

**As Reported by the Senate State and Local Government and
Veterans Affairs Committee**

**128th General Assembly
Regular Session
2009-2010**

S. C. R. No. 13

Senators Grendell, Faber

Cosponsors: Senators Gibbs, Buehrer, Cates, Hughes, Schuler, Schuring

CONCURRENT RESOLUTION

To claim sovereignty over certain powers pursuant to 1
the Tenth Amendment to the Constitution of the 2
United States of America, to notify Congress to 3
limit and end certain mandates, and to insist that 4
federal legislation contravening the Tenth 5
Amendment be prohibited or repealed. 6

**BE IT RESOLVED BY THE SENATE OF THE STATE OF OHIO (THE HOUSE OF
REPRESENTATIVES CONCURRING):**

WHEREAS, The Tenth Amendment to the Constitution of the 7
United States reads: "The powers not delegated to the United 8
States by the Constitution, nor prohibited by it to the States, 9
are reserved to the States respectively, or to the people"; and 10

WHEREAS, The Tenth Amendment defines the total scope of 11
federal power as being that specifically granted to the federal 12
government by the Constitution of the United States and no more; 13
and 14

WHEREAS, The scope of power defined by the Tenth Amendment 15
signifies that the federal government was created by the states 16
specifically to be an agent of the states; and 17

WHEREAS, Today, in 2009, the states are often treated as 18

agents of the federal government; and 19

WHEREAS, Many federal laws directly contravene the Tenth 20
Amendment to the Constitution of the United States; and 21

WHEREAS, We believe in the importance of all levels of 22
government working together to serve the citizens of our country, 23
by respecting the constitutional provisions that properly 24
delineate the authority of federal, state, and local governments; 25
and 26

WHEREAS, The Tenth Amendment assures that we, the people of 27
the United States and each sovereign state in the Union of States, 28
now have, and have always had, rights the federal government may 29
not usurp; and 30

WHEREAS, Article IV, Section 4 of the Constitution of the 31
United States, states in part, "The United States shall guarantee 32
to every State in this Union a Republican Form of Government," and 33
the Ninth Amendment to the Constitution of the United States 34
states that "The enumeration in the Constitution, of certain 35
rights, shall not be construed to deny or disparage others 36
retained by the people"; and 37

WHEREAS, The United States Supreme Court ruled in *New York v.* 38
United States, 505 U.S. 144 (1992), that Congress may not simply 39
commandeer the legislative and regulatory processes of the states 40
by compelling them to enact and enforce regulatory programs; and 41

WHEREAS, the United States Supreme Court, in *Printz v. United* 42
States/Mack v. United States, 521 U.S. 898 (1997), reaffirmed that 43
the Constitution of the United States established a system of 44
"dual sovereignty" that retains "a residuary and inviolable 45
sovereignty" by the states. The majority of the United States 46
Supreme Court noted in that case (521 U.S. 898, 921-922): 47

"As [President] Madison expressed it: '[T]he local or 48
municipal authorities form distinct and independent portions of 49

the supremacy, no more subject, within their respective spheres, 50
to the general authority than the general authority is subject to 51
them, within its own sphere.' The Federalist No. 39, at 245. 52

This separation of the two spheres is one of the 53
Constitution's structural protections of liberty. 'Just as the 54
separation and independence of the coordinate branches of the 55
Federal Government serve to prevent the accumulation of excessive 56
power in any one branch, a healthy balance of power between the 57
States and the Federal Government will reduce the risk of tyranny 58
and abuse from either front.' . . . To quote [President] Madison 59
once again: 60

'In the compound republic of America, the power surrendered 61
by the people is first divided between two distinct governments, 62
and then the portion allotted to each subdivided among distinct 63
and separate departments. Hence a double security arises to the 64
rights of the people. The different governments will control each 65
other, at the same time that each will be controlled by itself.' 66
The Federalist No. 51, at 323"; and 67

WHEREAS, A number of proposals by previous administrations, 68
some now pending proposals by the present administration, and some 69
proposals by Congress may further violate the Tenth Amendment 70
restriction on the scope of federal power; now therefore be it 71

RESOLVED, That the State of Ohio hereby acknowledges and 72
reaffirms its residuary and inviolable sovereignty under the Tenth 73
Amendment to the Constitution of the United States over all powers 74
not otherwise enumerated and granted to the federal government by 75
the Constitution of the United States; and be it further 76

RESOLVED, That this resolution serves as notice to the 78
federal government as agent of the states, to end federal mandates 79
that are beyond the scope of the constitutionally delegated 80

powers; and be it further 81

RESOLVED, That all compulsory federal legislation that 82
directs states to comply under threat of civil or criminal penalty 83
or sanction or that requires states to enact legislation or lose 84
federal funding be prohibited or repealed; and be it further 85

RESOLVED, That the Clerk of the Senate transmit authenticated 86
copies of this resolution to the President of the United States, 87
the President Pro Tempore of the United States Senate, the Speaker 88
of the United States House of Representatives, the Speaker of the 89
House of Representatives and the President of the Senate of each 90
state's legislature, and each member of the Ohio Congressional 91
delegation. 92