning and intent. This paper will attempt to clarify questions regarding its interpretation, the current actions of the states to push back federal intrusion and, finally, the role of the United States Supreme Court in deciding these important matters.

Ratified in 1791, The Tenth Amendment works to limit Congressional powers
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and guarantee that the states have primary control over matters that directly affect their citizens; over time, however, this clarification has eroded. The amendment expressly states that “ powers not delegated” to the new federal government must be left to the states to decide. While the original intent is clear, however, its interpretation has been widened beyond the expressed attempt to limit federal intrusion (Katz 1974). The debate continues in 2010 regarding the boundaries of the amendment’s authority. More recently, we can find U. S. Supreme Court cases addressing the powers of the Tenth Amendment. In 1995, the Court ruled that Congress overstepped its power by passing the 1990 Gun-Free School Zones Act. The federal government, the Court stated, could not regulate and determine punishment for gun possession in school zones, due to the Commerce Clause and the Tenth Amendment. Another federal gun control law, known as the Brady Law, was overturned by the Court in 1997 because the law violated the Tenth Amendment. State officials could not be forced to implement a federal regulatory program (Ritchie 2006). More Supreme Court rulings regarding the Tenth Amendment will likely be heard and decided in the near future.

Other rulings and legislation have used the Commerce Clause of the Constitution (Article I, Section 8, Clause 3) to bypass the authority of the Tenth Amendment (Hall 1992). The Commerce Clause, as part of the Constitution’s enumerated powers, is defined as the ability of Congress to regulate and protect aspects of interstate commerce. This power has been used to lessen the power of the states and explains Congress’ ability to exert increasing control over the states’ activities and policies. (An argument can also be made that Congress exercises ever-tightening control over the states

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by way of grants and funding--a budget source most financially-strapped states are reluctant to relinquish.)

How does the Tenth Amendment affect our daily lives? Currently, there are numerous attempts to clarify the role of the Tenth Amendment and use its wording and intention to limit the power of the federal government over the decisions of the states. For example, while numerous pro-medical marijuana laws have passed a number of state hurdles, the federal government has used the Commerce Clause of the Constitution to overrule and control state statutes. In turn, the federal government has worked to pass health care legislation and Cap and Trade/EPA regulations that would severely limit the ability of states to govern themselves (Tenth 2010). Various organizations such as The Tenth Amendment Center--together with factions within the individual states--are working to push back against the federal government and its intrusion in the affairs of the state and its citizens. Others argue that the amendment is vague, open to interpretation and is superseded by the authority of the Commerce Clause. One point is clear: the role of the Tenth Amendment in our daily lives continues to draw debate and controversy.

References

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