ALASKA LEGISLATURE SPECIAL COMMITTEE/SUBJECT FILES 8672

2660 SCOMM 119 HOUSE SPECIAL COMMITTEE WORLD TRADE..., 1999-2000

Alaska State Legislature

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Representative John Coghill

HJR 34 Repeal Federal Estate and Gift Tax

Sponsor Statement March 26, 1999

The purpose of this resolution can best be described by quoting the findings of H.R. 86:

Congress finds that:

"(1) Hard working American men and women spend a lifetime saving to provide for their children and grandchildren, paying taxes all the while. Throughout their lives, they pay taxes on the income and gains from their labor and their investment. Because of the heavy burden of income taxes, property taxes, and other levies, it is enormously difficult to accumulate savings for family's future. Worst of all, when the purpose of that hard earned saving is about to be achieved, families discover that between 37 percent and 55 percent of their after-tax savings is confiscated by Federal estate taxes.

(2) These transfer, estate, and gift taxes punish lifelong habits of thrift; they discourage entrepreneurship; they penalize families; and they have a negative effect on other tax revenue sources.

(3) These taxes raise almost no material revenue for the Federal Government. In fiscal year 1998, they produced about 1 percent of total Federal revenues.

(4) The waste and economic inefficiency caused by estate taxes is well known. American families employ legions of tax accountants and lawyers each year to set up trusts and other prolix devices designed to avoid these onerous levies. The make-work imposed upon the economy comprises billions of dollars.

(5) In order to pay these excessive taxes, many small businesses must liquidate all or part of their assets. By causing business closures, these taxes constrict business activity, increase unemployment, and reduce tax revenues to the Federal Government.

(6) Independent analyses indicate that, were these onerous taxes repealed, the Nation's gross domestic product, Federal and State tax revenues, employment base, and capital formation would increase substantially. According to a December 1998 study by the Joint Economic Committee, these taxes have reduced the stock of capital in the United States by $497,000,000,000, reduce annual Federal income tax receipts by $20,000,000,000, and cause family businesses to divert resources from investment and to develop environmentally sensitive land.

(7) Repealing these taxes will ensure economic fairness for all American families and businesses, as well as economic growth and prosperity for the Nation as a whole."

Representative_John_Coghill@LEGIS.state.ak.us

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HJR 34

Revision Date:
Title: Repeal Estate & Gift Tax

Sponsor: Coghill
Requester: WTR

Dept. Affected
BRU
Component

Component Serial No.

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES [ ]						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

THERE IS NO FISCAL IMPACT.

Prepared by Donald M. Riehle **Phone** 907-465-6643

House World Trade & State/Federal Relations **Phone**

Date

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GPO's PDF version of this bill	References to this bill in the Congressional Record	Link to the Bill Summary & Status file.	*Full Display* - 6,471 bytes.[Help]

Family Heritage Preservation Act (Introduced in the House)

H 86 IH

106th CONGRESS

1st Session

H. R. 86

To repeal the Federal estate and gift taxes and the tax on generation-skipping transfers.

IN THE HOUSE OF REPRESENTATIVES

January 6, 1999

Mr. COX (for himself, Mr. ADERHOLT, Mr. ANDREWS, Mr. ARMEY, Mr. BACHUS, Mr. BAKER, Mr. BARCIA, Mr. BARR of Georgia, Mr. BARTLETT of Maryland, Mr. BARTON of Texas, Mr. BASS, Mr. BILBRAY, Mr. BILIRAKIS, Mr. BLILEY, Mr. BLUNT, Mr. BOEHLERT, Mr. BOEHNER, Mr. BONILLA, Mrs. BONO, Mr. BOUCHER, Mr. BRADY OF TEXAS, Mr. BRYANT, Mr. BURR of North Carolina, Mr. BURTON of Indiana, Mr. CALVERT, Mr. CAMP, Mr. CAMPBELL, Mr. CANNON, Mr. CANADY of Florida, Mr. CHABOT, Mr. CHAMBLISS, Mrs. CHENOWETH, Mr. CRAMER, Mr. COBLE, Mr. COBURN, Mr. COLLINS, Mr. COMBEST, Mr. CONDIT, Mr. COOK, Mr. COOKSEY, Mr. CRANE, Mrs. CUBIN, Mr. CUNNINGHAM, Ms. DANNER, Mr. DEAL of Georgia, Mr. DELAY, Mr. DEMINT, Mr. DICKEY, Mr. DOOLITTLE, Mr. DREIER, Mr. DUNCAN, Ms. DUNN, Mr. EHRLICH, Mrs. EMERSON, Mr. ENGLISH, Mr. EVERETT, Mr. EWING, Mr. FOLEY, Mr. FOSSELLA, Mrs. FOWLER, Mr. FORBES, Mr. FRANKS of New Jersey, Mr. GALLEGLY, Mr. GEKAS, Mr. GIBBONS, Mr. GILLMOR, Mr. GILMAN, Mr. GOODE, Mr. GOODLING, Mr. GOODLATTE, Mr. GOSS, Mr. GRAHAM, Ms. GRANGER, Mr. GREEN of Wisconsin, Mr. GREENWOOD, Mr. HALL of Texas, Mr. HANSEN, Mr. HASTINGS of Washington, Mr. HAYES, Mr. HAYWORTH, Mr. HEFLEY, Mr. HERGER, Mr. HILL of Montana, Mr. HILLEARY, Mr. HORN, Mr. HOSTETTLER, Mr. HULSHOF, Mr. HUNTER, Mr. HUTCHINSON, Mr. HYDE, Mr. ISTOOK, Mr. JENKINS, Mr. SAM JOHNSON of Texas, Mr. JONES of North Carolina, Mr. KASICH, Mrs. KELLY, Mr. KING, Mr. KINGSTON, Mr. KNOLLENBERG, Mr. KOLBE, Mr. KUYKENDALL, Mr. LARGENT, Mr. LATHAM, Mr. LAHOOD, Mr. LATOURETTE, Mr. LEWIS of California, Mr. LEWIS of Kentucky, Mr. LINDER, Mr. LIVINGSTON, Mr. LOBIONDO, Mr. LUCAS of Oklahoma, Mr. MCCRERY, Mr. MCINTOSH, Mr. MCINNIS, Mr. MCHUGH, Mr. MCKEON, Mr. MCCOLLUM, Mr. MANZULLO, Mr. MARTINEZ, Mr. METCALF, Mr. MICA, Mr. MILLER of Florida, Mr. GARY MILLER of California, Mr. MORAN of Kansas, Mrs. MYRICK, Mr. NETHERCUTT, Mr. NEY, Mrs. NORTHUP, Mr. NORWOOD, Mr. OXLEY, Mr. PACKARD, Mr. PAUL, Mr. PEASE, Mr. PETERSON of Pennsylvania, Mr. PICKERING, Mr. PITTS, Mr. POMBO, Mr. PORTER, Ms. PRYCE of Ohio, Mr. RADANOVICH, Mr. RAHALL, Mr. RAMSTAD, Mr. RILEY, Mr. ROGAN, Mr. ROHRABACHER, Ms. ROS-LEHTINEN, Mrs. ROUKEMA, Mr. ROYCE, Mr. RYUN of Kansas, Mr. SALMON, Mr. SAXTON, Mr. SCARBOROUGH, Mr. SCHAFFER, Mr. SENSENBRENNER, Mr. SESSIONS, Mr. SHADEGG, Mr. SHAW, Mr. SHIMKUS, Mr. SHUSTER, Mr. SKEEN, Mr. SMITH of Texas, Mr. SMITH of Michigan, Mr. SOUDER, Mr. SPENCE, Mr. STEARNS, Mr. STUMP, Mr. SUNUNU, Mr. SWEENEY, Mr. TALENT, Mr. TANCREDO, Mr. TAUZIN, Mr. TAYLOR of North Carolina, Mr. TERRY, Mr. THORNBERRY, Mr. THUNE, Mr. TIAHRT, Mr. TOOMEY, Mr. UPTON, Mr. WALDEN of Oregon, Mr. WALSH, Mr. WAMP, Mr. WATKINS, Mr. WATTS of Oklahoma, Mr. WELDON of Pennsylvania, Mr. WELDON of Florida, Mrs. WILSON, Mr. WHITFIELD, Mr. WICKER, Mr. WOLF, and Mr. YOUNG of Alaska) introduced the following bill; which was referred to the Committee on Ways and Means

---

A BILL

To repeal the Federal estate and gift taxes and the tax on generation-skipping transfers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Family Heritage Preservation Act'.

SEC. 2. FINDINGS.

Congress finds that:

(1) Hard working American men and women spend a lifetime saving to provide for their children and grandchildren, paying taxes all the while. Throughout their lives, they pay taxes on the income and gains from their labor and their investment. Because of the heavy burden of income taxes, property taxes, and other levies, it is enormously difficult to accumulate savings for a family's future. Worst of all, when the purpose of that hard earned saving is about to be achieved, families discover that between 37 percent and 55 percent of their after-tax savings is confiscated by Federal estate taxes.

(2) These transfer, estate, and gift taxes punish lifelong habits of thrift; they discourage entrepreneurship; they penalize families; and they have a negative effect on other tax revenue sources.

(3) These taxes raise almost no material revenue for the Federal Government. In fiscal year 1998, they produced about 1 percent of total Federal revenues.

(4) The waste and economic inefficiency caused by estate taxes is well known. American families employ legions of tax accountants and lawyers each year to set up trusts and other prolix devices designed to avoid these onerous levies. The make-work imposed upon the economy comprises billions of dollars.

(5) In order to pay these excessive taxes, many small businesses must liquidate all or part of

their assets. By causing business closures, these taxes constrict business activity, increase unemployment, and reduce tax revenues to the Federal Government.

(6) Independent analyses indicate that, were these onerous taxes repealed, the Nation's gross domestic product, Federal and State tax revenues, employment base, and capital formation would increase substantially. According to a December 1998 study by the Joint Economic Committee, these taxes have reduced the stock of capital in the United States by $497,000,000,000, reduce annual Federal income tax receipts by $20,000,000,000, and cause family businesses to divert resources from investment and to develop environmentally sensitive land.

(7) Repealing these taxes will ensure economic fairness for all American families and businesses, as well as economic growth and prosperity for the Nation as a whole.

SEC. 3. REPEAL OF FEDERAL TRANSFER TAXES.

(a) GENERAL RULE- Subtitle B of the Internal Revenue Code of 1986 (relating to estate, gift, and generation-skipping taxes) is hereby repealed.

(b) EFFECTIVE DATE- The repeal made by subsection (a) shall apply to the estates of decedents dying, and gifts and generation-skipping transfers made, after the date of the enactment of this Act.

The Family Heritage Preservation Act

http://cox.house.gov/deathtax/

First introduced in the House of Representatives by Rep. Christopher Cox (R-California) in 1993. with the support of 29 other members, Death Tax repeal is a top Congressional priority, and is a top legislative priority of President Clinton's White House Conference on Small Business. The Family Heritage Preservation Act, H.R. 86 has 196 House sponsors.

What is the Death Tax?

The Death Tax is levied on all assets you have accumulated during your life, including your home, your savings, your stocks and bonds, your bank accounts, your land, your family heirlooms, your jewelry, your furniture, and on every asset in any business you own, whether or not such a business has the cash available to pay the death tax. The Death Tax is unfair because all of the money it raises has been taxed at least once, and sometimes two or three times, through income taxes, the penalty tax on savings and investment, and the myriad other taxes on Americans.

The Death Tax used to be three taxes. They were "unified" in 1981. The Internal Revenue Code levies taxes on transfers of property at death (the estate tax), during life (the gift tax), and to grandchildren or other descendants (the generation-skipping transfer tax). The Death Tax rate is the steepest in the tax code, starting at 37% and rising to 55%. The components of the Death Tax are:

The Estate Tax

> The estate tax is levied against everything you own when you die. This tax can be deferred until the death of your spouse. While the tax is owed on the first dollar of your estate, a unified credit is allowed against a taxable estate that essentially cancels out any taxed owed until the gross value of the estate reaches $625,000. Every dollar after that point is taxed at a rate between 37% and 55% percent. While the first $625,000 of an estate is tax exempt, Congress had not raised the level of the exemption since 1981 until last August, at which time it was increased by only $25,000. The result is that the actual value of the exemption has been badly eroded by inflation—according to Americans for tax reform, the value of the $600,000 exemption in 1981 dollars is only $377,000. The 1997 Taxpayer Relief Act gradually raises the $600,000 to $1,000,000 by 2006, roughly keeping pace with projected inflation after 1997, but this does little to rectify the loss of previous value, and (since this new exemption is not indexed either) the problem will begin anew in 2006.

The Gift Tax

> The gift tax is levied on taxable gifts greater than $10,000. In other words, to prevent you from giving your estate to your heirs, you may only give

$10,000 per person per year. The graduated rates of this tax are the same as the estate tax. The $625,000 exemption may be used at time of death, or gifts may be made during life which count towards this total.

The Generation Skipping Transfer Tax

In the words of West Publishing's 500-page "Nutshell" description of the Death Tax, the generation-skipping transfer tax imposes a 55% tax on "wealth transfers from a donor to a transferee who is two or more generations younger . . . that escape the estate or gift tax at the intervening generation(s)." It was designed to cut off means to avoid the estate and gift taxes, but added significant complexity to Death Tax law.

Why Should the Death Tax Be Repealed?

One of the most powerful reasons people work is to make life better for their children and loved ones. That's why families go to great lengths to circumvent this most unnatural of all taxes, which seeks to repeal human nature. By confiscating between 37% and 55% of a family's after-tax savings, the Death Tax punishes thrift, discourages entrepreneurship, penalizes families, and has an enormous negative effect on other tax revenues.

Although intended as tool for redistributing income designed to break up large concentrations of family wealth, the Death Tax in fact perpetuates wealth concentration. Not only can the rich afford lawyers and accountants to construct tax exempt trusts and other complicated legal devices to shield their wealth, but cash-strapped family farmers and small business people without the high-priced legal help must often sell out to larger corporate interests at firesale prices to pay the taxman. Some Death Tax lawyers claim the Death Tax is voluntary, paid only by people who cannot afford their services or who do not realize that they will be caught in its grasp. In fact, the Death Tax has created its own Death Tax industry in the legal and accounting professions, diverting some of the nation's brightest lawyers and accountants from productive work to the job of creating fictitious legal entities for the sole purpose of avoiding as much Death Tax as possible.

The Death Tax and Family Business

According to the Center for the Study of Taxation, 70% of family businesses don't survive through the second generation. 87% don't make it through the third generation. The Death Tax is a major factor contributing to the demise of family businesses: 9 out of 10 successors whose family-owned businesses failed within three years of the principal owner's death said trouble paying estate taxes contributed to the company's demise, according to a Prince & Associates survey.

When a family business owner (or family farmer) dies, the value of the enterprise is added to his or her estate and taxed at rates as high as 55%. The valuation of such businesses at the death of the owner is difficult—as there has been no transaction, the determination made by the IRS is inherently arbitrary, resulting in a tremendous amount of litigation and legal squabbling. The result: many family businesses must be sold, downsized, or liquidated just to pay the tax collector and the lawyers.

The Death Tax and Minority Business

Americans who undertake entrepreneurial enterprises and succeed lift themselves and their descendants out of poverty, but the Death Tax often destroys the vehicle that provided their upward mobility. In 1995, Kennesaw State College conducted a study in which the effects of the Death Tax on minority-owned businesses were examined. According to the businesses they surveyed:

- 58% of all the businesses in this survey anticipated that their businesses would either fail or face great difficulty in surviving the burden of the Death Tax.
- 90% of minority-owned businesses were aware of their exposure to the Death Tax, but only two-thirds were able to take steps to minimize their exposure to its confiscatory tax rates.
- More than half of these businesses reported that the only reason they changed their financial arrangements was the Death Tax. In other words, they were forced to spend money on legal fees, life insurance, or other economically useless financial instruments with money that should have been used to make their businesses grow, creating jobs and opportunities for themselves, their children, and their employees.

The Death Tax, Savings, and Capital Formation

Federal Reserve Chairman Alan Greenspan has characterized America's low savings rate as "the key domestic economic policy problem of this country." The Death Tax is an especially strong source of our tax code's bias against savings and capital formation. By penalizing success and the creation of wealth, the Death Tax depresses national income and savings. It creates a bias against savings and investment, in favor of consumption. It impedes the upward mobility of labor by stifling productivity, wage growth, and employment opportunities. At the same time, the Death Tax stimulates enormous amounts of economically useless lawyers' and accountants' time and expense, as people construct trusts and all manner of prolix legal devices in order to avoid this punitive tax.

Death Tax Revenue Is Illusory

In 1997, revenue from taxes on estates, gifts, and generation-skipping transfers was about one percent of federal receipts. This revenue is offset by administration costs and by tax revenue lost from payroll, income, and other taxes when businesses are destroyed and jobs lost.

The Death Tax is one of the costliest taxes for the IRS to administer. According to the Center for the Study of Taxation, compliance and enforcement costs eat up about 65 cents for every $1 collected. The transfer tax provisions take up nearly 100 pages of the Internal Revenue Code and nearly 300 pages of Regulations issued by the IRS. Death Tax planning is so complicated that the IRS maintains separate Death Tax units in its field offices. Many disputes between the IRS and estates end up in court, with more than 10,000 cases currently pending.

By stifling economic growth, the Death Tax cuts other federal tax receipts, such as income and payroll taxes. (State and local government tax revenues also suffer from this smaller tax base.) Repealing the Death Tax would, over time, lead to gains in these other tax revenues—quickly outstripping the immediate loss of the revenue that might occur. Here are a few recent studies:

The Heritage Foundation, 1997, ten-year forecast after Death Tax repeal:

- The nation's economy would yield an average of $11 billion per year in extra output.
- An average of 145,000 new jobs would be created.
- Personal income would rise by an average of an additional $8 billion per year.

- Increased revenues from extra economic growth would more than offset the meager revenues realized from the estate tax.

The Institute for Research on the Economics of Taxation, 1993, eight-year forecast after Death Tax repeal:

- GDP would have been $80 billion greater.
- 228,000 more jobs would have been created.
- Available capital would have been $640 billion greater.

Fiscal Associates, 1992:

Estimated 20-year impact had the Death Tax been repealed in 1971:

- America's private capital stock would have been $398.6 billion larger.
- GDP would have been $46.3 billion larger.
- 262,000 more full-time jobs would have been created.
- Net federal revenues would have been $21 billion higher.

Estimated impact of Death Tax repeal in 1992, seven-year forecast:

- The stock of private capital would be $630 billion larger.
- GDP would be $79.2 billion larger.
- 228,000 additional jobs would be created.

"(The Death Tax) discourages behavior that a liberal, democratic society ought to like—work, savings, bequests—and encourages behavior that such a society ought to suspect—the large-scale consumption, leisure, and intervivos giving of the very rich. (The Death Tax) is an anti-sin, or a virtue, tax. It is a tax on work and savings without consumption, on thrift, on long term savings. There is no reason even a liberal populace need support it. . . . The current gift and estate tax does not work, is in deep tension with liberal egalitarian ideals, and lacks strong popular or political support."—University of Southern California Law Professor Edward McCaffrey, in testimony before the Senate Finance Committee

The History of the Death Tax in America

As with the income tax, the estate tax was first instituted as a temporary emergency measure designed to raise revenue during war time.

The first federal estate tax was enacted in 1797 as a way for our fledgling nation to build a navy to police our shores. The tax was subsequently repealed in 1802. It was brought back during times of national emergency such as the Civil War and the Spanish-American War--and subsequently repealed when the crisis was over.

The estate tax became a permanent feature of the tax code in 1916. Its basic structure has remained largely unchanged since the 1930's.

Aside from being a source of revenue to the federal government, the express purpose of the estate tax was to break up large concentrations of wealth. 75 years of U.S. experience with the estate tax, however, suggests that rather than promoting equal economic opportunity, estate taxes are in fact a barrier to economic advancement for people of all economic circumstances.

SCOMM

119:14

Alaska State Legislature

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Representative John Coghill

HJR 35 REPEAL THE BRADY ACT

Sponsor Statement

I have introduced House Joint Resolution 35 to encourage Congress to repeal the Brady Handgun Protection Act because it "has directly undermined a fundamental protection each citizen has under the supreme law of the land."

HJR 35 is a resolution requesting the United State Congress uphold the Second Amendment to the Constitution of the United States and repeal the Brady Act. Coghill said the law is unconstitutional because "it violates the provisions of U.S. Constitution and the Alaska Constitution guaranteeing the right to keep and bear arms."

The Second Amendment protects a fundamental right. There's something wrong when a government assumes having a handgun makes you a criminal. Well over 90 % of all crimes are committed without the use of a handgun.

Amendments to the Brady Act have further limited ownership and use of rifles and shotguns. Now the FBI further invades the privacy of citizens through FBI maintained registration checks.

It's time to repeal the law that would be used against citizens instead of against criminals.

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Representative_John_Coghill@LEGIS.state.ak.us

HOUSE JOINT RESOLUTION NO. 35

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES COGHILL, Barnes, Dyson, Kohring

Introduced: 3/31/99
Referred: House Special Committee on World Trade and State/Federal Relations, Judiciary

A RESOLUTION

Relating to requesting the United States Congress to repeal the "Brady Handgun Protection Act".

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS the Constitution of the United States, in the Second Amendment, guarantees protection for all citizens to keep and bear arms; and

WHEREAS art I, sec. 19, Constitution of the State of Alaska, asserts that the right to keep and bear arms is an individual right; and

WHEREAS the "Brady Handgun Protection Act" has directly undermined a fundamental protection each citizen has under the supreme law of the land; and

WHEREAS the "Brady Handgun Protection Act" has been used by those who would outlaw the use of arms by law-abiding citizens through regulations that are intrusive and through intimidation by the Federal Bureau of Investigation through the use of background checks; and

WHEREAS the "Brady Handgun Protection Act" violates the provisions guaranteeing the right to keep and bear arms in both the Alaska and the United States Constitutions, and it violates the Tenth Amendment to the Constitution of the United States;

BE IT RESOLVED that the Alaska State Legislature respectfully requests that the United States Congress uphold the Second Amendment to the Constitution of the United States and repeal the "Brady Handgun Protection Act".

COPIES of this resolution shall be sent to the Honorable Bill Clinton, President of the United States; the Honorable Al Gore, Jr., Vice-President of the United States and President of the U.S. Senate; Louis Freeh, Director of the Federal Bureau of Investigation; the Honorable Trent Lott, Majority Leader of the U.S. Senate; the Honorable J. Dennis Hastert, Speaker of the U.S. House of Representatives; to the Honorable Ron Paul, U.S. Representative from Texas; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

FISCAL NOTE

STATE OF ALASKA
1999 LEGISLATIVE SESSION

BILL NO. HJR 35

Revision Date:
Title: Requesting Repeal of Brady Bill
Sponsor: COGHILL
Requester: H. World Trade & State/Fed. Relations

Dept. Affected
BRU
Component
Component Serial No.

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 00	FY 01	FY 02	FY 03	FY 04	FY 05
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES [ ]						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This resolution would not have a significant fiscal impact on any state agency.

Prepared by Donald M. Riehle WTR staff

Phone 465-6643

Phone

Date 2-8-00

Why Libertarians Support Equal Rights for America's Gun Owners

Libertarians, like other Americans, want to be able to walk city streets safely and be secure in their homes. We also want our Constitutional rights protected, to guard against the erosion of our civil liberties. In particular, Libertarians want to see all people treated equally under the law, as our Constitution requires. *America's millions of gun owners are people too.*

Law-abiding, responsible citizens do not and should not need t[illegible]k anyone's permission or approval to engage in a peaceful activity. **Gun o[illegible]rship, by itself, harms no other person and cannot morally justify cr[illegible]al penalties.**

Constitutional Rights

America's founders fought the Revolutionary War to throw off British tyranny. Most of the revolutionaries owned and used their own guns in that war. After the war, in 1789, the 13 American States adopted the Constitution, creating the federal government. Before ratifying the Constitution, the people demanded a Bill of Rights to prevent our government from depriving them of their liberties as the British had done.

One of the most important protections we have against government tyranny is that we are presumed innocent of any crime until proven guilty, before a jury, in a proper trial.

But, gun control advocates would declare all gun owners guilty without trial, simply for owning guns. although millions of them have never used their guns to harm another person. Such blanket condemnation is immoral, unfair and *contrary to the principles* on which America was founded.

The Prohibition Lesson

Gun control advocates are much like the prohibitionists of the early 20th Century. By making liquor illegal, they spawned organized crime, caused bloody, violent turf wars and corrupted the criminal justice system. Today's war on drugs has exactly the same results.

Prohibition didn't stop liquor use; the drug laws can't stop drug use. **Making gun ownership illegal will not stop gun ownership.**

The primary victim of these misguided efforts is the honest citizen whose civil rights are trampled as frustrated legislators and police tighten the screws.

Banning guns will make guns more expensive and give organized crime a great opportunity to make profits in a new black market for weapons. Street violence will increase in new turf wars. Criminals will not give up their guns. **But, many law abiding citizens will, leaving them defenseless against armed bandits.**

The Right of Self Defense

Libertarians agree with the majority of Americans who believe they have the right to decide how best to protect themselves, their families and their property. Millions of Americans have guns in their homes and sleep more comfortably because of it. Studies show that where gun ownership is illegal, residential burglaries are higher. A man with a gun in his home is no threat to you if you aren't breaking into it.

The police do not provide security in your home, your business or the street. They show up after the crime to take reports and do detective work. The poorer the neighborhood, the riskier it is for peaceful residents.

Only an armed citizenry can be present in sufficient numbers to prevent or deter violent crime before it starts, or to reduce its spread. Interviews with convicted felons indicate that fear of the armed citizen significantly deters crime. A criminal is more likely to be driven off from a particular crime by an armed victim than to be convicted and imprisoned for it. Thus, widespread gun ownership will make neighborhoods safer.

Foolish politicians and police now seek to ban semi-automatic "assault rifles". They ignore the fact that only honest citizens will comply; criminals will still have them. **Such a ban will only increase the criminals' ability to victimize the innocent.**

Personal Responsibility

Guns are not the problem. They are inanimate objects. Gun control advocates talk as if guns could act on their own, as if human beings cannot control them, so the uncontrollable guns must be banished.

Let us put the responsibility where it belongs, on the owner and user of the gun. If he or she acts responsibly, without attacking others or causing injury negligently, no crime or harm has been done. Leave them in peace. But, if a person commits a crime with a gun, then impose the *severest penalties* for the injuries done to the victim. Similarly, hold the negligent gun user fully liable for all harm his negligence does to others.

Rather than banning guns, the politicians and the police should encourage gun ownership, as well as education and training programs. A responsible, well-armed and trained citizenry is the best protection against domestic crime and the threat of foreign invasion. America's founders knew that. **It is still true today.**

THE LIBERTARIAN PARTY
PLATFORM

THE RIGHT TO KEEP AND BEAR ARMS

The Bill of Rights recognizes that an armed citizenry is essential to a free society. We affirm the right to keep and bear arms and oppose all laws at any level of government restricting, regulating, or requiring the ownership, manufacture, transfer, or sale of firearms or ammunition. We oppose all laws requiring registration of firearms or ammunition. We also oppose any government efforts to ban or restrict the use of tear gas, "mace," - other self-protection devices. We further oppose all attempts to ban weapons or ammunition on the grounds that they are risky or unsafe.

We support repeal of the National Firearms Act of 1934 and the Federal Gun Control Act of 1968, and we demand the immediate abolition of the Bureau of Alcohol, Tobacco, and Firearms.

We favor the repeal of laws banning the concealment of weapons or prohibiting pocket weapons. We also oppose the banning of inexpensive handguns ("Saturday night specials"), and semi-automatic or so-called assault weapons and their magazines or feeding devices.

LP HOME

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SCOMM

119:15

REPRESENTATIVE SCOTT OGAN Alaska State Legislature

House District 27 • Palmer • Greater Palmer • Sutton • Chickaloon • Sheep Mountain

HJR - 44

Sponsor Statement

I have introduced this resolution to show our support for the 10th amendment to the United States Constitution and to encourage those in Congress and the Federal Government to take violations of it more seriously.

No state has felt the incursion of the federal government more severely than Alaska. It is important that we along with other states, send a message to Congress that the 10th amendment is constantly being violated and that such violations injure not only our states, but our citizens as well.

I urge your support for this Resolution.

Thank you.

Interim: 600 E. Railroad Ave. #1, Wasilla, AK 99654 • Session: State Capitol, Juneau, AK 99801 465-3878
(907) 376-4866 Fax (907) 373-4724 1 (800) 862-3878 Fax (907) 465-3265

1-LS1262\A

HOUSE JOINT RESOLUTION NO. 44

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES OGAN, Coghill, Kohring

Introduced: 1/14/00
Referred: House Special Committee on World Trade and State/Federal Relations, Resources

A RESOLUTION

Relating to mandates and other conditions imposed on the states by the federal government.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS the Tenth Amendment to the Constitution of the United States states:

> "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."; and

WHEREAS the Tenth Amendment defines the total scope of federal power as being that specifically granted by the United States Constitution and no more; and

WHEREAS the scope of power defined by the Tenth Amendment means that the federal government was created by the states specifically to assume the responsibility for exercising certain powers on behalf of the union as a whole, including the responsibility to provide the funding needed to carry out those powers; and

Amend #3

WHEREAS, in recent years, the states have been demonstrably treated ais ~~as~~ tools ~~of~~ by the federal government and used to carry out federal policy while bearing the costs of that policy; and

WHEREAS many federal mandates are directly in violation of the Tenth Amendment;

'and' added by Tam Cook/leg legal to ensure complete sentence.

Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress; and to the governor of each of Alaska's sister states.

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION

HOUSE JOINT RESOLUTION NO. 44

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WHEREAS many federal mandates are directly in violation of the Tenth Amendment;

'and' added by Tam Cook/leg legal to ensure complete sentence.

and

WHEREAS the United States Supreme Court has ruled in New York v. United States, 112 S.Ct. 2408 (1992), that "Congress may not simply 'commandeer the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program'"; and

NO WHEREAS the management of fish and wildlife resources by the federal government within the State of Alaska is not authorized by the United States Constitution and is a gross abrogation of power reserved to the several states thereunder; and Amend #2 delete

WHEREAS a number of proposals from previous administrations and some now pending from the present administration and from the Congress would further violate the Tenth Amendment to the Constitution of the United States; and

WHEREAS the powers of the Congress are itemized in art. I, sec. 8, of the United States Constitution, and the Congress should concentrate on carrying out those important duties while leaving local matters to each of the states to resolve based upon the unique needs and circumstances of each state; and

WHEREAS numerous resolutions have been forwarded to the federal government by various state legislatures without any response or result from the Congress or the federal executive branch;

BE IT RESOLVED that the Alaska State Legislature hereby claims sovereignty under the Tenth Amendment to the Constitution of the United States over all powers not otherwise enumerated and granted to the federal government by that constitution; and be it

Amend #1

FURTHER RESOLVED that this resolution serves as notice ~~and demand~~ to the federal government to immediately cease and desist from

(1) imposing mandates on the states that are beyond the scope of its authority under the Tenth Amendment to the Constitution of the United States; and

2 (2) making any efforts to regulate, manage, or control the utilization of fish and wildlife resources found within the State of Alaska. Amend delete #2

COPIES of this resolution shall be sent to the Honorable Bill Clinton, President of the United States; the Honorable Al Gore, Jr., Vice-President of the United States and President of the U.S. Senate; the Honorable Strom Thurmond, President Pro Tempore of the U.S. Senate; the Honorable J. Dennis Hastert, Speaker of the U.S. House of Representatives; to the

Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress; and to the governor of each of Alaska's sister states.

Official Business

MEMBER
Natural Resources
Committee

Alaska State Legislature

Vice-Chair, Legislative Council
Chair, World Trade
And
State/Federal Relations

REPRESENTATIVE
RAMONA L. BARNES
District 22

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(907) 269-0100
Fax: (907) 269-0105

State Capitol
Juneau, AK 99801-1182
(907) 465-3438
Fax: (907) 465-4565

MEMORANDUM

TO: Ramona

FROM: Mark

DATE: February 5, 2000

SUBJECT: HJR 44

HJR 44: "Relating to mandates and other conditions imposed on the state by the federal government."

HJR 44 points out that the 10th Amendment to the US Constitution provides for the powers reserved to the states and defines the total scope of federal power as that specifically granted by the U.S. Constitution, and no more.

The federal government was created by the states to assume specific responsibility for the exercise of specific powers on behalf of the union.

HJR 44 suggests the states in recent years have been treated by the federal government as tools of the federal government and used to carry out federal policy and even bearing the costs of same. The US Supreme Court has ruled that Congress cannot commandeer the legislative processes of the states by directly compelling them to enact/enforce a federal regulatory program (federal mandates).

HJR 44 offers that management of Alaska's fish and game is not authorized the by the US Constitution and is a federal mandate. Therefore,

The Alaska Legislature claims sovereignty (under the 10th Amendment) over all powers not otherwise enumerated and granted to the federal government by the US Constitution; and demands the federal government cease and desist from imposing such mandates on the states, including fish and game management in Alaska.

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HJR 44

Revision Date: 2-8-00
Title Re: mandates-other conditions imposed on states by fed gov.
Sponsor: OGAN
Requester: H. WTR

Dept. Affected
BRU
Component
Component Serial No.

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 01	FY 02	FY 03	FY 04	FY 05	FY 06
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGE IN REVENUES [ ]						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1091 Designated Program Receipts						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY00) cost:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*

This resolution would not have a significant fiscal impact on any state agency.

Prepared by Donald M. Riehle WTR staff

Donald M. Riehle

Phone 465-6643

Phone

Date 2-8-00

SECTION. 6. [1] The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States.[6] They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

[2] No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION. 7. [1] All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

[2] Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

[3] Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION. 8. [1] The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

[2] To borrow Money on the credit of the United States;

[3] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

[6] This clause has been affected by amendment XXVII.

[4] To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

[5] To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

[6] To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

[7] To establish Post Offices and post Roads;

[8] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

[9] To constitute Tribunals inferior to the supreme Court;

[10] To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

[11] To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

[12] To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

[13] To provide and maintain a Navy;

[14] To make Rules for the Government and Regulation of the land and naval Forces;

[15] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

[16] To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

[17] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

[18] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION. 9. [1] The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

[2] The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

[3] No Bill of Attainder or ex post facto Law shall be passed.

[4] No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.[7]

[7] This clause has been affected by amendment XVI.

A Heartland Perspective

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(EDITOR: Please consider this *Heartland Perspective* for the op-ed page or for broadcast as a guest editorial. Reprint permission is granted.)

FOR IMMEDIATE RELEASE
November 10, 1995

CONTACT: **Diane Carol Bast**
708/202-3060

The Devolution Revolution

by Joseph L. Bast

The winds of change are howling through the halls of American federalism. The states are clamoring to take responsibility for billions of dollars of social welfare programs now controlled by the federal government. Wisconsin Governor Tommy Thompson has said "We're seeing a rebirth of [state power], and I'm totally comfortable with the states' ability to handle it." Even the devoutly pro-establishment *National Journal*, in its July 29th issue, noted that recent Supreme Court decisions have "fueled the fires of federalism."

> "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."
>
> ***Tenth Amendment***

At the root of the devolution movement is the Tenth Amendment to the U.S. Constitution, which reads: "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." Intended by the founding fathers to be a bulwark against the concentration of power and resources in the hands of the central government, the Tenth Amendment historically has been ignored by politicians as well as judges. Instead, the

- more -

national government has been allowed to dominate the states, becoming far more involved in matters of commerce and conscience than the founding fathers ever intended.

In recent months, the Supreme Court has helped push along the call for less federal authority and more state and local autonomy. In *U.S. v. Lopez*, for example, the Court invalidated a federal law barring possession of guns near school grounds, marking the first time in sixty years that the courts have found a limit to federal power granted under the Constitution's commerce clause. *

The Court is dusting off the Tenth Amendment partly because of the convictions of a new and passionate member of the Court, Justice Clarence Thomas. But it is also being pressured to act by a surge of litigation on issues of federal-state relations. The Brady Law, which requires local police departments to conduct background checks on gun buyers, has been successfully challenged on Tenth Amendment grounds in five district courts around the country. A half-dozen states have filed suits challenging the constitutionality of the 1994 National Voter Registration Act. States are launching legal action against the federal government over the Endangered Species Act, the Clean Air Act, and other federal programs.

State and local governments have become more litigious because unfunded federal mandates have become unbearable. Michael Pompili, assistant commissioner for health of Columbus, Ohio, says new environmental protection mandates are being imposed on local government at "a torrid pace." In a recent issue of *Regulation* magazine, he writes: "The cumulative impact of these mandates with other non-environmental mandates makes it virtually impossible for any community, large or small, to remain in compliance without neglecting other essential local governmental services."

Still another factor fueling the devolution movement is dwindling public confidence in the federal government. Media coverage of the disasters in Waco, Texas, Oklahoma City, Oklahoma, and Ruby Ridge, Idaho revealed that millions of Americans are afraid of their own government. Even more shocking, this fear is reasonable. With alarming frequency, the activities of agencies such as BATF, IRS, DEA, and EPA cross the line between law enforcement and assaulting constitutionally protected liberties.

Dr. Mary J. Ruwart, a scientist, author, and long-time libertarian activist, believes the devolution revolution must reduce the use of violence by all levels of government. She locates the roots of the Oklahoma City bombing in the fact that using force to achieve social and political ends has become commonplace in America. "In this manner," writes Ruwart, "violence against others has become an acceptable option. Since this violence is largely perpetrated through government, the average individual rarely thinks consciously about its true nature. Unconsciously, however, the seeds of violence have been sown. Those seeds have borne fruit."

The alternative to devolution could be the loss of the federal system of government our founding fathers gave us, and the rise of domestic terrorism to levels previously unknown in America. With so much at stake, surely it is time to consider restoring the protections of the long-neglected Tenth Amendment.

###

Joseph L. Bast is president of The Heartland Institute, a nonprofit research organization based in Palatine, Illinois. Nothing in his *Heartland Perspective* should be construed as reflecting the views of The Heartland Institute, nor as an attempt to aid or hinder the passage of pending legislation.

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Topic Code 08

Colorado SB 95-052
State Sovereignty Act

A Bill for an Act
Concerning the Collection of Federal Taxes, and, in Connection
Therewith, Asserting Colorado's Right to Control the Manner in which Those Taxes are Collected.

Bill Summary

Requires any person liable for any federal tax that is a component of the highway users tax fund to remit the tax to the department of revenue. Directs the department of revenue to transfer the moneys to the state treasurer for deposit into an escrow account call the "Federal Tax Fund."

Unless the federal government imposes sanctions on the state for failing to enact legislation required by federal law, directs the state treasurer to transfer an amount for payment of the taxes owed to the Internal Revenue Service at the end of each month. Retains the interest earned on the moneys and any civil penalties in the fund for payment of any necessary administrative costs, with any excess to be transferred to the highway users tax fund.

If the federal government imposes sanctions against the state, delays any transfers to the Internal Revenue Service until the sanctions are lifted. If the sanctions are not lifted within 90 days, allows the state to impose a surcharge on the moneys in the fund to be used as payment to continue any highway projects being constructed at the time the sanctions were imposed.

Imposes a civil penalty on any person who fails to remit any federal tax that is a component of the highway users tax fund to the department of revenue.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Title 39, Colorado Revised Statutes, 1994
Repl. Vol., is amended by the addition of a new article to read:

ARTICLE 27.5
State Sovereignty Act

39-27.5-101. *Short title.* This Article shall be known and may be cited as the "State Sovereignty Act."

39-27.5-102. *Definitions.* For purposes of this Article.

(1) "Person" means natural persons, corporations, partnerships, limited liability companies, associations, and other legal entities.

(2) "Excise tax" means any tax that forms a component of the highway users tax fund.

39-27.5-103. *Legislative declaration.*

(1) The Tenth Amendment of the United States Constitution defines the total scope of federal power as being that specifically granted by the federal constitution and no more. The general assembly recognizes that the United States Congress has the right to lay and collect taxes under the federal constitution. The general assembly finds, however, that the Congress does not have the right under the federal constitution to withhold from the states the benefits of those taxes through unconstitutional mandates.

(2) The general assembly further funds that most unconstitutional mandates prohibit Colorado from implementing programs of excellence that would exceed federal expectations. Colorado has significant technical expertise in resource management in the areas of air, earth, and water, but the persistent threat of sanctions renders that expertise ineffective.

(3) In light of the continuing unconstitutional withholding or the benefits of the taxes, the State of Colorado hereby reasserts its claim of sovereignty asserted during the second regular session of the fifty-ninth general assembly.

39-27.5-104. *Payment of federal tax.*

(1) There is hereby created in the Colorado state treasury the Federal Tax Fund, which shall be an escrow account. Any interest earned on the deposit of moneys in the fund,

along with any civil penalties assessed pursuant to section 39-27.5-105, shall remain in the fund and shall not revert to the general fund of the state at the end of any fiscal year. The interest earned on the deposit of moneys and any civil penalties shall be used to pay any necessary administrative costs incurred pursuant to this article and any excess interest and penalties shall be transferred to the Highway Users Tax Fund.

(2) Any person liable for any excise tax shall remit the tax when due along with the person's federal taxpayer number to the Colorado Department of Revenue for deposit into the fund.

(3) All moneys collected pursuant to subsection (2) of this section shall be transmitted to the state treasurer who, as a fiduciary agent, shall credit the same to the Federal Tax Fund on behalf of the person that remitted the tax.

(4) (a) Except as provided in paragraph (b) of this subsection (4), the state treasurer shall transfer at the end of each month the moneys held in the Federal Tax Fund less any interest earned on the deposit to the Internal Revenue Service in payment of the tax obligation of those persons who remitted the tax to the Department of Revenue. As a part of the transfer, the state treasurer shall identify the federal taxpayer number and amount received from each person who remitted any tax to the Department of Revenue.

(b) If the federal government imposes any sanctions on the State of Colorado for failing to enact legislation required by federal law, which the general assembly deems to be unconstitutional, by withholding or reprogramming any federal-aid moneys from, among other things, highway construction to highway safety or other programs, the state treasurer shall not transfer any taxes held in the Federal Tax Fund but shall retain the moneys in the fund until such time as the sanctions are lifted. If the lifting of the sanctions occurs within ninety days, the state treasurer shall transfer the amounts held in the fund to the Internal Revenue Service within ten days of the lifting of the sanctions. If the sanctions are not lifted within ninety days, the state shall impose a surcharge on all the moneys in the fund to be used for payment to continue highway project funding.

39-27.5-105. *Failure to remit tax-penalty.*

Any person who fails to comply with section 39-27.5-104 shall be subject to a civil penalty in an amount equal to one hundred fifty percent of the tax owed for each day the person fails to comply with said section. Any civil penalties assessed under this section shall be deposited into the Federal Tax Fund established in section 39-27.5-104 (1).

SECTION 2. Applicability. This act shall apply to the federal taxes to be collected on or after the enactment of this act.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

First Regular Session
Sixtieth General Assembly
LLS No. 95-0024.01
Senate Bill 95-052
State of Colorado
By Senator Charles Duke

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AMERICAN LEGISLATIVE EXCHANGE COUNCIL

ALEC

The State Factor

Volume 22, Number 7 October 1996

THE TENTH AMENDMENT:

The Promise of Liberty

Strategies to Restore the Balance of Power Between the Federal and State Governments

Board of Directors' Committee on Federalism

910 17th Street N.W. ■ Fifth Floor ■ Washington, D.C. 20006
(202) 466-3800 ■ FAX (202) 466-3801

ABOUT THE AUTHORS...

Charles J. Cooper concentrates his practice in the areas of civil litigation and administrative law. From 1985-1988, he served as Assistant Attorney General in the Department of Justice's Office of Legal Counsel. As Assistant Attorney General, he provided the President and the departments of the executive branch with formal legal opinions and informal legal advice. Prior to that appointment, he served as Deputy Assistant Attorney General in the Civil Rights Division, supervising all appellate litigation from 1981-1985. Since leaving the Department of Justice in 1988, Mr. Cooper has been in private practice, litigating cases in the banking, civil rights, First Amendment, and other federal administrative areas. Last year, he served on the Scholars Advisory Committee on Federalism which was created by the States' Federalism Summit Steering Committee. The Scholars Advisory Committee presented proposals to restore balance to the federal system at the States' Federalism Summit held in Cincinnati, Ohio in October 1995.

During his tenure with the Department of Justice, Mr. Cooper also served as Chairman of the Domestic Policy Council's Working Group on Federalism, as well as a member of the National Security Council's Policy Review and Planning and Coordinating Groups.

From 1978-1979, Mr. Cooper clerked for Justice (now Chief Justice) William H. Rehnquist of the United States Supreme Court. The previous year, he clerked for Judge Paul H. Roney of the United States Court of Appeals for the Fifth (now Eleventh) Circuit.

Mr. Cooper, who graduated first in his law school class in 1977, earned his B.S. and J.D. degrees from University of Alabama. Among his many law school honors, he was inducted into the Order of the Coif. He served as Editor-in-Chief of the *Alabama Law Review* from 1976-1977 and, since then, has been a frequent contributor to policy and legal journals.

David H. Thompson is a constitutional lawyer in Washington, D.C. He has participated in cases challenging federal encroachment of state sovereignty in contravention of the Eleventh Amendment and has been an advocate for the restoration of federalism. He received both his undergraduate degree and his law degree from Harvard University.

The State Factor: The Tenth Amendment: The Promise of Liberty
Volume 22, Number 7

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Washington, D.C. 20006

(202) 466-3800

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MODEL RESOLUTION

GOVERNMENT OF THE PEOPLE AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

A resolution for the purpose of petitioning the Congress of the United States to propose an amendment to the Constitution of the United States for submission to the states to establish a mechanism for nullification of federal laws and regulations where the states determine that such laws or regulations exceed the authority of the federal government under the Constitution of the United States.

WHEREAS, the federal government was established by the states through ratification of the Constitution of the United States; and

WHEREAS, the federal government was granted certain limited powers under the Constitution of the United States; and

WHEREAS, the Constitution of the United States requires, under the 10th Amendment that: "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;" and

WHEREAS, the Constitution of the United States established a system in which the states only ceded certain powers to the federal government; and

WHEREAS, the framers recognized that separation of powers is essential and ensured that the rights of the people would be protected by establishing checks and balances not only between the branches of the federal government, but also between the federal government and state governments; and

WHEREAS, the legislative, executive and judicial branches of the federal government have by many actions usurped powers reserved to the states and to the people; and

WHEREAS, by the combined actions of the legislative, executive and judicial branches of the federal government, the relationship between the federal government and state government established by the Constitution; and

WHEREAS, the federal Judiciary, itself a branch of the federal government, has failed to stop many of these federal excesses; and

WHEREAS, the federal government is more distant from the people than state governments and is thereby less efficient and effective in providing for functions that, under the Constitution of the United States, were to have been reserved to the States and to the people; and

WHEREAS, to achieve government of the people, by the people and for the people, government must become closer to the people; and

NOW THEREFORE BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF {INSERT STATE}, A MAJORITY OF ALL MEMBERS OF THE TWO HOUSES CONCURRING SEPARATELY HEREIN, that the Congress of the United States is hereby petitioned to propose the *Government of the People Amendment* to the Constitution of the United States, for submittal to the states for ratification, providing for the states to nullify federal laws and regulations, in such cases as the states deem that the federal government has exceeded the limits of its authority.

BE IT FURTHER RESOLVED that to achieve the purpose expressed above that the *Government of the People Amendment* shall provide that:

1. Any act of Congress, or provision thereof shall be null and void upon the adoption of a Resolution of Disapproval by the legislatures of two-thirds of the states, provided that two-thirds of the states have adopted without subsequently rescinding resolutions of disapproval within any seven-year period.

2. Any regulation, administrative directive or provision thereof shall be null and void upon the adoption of a resolution of disapproval by the legislatures of two-thirds of the states, provided that two-thirds of the states have adopted without subsequently rescinding resolutions of disapproval within any seven-year period.

BE IT FURTHER RESOLVED that the *Government of the People Amendment* shall contain reasonable limitations on the use of resolutions of disapproval with respect to issues of national security and foreign policy.

BE IT FURTHER RESOLVED that the Secretary of State of the State of {insert state} transmit copies of this Resolution to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the President of the Senate and the Speaker of the House of Representatives of each state legislature in the United States, and each member of Congress from the state of {insert state}.

MODEL RESOLUTION

STATES' INITIATIVE AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

A resolution for the purpose of petitioning the Congress of the United States to propose an amendment to the Constitution of the United States for submission to the states to provide the states a method of offering amendments to the Constitution of the United States.

WHEREAS, the ratification of the Constitution of the United States by the states created a balance of power between the federal government and the states; and

WHEREAS, the federal government was granted certain limited powers under the Constitution of the United States; and

WHEREAS, the Constitution of the United States requires, under the 10th Amendment that: "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;" and

WHEREAS, by the combined actions of the Congress, the Executive and the Judiciary, today, power is concentrated in the federal government; and

WHEREAS, the original checks and balances created by the founders have been eroded and the national government has consolidated power and authority; and

WHEREAS, the federal government is more distant from the people than state governments; and

WHEREAS, to achieve government of the people, by the people and for the people, government must become closer to the people; and

WHEREAS, there is a need for an effective mechanism by which the states can offer amendments to the Constitution of the United States;

NOW THEREFORE BE IT RESOLVED, BY THE LEGISLATURE OF THE STATE OF {INSERT STATE}, A MAJORITY OF ALL MEMBERS OF THE TWO HOUSES CONCURRING SEPARATELY HEREIN, that the Congress of the United States is hereby petitioned to propose the *States' Initiative Resolution* as an amendment to the Constitution of the United States for ratification by state legislatures. This resolution shall be submitted to the states for ratification, providing for the states a method through which they may amend the Constitution of the United States.

BE IT FURTHER RESOLVED that to achieve the purpose expressed above, the *States' Initiative Amendment* shall provide that: Whenever three-fourths of the legislatures of the states deem it necessary, they shall propose amendments to this Constitution. These proposed amendments are valid for all intents and purposes two years after they are submitted to Congress. The said amendments will be invalid if both houses of Congress, by two-thirds vote, disapprove them within two years after their submission.

BE IT FURTHER RESOLVED that the Secretary of State of the State of {insert state} transmit copies of this Concurrent Resolution to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the President of the Senate and the Speaker of the House of Representatives of each state's legislature of the United States of America, and the {insert state} Congressional Delegation.

MODEL RESOLUTION

ACCOUNTABILITY IN GOVERNMENT AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

A resolution for the purpose of petitioning the Congress of the United States to propose an amendment to the Constitution of the United States for submission to the States to prohibit the federal government from imposing: (1) regulatory mandates on the States or their political subdivisions; (2) unfunded mandates on state and local governments; and (3) spending conditions that are unrelated to the actual expenditures of funds allocated by Congress.

WHEREAS, the federal government was established by the States through the ratification of the Constitution of the United States; and

WHEREAS, the federal government was granted certain limited powers under the Constitution of the United States and the Tenth Amendment to the United States Constitution provides that "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 the people;" and

WHEREAS, state authority has been increasingly eroded through federal assumption of powers reserved to the States under the Tenth Amendment; and

WHEREAS, the federal government has impermissibly expanded its power beyond its constitutional bounds at the expense of the state and local governments by imposing federal mandates and conditional spending grants on unrelated federal policies; and

WHEREAS, federal encroachment on state authority obscures the lines between state and federal policy, thereby decreasing the political accountability of elected officials of both governments. To ensure political accountability, the People must be able to discern which governmental actors are imposing obligations and expenses upon them; and

WHEREAS, the United States Supreme Court has ruled in New York v. United States, 112 S. Ct. 2408 (1992), that Congress may not simply commandeer the legislative and regulatory processes of the States; and

WHEREAS, federal mandates are being imposed at an alarming rate on the States without the accompanying tax dollars necessary to implement the mandated programs; and

WHEREAS, the impact of unfunded federal mandates threatens the fiscal integrity of the States as well as the States' right of self determination;

NOW THEREFORE BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF {INSERT STATE}, A MAJORITY OF ALL MEMBERS OF THE TWO HOUSES CONCURRING SEPARATELY HEREIN, that the Congress of the United States is hereby petitioned to propose the *Accountability in Government Amendment* to the Constitution of the United States, for submittal to the States for ratification, prohibiting the federal government from: (1) imposing regulatory mandates on the States or their political subdivisions; (2) imposing unfunded mandates on state and local governments or mandates that are not enacted pursuant to the enumerated powers of the federal government; (3) imposing spending conditions that are unrelated to the actual expenditures of funds allocated by Congress.

BE IT FURTHER RESOLVED that to achieve the purpose expressed above that the *Accountability in Government Amendment* shall provide that:

1. No State shall be obligated, without its consent to enact or enforce any State law or regulation, or to administer any federal regulatory program imposed by or pursuant to a law enacted by Congress acting pursuant to its enumerated powers.

2. Any obligation imposed upon a State by or pursuant to a law enacted by Congress shall not be enforceable against such State unless the federal government has acted pursuant to its enumerated powers and has provided the State with the funds needed to pay the States' cost of compliance with the obligation.

3. No condition on the receipt of federal funds by a State, imposed by or pursuant to a law enacted by Congress is valid unless such condition is clearly stated, directly related to and does no more than specify the purposes for which, or manner in which, the funds are to be spent.

BE IT FURTHER RESOLVED that the Secretary of State of the State of {insert state} transmit copies of this Concurrent Resolution to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the President of the Senate and Speaker of the House of Representatives of each state's legislature of the United States, and the {insert state} Congressional Delegation.

MODEL RESOLUTION

RESOLUTION REQUESTING CONGRESS OF THE UNITED STATES TO ENACT LEGISLATION THAT REQUIRES CONGRESS TO SPECIFY THE CONSTITUTIONAL AUTHORITY FOR THE ENACTMENT OF LAWS

A resolution for the purpose of petitioning the Congress of the United States to enact legislation that requires Congress to specify the constitutional authority for the enactment of law; prohibits federal agency rules or regulations from preempting or otherwise interfering with state or local powers without express statutory authority; and requires a list of factual findings, establishing a substantial nexus between the regulatory effect of the proposed law and interstate commerce if Article I, Section 8, Clause 3, of the Constitution is identified as the Constitutional provision granting authority to Congress for its proposed law.

WHEREAS, the federal government was established by the states through the ratification of the Constitution of the United States; and

WHEREAS, the federal government was granted carefully limited powers under the Constitution of the United States and the Tenth Amendment to the United States Constitution provides that "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"; and

WHEREAS, the Constitution of the United States established a system in which the states ceded only certain powers to the federal government; and

WHEREAS, the framers recognized that separation of powers is essential and ensured that the rights of the people would be protected by establishing checks and balances not only between the branches of the federal government but also between the federal government and state governments; and

WHEREAS, the legislative, executive and judicial branches of the federal government have by many actions usurped powers reserved by the Constitution of the United States to the states and to the people; and

WHEREAS, by the combined actions of the legislative, executive and judicial branches of the federal government, the relationship between the federal government and state governments established by the Constitution of the United States has been severely unbalanced; and

WHEREAS, the federal judiciary, itself a branch of the federal government, has failed to stop many of these federal excesses; and

WHEREAS, less federal preemption means states can act as true laboratories of democracy, seeking novel social and economic policies without risk to the nation; and

WHEREAS, to restore the balance of power between the federal government and state governments intended by the framers of the Constitution of the United States, the federal government must carefully consider, and be accountable for, the constitutional boundaries of its jurisdiction to protect the states and the people from the unwarranted assumption of power by the federal government.

NOW THEREFORE BE IT RESOLVED by the Legislature of the state of (insert state), a majority of all members of the two houses concurring, that the One Hundred and Fourth Congress of the United States enact legislation requiring the Congress of the United States to cite the section of the Constitution that grants Congress the authority to enact proposed laws. The (insert state) Legislature supports the inclusion in such legislation:

(a) That Congress be required to state explicitly the extent to which the proposed section of law preempts any state, local or tribal law, and if so, an explanation of the reasons for such preemption.

(b) That Federal agency rules or regulations may not preempt or otherwise interfere with State or local powers without express statutory authority. Agencies must allow states notice and an opportunity to be heard in the rule-making process.

(c) That if Article I. Section 8. Clause 3, of the Constitution of the United States, is identified as the Constitutional provision granting authority to Congress for its proposed law, Congress must report a list of factual findings establishing a substantial nexus between the regulatory effect of the proposed law and interstate commerce.

BE IT FURTHER RESOLVED that the Secretary of State of the State of {insert state} transmit certified copies of this Resolution to the President of the United states; and to each Member of the Senate of the United States; and the House of Representatives of the United States; and to the Speaker of the House of Representatives and the President of the Senate of each state legislature in the United States.

AMERICAN LEGISLATIVE EXCHANGE COUNCIL
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Re: HJR 44 2/22/00

SECTION. 6. [1] The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States.[6] They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

[2] No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

SECTION. 7. [1] All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

[2] Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

[3] Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

SECTION. 8. [1] The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

[2] To borrow Money on the credit of the United States;

[3] To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

[6] This clause has been affected by amendment XXVII.

[4] To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

[5] To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

[6] To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

[7] To establish Post Offices and post Roads;

[8] To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

[9] To constitute Tribunals inferior to the supreme Court;

[10] To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

[11] To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

[12] To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

[13] To provide and maintain a Navy;

[14] To make Rules for the Government and Regulation of the land and naval Forces;

[15] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

[16] To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

[17] To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

[18] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

SECTION. 9. [1] The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

[2] The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

[3] No Bill of Attainder or ex post facto Law shall be passed.

[4] No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.[7]

[7] This clause has been affected by amendment XVI.

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

SOVEREIGNTY OF THE PEOPLE AND DEVOLUTION

An Agenda for the Restoration of the Tenth Amendment

by
State Sovereignty Committee
and
Wendell Cox
and
Samuel A. Brunelli

May 1995

Washington, D.C.

Sovereignty of the People and Devolution:
An Agenda for the Restoration of the Tenth Amendment

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Sovereignty of the People and Devolution

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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.

SOVEREIGNTY OF THE PEOPLE AND DEVOLUTION

An Agenda for the Restoration of the Tenth Amendment

EXECUTIVE SUMMARY

From Privileged Sovereignty to Popular Sovereignty. Sovereignty is supreme political authority -- the ultimate source of political power. To the extent that a government or a person is sovereign, that government or person is not subject to the orders or compulsion of outside agencies.

"Privileged sovereignty," sovereignty exercised by the few has existed throughout most of history. This produced arbitrary laws, and resulted in people becoming the servants of government. Approximately 200 hundred years ago, a worldwide revolution began, involving "popular sovereignty" -- the concept that the people, not an individual nor a privileged group, are supreme. One of the most eloquent statements of popular sovereignty is to be found in the Declaration of Independence, which proclaims that governments must derive their powers from the governed, and the governed have the right to change the way in which they are governed.

Popular sovereignty involves the following principles: 1) Fundamental rights are retained by the people -- they are not even delegated to the levels of government closest to the people; 2) People are equal under the law, and have equal access to their government; and, 3) Government depends upon the consent of the governed, and the people retain the right to alter governmental arrangements.

Popular sovereignty replaced arbitrary laws with general laws, and government as the master of the people with government as the servant of the people. Popular sovereignty brought a new and enduring political ideal, which Abraham Lincoln characterized as: *government of the people, by the people, and for the people.*

Popular Sovereignty and the U.S. Constitution. As a result of the American revolution, the states became sovereign entities, drawing their powers from their citizens. Subsequently, the states delegated some of their sovereignty -- certain enumerated and limited powers -- to the federal government, through ratification of the Constitution. The states, on behalf of the people, retain control over the Constitution through the amendment ratification process.

Popular sovereignty is a hierarchy. Fundamentally, the people are sovereign, and the people have delegated certain elements of sovereignty to the states. Yet the people retain important elements of sovereignty, such as freedom of speech, freedom of assembly, freedom of religion, choosing where to live, choosing where to work, and many others. The states have delegated certain of their powers to the federal government. Ultimately, the source of supreme political authority is the people.

The United States: A Federation, not a Unitary State. In a unitary state, all sub-national governments are creations of and under the control of the national government. The United States is not a unitary state; it is rather a federation of unitary states. Unlike a unitary state, in the U.S., all local governments and the federal government are the creations of and under the control of the states. The Constitution, under the Tenth Amendment, reserves to the states and to the people all powers that are not delegated to the federal government. The Constitution further requires that any changes to it -- constitutional amendments, must be approved by three-quarters of the states.

Federal Usurpation of Popular Sovereignty. Through the years, the sovereignty of the states and of the people has been eroded by illegitimate federal expansion. As the federal government has expanded, it has spent beyond its means and has resorted to mandating actions by state and local governments without providing the necessary funding. In enacting these mandates, the federal government has treated the states as subordinate units of government, which they are not. The federal government has no general constitutional authority to mandate actions by the states. Federal authority over the states is largely limited to prohibitions relating to the constitutional rights of individuals, and enumerated powers under the Constitution. ***To the extent that the states are sovereign, they are outside the reach of federal mandates.*** Rising concern with federal expansion has generated an historic sovereignty debate.

Popular Sovereignty is Inseparable from Democratic Values. As government decision-making becomes more remote from the people, they have less control, and their sovereignty is diluted. Ever incremental dilution of popular sovereignty restores privileged sovereignty. Popular sovereignty requires that government decisions be made at the level of government closest to the people that is competent to handle the issue. Thus, while the states are sovereign, they should devolve whatever powers are appropriate to the levels of government closest to the people. Where government decisions are unnecessarily remote, the power of interests that seek private gain at common cost is increased. Moreover, as the federal government increases its power, greater waste and duplication of effort occur. Government more remote from the people than necessary violates the most fundamental democratic principles. Considerable devolution of illegitimately acquired federal power is appropriate. *Government of the people, by the people and for the people is government that is closer to the people.*

A Crisis of Governance. The original fundamental principles of the Constitution have been violated by illegitimate expansion of federal power. While there are encouraging signs that Congress will engage in some voluntary devolution, it is unreasonable to expect that the federal government will devolve itself of the powers that it has wrested from the states. The people, through the states, can restore their sovereignty by amending the Constitution to provide expeditious mechanisms for restraining the federal government.

The ALEC *Sovereignty of the People and Devolution* Agenda. The American Legislative Exchange Council (ALEC) has developed a "Sovereignty of the People and Devolution Agenda." The principal element is a Declaration of Sovereignty, which affirms the importance of fundamental law, proposes principles by which popular sovereignty should be restored, and outlines strategies by which such restoration might occur. The "Sovereignty of the People and Devolution agenda" also includes proposed Constitutional amendments, model resolutions and model legislation that would advance the sovereignty of the states and the people.

CHAPTER 1

FROM PRIVILEGED SOVEREIGNTY TO POPULAR SOVEREIGNTY

Sovereignty is supreme political authority -- the ultimate source of political power. To the extent that a government or a person is sovereign, that government or person is not subject to the orders or compulsion of any other.

"Privileged sovereignty," sovereignty exercised by the few, has existed throughout most of history.

- ☐ Individual monarchs and dictators were considered sovereign.
- ☐ Small groups were sovereign in plutocracies, such as aristocracies or communist governments.

Such governments were limited only by the sovereign's self restraint. As a result, privileged sovereignty produced arbitrary laws and other arbitrary government actions. The governed had few rights and virtually no access to the political decision- making process. Privileged sovereignty involved a "government of men" (a limited group of people) rather than a "government of laws" (limited by fundamental principles). Privileged sovereignty relegated the people to the status of servants of government or servants of the privileged.

In the decades surrounding American independence, political philosophers suggested that sovereignty be broadened -- that "popular sovereignty" should replace privileged sovereignty. Government of the few was to be replaced by government of the many. There was no more eloquent statement of the imperative for popular sovereignty than that found in the Declaration of Independence:

> *We hold these truths to be self-evident. That all men are created equal, that they are endowed by their Creator with*

> *certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, governments are instituted among Men, deriving their just power from the consent of the governed.*[1]

Under popular sovereignty, the ultimate political authority resides with the people. Through popular sovereignty the people "loan" power to government, which the people are free to alter as they see fit.

> *That whenever any form of government becomes destructive of these ends, it is the Right of the People to alter or abolish it, and to institute new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.*[2]

In the ensuing centuries, popular sovereignty has spread around the world. With the fall of the absolutist communist (privileged sovereignty) regimes, popular sovereignty has expanded substantially in the last decade.

Popular sovereignty involves the following principles:

1. Fundamental rights are reserved to the people. These rights, such as freedom of speech and freedom of assembly, represent sovereignty that the people do not delegate to government, but which government is empowered to protect.

2. People are equal under the law, and have equal access to their government.

3. Government depends upon the consent of the governed, and the people retain the right to alter governmental arrangements.

By delegating sovereignty to government, the people seek to improve their lives in dimensions that would not be possible except by common action. Through government, the people attempt to serve the common good by serving public purposes.[3] Government serves the public purpose by the enactment of general laws, limited by fundamental principles, that apply to all.[4]

> *What government does for one it should do for all and what government does not do for all, it should do for none.*[5]

The replacement of privileged sovereignty by popular sovereignty established radically new values. Popular sovereignty replaced arbitrary laws with general laws, government of the few with government of the many, absolute government with limited government, private purposes with public purposes, and government as the master of the people with government as the servant of the people. The rise of popular sovereignty represented the philosophical triumph of the Jeffersonian values of individual liberty, limited government, and the free market.[6] According to Jefferson:

> *...a wise and frugal government, which shall restrain men from injuring one another, which shall leave them free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government.*[7]

Popular sovereignty brought a new and enduring political ideal, which Lincoln characterized as:

> *..government of the people, by the people, and for the people.*[8]

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1 *Declaration of Independence.*
2 *Declaration of Independence.*
3 See Jean Love and Samuel A. Brunelli (editors), "The Public Purpose," and "Serving the Public Purpose," *Legislative Issue Briefs, 3rd Edition*, (Washington, DC: American Legislative Exchange Council, 1995).
4 Fredrich A. Hayek, *The Constitution of Liberty* (Chicago, IL: University of Chicago Press: 1960).
5 Samuel A. Brunelli, "Serving the Public Purpose," *FYI* (Washington, DC: American Legislative Exchange Council, January 21, 1992).
6 Individual liberty in economic activities.
7 Thomas Jefferson, *1801 Inaugural Speech.*
8 Abraham Lincoln, *Gettysburg Address.*

CHAPTER 2

POPULAR SOVEREIGNTY AND THE CONSTITUTION

As a result of the American revolution, the states became sovereign entities, based upon a delegation of sovereignty by their citizens. According to Alexander Hamilton:

> *The State governments by their original constitutions are invested with completed sovereignty.*[9]

At the same time, the people reserved elements of sovereignty to themselves through limits on the powers of state governments. Constitutions were thus established to guarantee the sovereignty of the people and to limit the scope of government.

As time went on, a consensus developed that the common good of the American states required establishment of a national government. The federal government was established by the states through the Constitutional Convention and the subsequent ratification process. State delegations were selected by the state legislatures. As it developed, ratification would require nine of the 13 states, and even then the Constitution would be effective in only those states that ratified it.[10] In the end, all 13 states ratified the Constitution. Thus the states, on behalf of the people, delegated sovereignty with respect to some powers to the new federal government. The Preamble of the Constitution clearly recognizes the delegation of power by the people.

> *We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.*

The Constitution is a prescription for limited government in which limited powers were enumerated for delegation to the federal government. The Bill of Rights limited government still further.

The federal government became sovereign with respect to its delegated powers, to the extent that its actions remained consistent with its authority under the Constitution.[11]

> *This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land;*[12]

This limitation on federal power was explained by Hamilton, a proponent of greater federal government power:

> *Every act of a delegated authority, contrary to the tenor of the commission under which it is exercised is void. No legislative act, therefore, contrary to the Constitution can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their powers do not authorize, but what they forbid.*[13]

The Supreme Court of the United States is popularly thought of as the final arbiter of Constitutional questions. The authority of the Supreme Court, like that of Congress and the President, is limited by the Constitution. There is no similar limitation on the people. Just as the people, through the states, delegated some of their sovereignty to the federal government, the people, through the states, remain the ultimate arbiter of Constitutional questions. Through the Constitutional amendment process, the people retain the authority to change or clarify the Constitution. Under Article V, amendments to the Constitution may be proposed by Congress.[14] Alternatively, Article V provides for a Constitutional Convention, which must be called by Congress if sought by two-thirds of the states. Once proposed, a Constitutional amendment is ratified upon adoption by three-quarters of the states, either by state legislatures or by state Constitutional Conventions.[15]

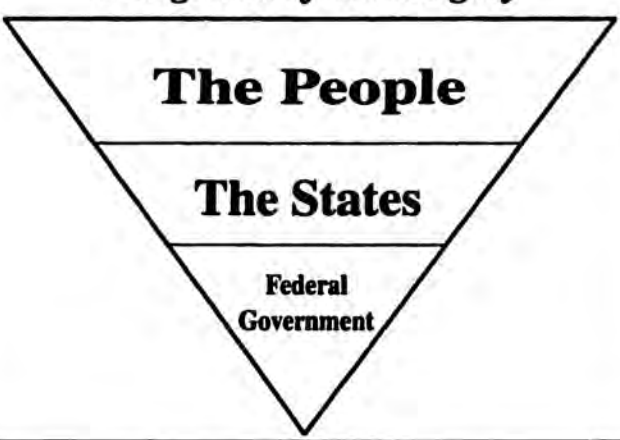
Popular sovereignty under the Constitution involves delegations of power. The people have delegated certain elements of sovereignty to the states, yet the people retain important elements of sovereignty as guaranteed rights under the Constitution. With respect to the elements of sovereignty retained by the people, no government, federal, state or local is authorized to interfere. The states, on behalf of the people, have delegated to the federal government, certain elements of sovereignty that were previously granted to the states by the people.

Thus, popular sovereignty is a hierarchy, which may be illustrated by an inverted pyramid (see Figure 1). Fundamentally, the people are sovereign. The people have delegated certain sovereign powers to the states. The states have delegated certain of the powers delegated to them by the people to the federal government. Ultimately, the source of sovereignty is the people: *Government of the people, by the people, and for the people.*

[9] *The Federalist.*
[10] *US Constitution*, Article VII. In fact, North Carolina and Rhode Island had not ratified the Constitution by the first presidential election (1789) and did not take part in that election.
[11] See *The Federalist, #33.*
[12] *US Constitution*, Article VI.
[13] *The Federalist.*
[14] By a two-thirds vote of each house of Congress. Unlike the legislative process, the signature of the President is not required, and thus there is no Presidential veto.
[15] The method by which the states ratify is up to the Congress. In all but one case, ratification was by the state legislatures, instead of by state constitutional conventions.

Figure 1.

Delegation of Sovereignty



CHAPTER 3
THE UNITED STATES: A FEDERATION, NOT A UNITARY STATE

In a unitary state (nation), all sub-national governments are subordinate to, or under the control of, the national government. The United States of America is not a unitary state, it is a federation of unitary states. The sovereignty of the federal government is granted by the people through the states. Through the Constitutional amendment process, the states retain the authority to alter the federal government. The federal government has no such power over the states.[16] On the other hand, the states are unitary governments, not federations. Counties, municipalities and other local governments are creations of the states, and are subordinate to state government. Under the U.S. federal system, the national government obtains virtually all of its sovereignty from the people through the states.

Perhaps the most important sovereign power of the states is their power over the federal government. In this process, the states are equal.

- ❑ In obtaining the requisite number of state ratifications for a Constitutional amendment, Wyoming (the state with the smallest population) is just as important as California (the state with the largest population), which has 65 times more people.

The states have sovereign power over the Congress in that they may require Congress to call Constitutional conventions.[17]

The sovereignty of the states and the people is demonstrated by the fact that the states in concert limited even their own ability to alter the Constitution -- that:

> *...no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.*[18]

Through the Constitution, the States delegated certain elements of their sovereignty to the federal government, while retaining all other sovereign powers granted to them by the people. The Tenth amendment to the Constitution specifies that:

> *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.*[19]

Even before the Tenth Amendment was proposed, Hamilton strongly asserted the view that the states would retain a substantial degree of sovereignty under the Constitution:

> *the State governments would clearly retain all the rights of sovereignty that they before had, and which were not ... exclusively delegated to the United States. This ... alienation (removal) of State sovereignty would only exist in three cases:*
>
> *Where the Constitution in express terms granted an exclusive authority to the Union;*
>
> *where it granted in one instance an authority to the Union, and in another prohibited the States from exercising the like authority; and*
>
> *where it granted an authority to the Union to which a similar authority in the States would be absolutely and totally contradictory and repugnant.*[20]

Thus, under even after establishment of the federal government, the people, through the states remain the ultimate repository of sovereignty.

[16] While the federal government may establish new states, its authority is pursuant to the US Constitution, as authorized by the states.
[17] US Constitution, Article V.
[18] *US Constitution*, Article V.
[19] US Constitution, 10th Amendment.
[20] *The Federalist*. Underlining indicates emphasis by Hamilton.

CHAPTER 4

FEDERAL USURPTION OF POPULAR SOVEREIGNTY

But through the years the sovereignty of the people and the states has been eroded by acts of Congress, Presidential executive orders, and regulations issued by executive departments, and the failure of the U.S. Supreme Court to curb the expansion of the federal government. Federal power could have been legitimately expanded by the states and the people through the established Constitutional processes. But that has not been the case. The dilution of sovereignty through federal expansion has been illegitimate -- it is nothing less than usurpation. Each of the three branches of the federal government have used logic that strains rationality to justify the illegitimate centralization of power at the federal level.

- For example, a 1940s Supreme Court decision upheld a federal law that subjected to federal regulation a farmer's production of wheat for personal consumption under the dubious logic that such production impacted interstate commerce.[21]

As the federal government assumed sovereignty in excess of its authorization, its appetite for spending has greatly exceeded the available financial resources. The financial failure of the federal government is so pervasive that the very economic future of the nation is threatened.[22] The nation's accumulated federal budget deficits have produced a federal government debt (national debt) nearing $50,000 per household. Interest on the federal government debt consumes one-seventh of the current federal budget -- and that will continue to rise. The congressional Bi-Partisan Commission on Entitlement and Tax Reform reported that if current spending trends continue:[23]

> *In less than 20 years, virtually all federal revenues will be required to pay for entitlements, such as social secu-*

rity, Medicare and Medicaid, and interest on the federal government debt. Nothing will be left over for infrastructure, defense, or the multitude of other programs.

Over the next 40 years, federal tax increases of 75 percent will be required to simply maintain present federal programs because spending is escalating so rapidly.[24]

In recent years, growing concern about the rising federal government debt and the federal deficit has made it more difficult to increase program outlays by raising federal taxes. But the federal government has continued to usurp power, especially by imposing mandates on state and local governments, while providing little or no funding for their implementation. Unfunded mandates have created substantial burdens for state and local governments.

For example, the state of California estimates that unfunded and under-funded federal mandates cost it $8 billion per year[25] (approximately one-fifth of state general expenditures).

By imposing mandates on the states, the federal government has illegitimately relegated the states to a subordinate status. The United States has begun to resemble a unitary nation, rather than a federation, in contravention of the U.S. Constitution.

State and local government officials have become concerned about unfunded federal mandates. And, in just a few years, this concern has blossomed into an historic debate.[26] Supporters of unfunded federal mandates often suggest the importance of national standards and express concerns that federal imposition of mandates is necessary; otherwise the states will fail to act. While this concern is at least partially rooted in an arrogance that perceives state and local governments to be less competent than the federal government, there is a more important problem. ***In and of itself, an apparent need for federal action does not meet the threshold to justify federal activity.*** Only the Constitution can do that. The Constitution does not grant the federal government any general power to impose mandates on the states or their local levels of government.[27]

Federal authority over the states is largely confined to prohibiting or limiting what the states may do. The federal government forbids the states to violate the Constitutional rights of individuals. It can preclude or limit state activity with respect to powers that are delegated to the federal government. But federal power to order a state to act is very limited. For example, the federal government can require the states to place their militias under federal control in time of emergency.[28] But, despite the limited authority of the federal government over the states, Congress has routinely imposed costly mandates on the states and their subordinate governments.

The authority of the federal government to require the states to perform activities, or to perform them in any particular way, is constitutionally limited. Hamilton, as noted earlier, viewed the states as retaining sovereignty except where particular powers were delegated to the federal government, an interpretation added to the Constitution itself in the Tenth Amendment. ***To the extent that the states are sovereign, they are outside the reach of federal mandates.***

The proliferation of federal mandates raises fundamental questions of federal power in relationship to that of the states and of the people. Federal usurpation of popular sovereignty has risen to the top of the public policy agenda.

[21] Wickard v. Filburn, 317 US 111 (1942).

[22] For example, one economic report suggests that average after tax incomes may decline by nearly two thirds over the next forty years, largely as a result of escalating federal spending. See Neil Howe, "Why the Graying of the Welfare State Threatens to Flatten the American Dream — or Worse," *National Taxpayers Union Foundation Policy Paper* Number 10 (Washington, DC: National Taxpayers Union, December 30, 1994).

[23] *Bipartisan Commission on Entitlement and Tax Reform: Interim Report to the President* (Washington: August 1994).

[24] It is highly unlikely that this level of federal revenue increase is achievable, due to the "law of diminishing returns." In taxation, tax increases tend to discourage tax producing economic activity.

[25] *Governor's Budget Summary: 1995-6* (California Governor Pete Wilson: Sacramento: 1995).

[26] Concern about unfunded federal mandates received national attention when a coalition led by the United States Conference of Mayors (including ALEC) declared an "Unfunded Mandates Day," in October 1992.

[27] The Constitution contains no indication that any federal to local government relationship was to occur.

[28] *US Constitution*, Article II, Section VIII.

CHAPTER 5

POPULAR SOVEREIGNTY: INSEPARABLE FROM DEMOCRATIC VALUES

While the Constitution itself provides sufficient justification for the sovereignty of the states and of the people, there is also a strong practical rationale. As sovereignty is removed further from the people, popular sovereignty is diluted, and any dilution of popular sovereignty represents a shift toward privileged sovereignty. As the sovereignty of the people has been eroded, governments have illegitimately exercised greater sovereignty. In consequence, dilution of popular sovereignty represents an abdication of the most fundamental principles of democracy.

As the functions of government become more remote from the people, it is more difficult for people to exercise control over government, which means the voice of the individual voter is less forceful. This can be stated in simple terms.

- Each California voter has 13 times the influence at the state level as at the federal level.

- Each Wyoming voter exercises more than 500 times the influence in state elections as in federal elections.[29]

- Similarly, voters in each state have more control over local government units than over state government, and individual voters in smaller municipalities have greater voice than in larger municipalities.[30]

The Constitution delegates authority to the federal government for functions that are most appropriately handled at the national level, such as defense, international affairs, immigration, printing of currency, patents, and interstate commerce. The philosophy behind the Tenth Amendment is that power should be retained by the states with respect to issues that do

not have to be handled at the national level. As a result, the Constitution delegates authority to the federal government over such demonstrably national issues as defense, the currency, and interstate commerce. This principle ("subsidiarity"[31]) holds that governmental functions should be performed at the level of government closest to the people that is competent to perform the function. State governments should devolve to local governments all functions that can appropriately be handled at that level. And functions that can appropriately be handled by state governments should not be handled by the federal government. Similarly, powers that can be handled by the individual should not be handled by local government (or any other level of government).

Government of the People: Competence and Closeness

The fundamental virtue of government that is closer to the people is its relative accountability. State and local governments are not inherently more competent than the federal government. Their greater proximity simply permits them to be more reflective of the public will, and provides incentives for them to spend more efficiently the tax money they collect from their citizens. Moreover, it is easier for the people to effect changes through the electoral process where government is closer to the people. Greater accountability is the natural and necessary consequence of government that is closer to the people.

Unwarranted centralization of power creates a "democratic deficit." This occurs when the people have less control over a government function than they should have, or when a function is performed at a government more remote from the people than necessary. When governmental functions are handled at a more remote level than necessary, the people are disenfranchised.

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If there is a democratic deficit because the government becomes more remote, it is also more susceptible to political interests ("rent-seeking"[32] interests) that seek favors from government for private purposes, rather than public purposes. And remote governments provide significant "economies of scale," for those seeking legislation for private purposes. For example, only one government need be lobbied at the national level, versus 50 state governments or more than 20,000 thousand local governments. Moreover, the stronger voice of the people at the state and local level makes it more difficult to enact private purpose legislation.[33] Thus, there has been considerable support for expanding federal sovereignty at the expense of the states and the people by some interests that seek private gain at the public's expense.

Centralization of power at the federal level has resulted in waste, duplication and contradictory policies as the federal government has intruded into functions that are also handled by state and local governments. The federal government, which is more remote, has imposed costly requirements on government programs that could not have been enacted in the 50 states.[34] State and local governments have spent more to accommodate federally funded programs than they would have if they had spent taxes raised directly from their own citizens.[35] States and localities, like people, are ***more careful with their own money than with other people's money***.[36] In the final analysis, however, federal funds are not other people's money, they are the people's money. Over-reliance on the federal government and on federal funding has produced a net loss through higher than necessary taxes, imprudent investment decisions, reduced economic growth and retarded job creation.[37]

Moreover, state and local governments themselves mimicked rent-seeking political interests as they have established expensive, duplicative and conflicting federal lobbying initiatives. This has diluted the sovereignty of the people even more, because as the lines of political authority become more obscured, it is more difficult for the people to exercise control.

To restore the sovereignty of the states and the people, it is necessary that federal usurpation of sovereignty be reversed.

This requires "devolution" of illegitimately acquired sovereignty by the federal government to state governments, which should further devolve such powers as are appropriate to their local governments. By devolving all powers that have been illegitimately assumed by the federal government, the sovereignty of the states and of the people can be restored. There is a simple test: whether a rational, unstrained reading of the Constitution grants sovereignty on an issue to the federal government. If not, then the issue is in the domain of the states.

In the final analysis, unnecessary centralization of power at the federal level is anti-democratic, because it dilutes popular sovereignty. In a very real sense:

Government of the people, by the people and for the people is government that is closer to the people.[38]

[29] Based upon the total vote in the November 1992 general election.

[30] The remoteness of government from the people may be expressed in terms of the relative levels of government or the relative size of individual government units. For a description of the advantages of smaller local governments even in a metropolitan setting, see *The Organization of Local Public Economies* (Washington, DC: Advisory Commission on Intergovernmental Relations, December 1987).

[31] The term "subsidiarity" is used for this concept in the European Union: "the powers that a State or federation wields in the common interest are only those which individuals, families, companies, and local or regional authorities cannot exercise in isolation. This common sense principle therefore dictates that decisions should be taken at the level closest to the ordinary citizen and that action taken by the upper echelons of the body politic should be limited. (author's emphasis); *The Principle of Subsidiarity: Communication of the Commission to the Council and the European Parliament*, (Brussels, Belgium: Commission of the European Communities, October 27, 1995).

[32] A political economic term denoting political activity by interests to alter public policy to their own advantage, and to the disadvantage of others.

[33] There are at least two dimensions to this. In smaller governments the people have greater voice, and are therefore able to exercise greater control over their elected representatives by making their views known during the legislative process. Further, people can more readily change the makeup of their state and local legislatures during elections.

[34] It is estimated that federal labor mandates in mass transit are more costly than the federal aid received by state and local governments, rendering the program a net deficit in terms of the public interest. See Wendell Cox and Samuel A. Brunelli, Up to the Challenge: Why State and Local Governments can Flourish under the Balanced Budget Amendment," *Issue Analysis*, Volume 21, Number 1 (Washington, DC: American Legislative Exchange Council, February 1995).

[35] For example, local governments have routinely spent more to construct federally funded waste water treatment plants, and built less reliable technology, than they have spent to construct locally funded waste water treatment plants. See Congressional Budget Office, *Efficient Investments in Waste-water Treatment* (Washington, DC: June 1985).

[36] Milton Friedman, "The Real Free Lunch: Markets and Private Property," *Cato Policy Report* (July-August 1993).

[37] It has been estimated that each additional $1.00 in taxation destroys $0.40 in economic growth. See Dale W. Jorgenson and Kun-Young Yun, "The Excess Burden of Taxation in the United States," *Journal of Accounting, Auditing and Finance*, September 1990.

[38] Speaker of the North Carolina House of Representatives Harold J. Brubaker, *The States: The Supreme Level of Government*, Address to the National Orientation Conference of the American Legislative Exchange Council (Washington, DC: December 1994).

CHAPTER 6

A CRISIS OF GOVERNANCE

Federal usurpation of popular sovereignty has generated a serious crisis in American governance. The most basic principles of the nation's fundamental law (the U.S. Constitution) have been violated. The Supreme Court has generally failed in its critical role of defending the Constitution and has instead joined Congress and the Executive branch in arbitrarily reducing the sovereignty of the states and of the people.

Of course, the three branches of the federal government could undo their wrongful expansion of power.

- ❑ Congress could repeal the laws under which it has illegitimately expanded federal power.

- ❑ The President could rescind orders and regulations that have wrongly intruded into areas of state responsibility.

- ❑ The Supreme Court could invalidate laws, regulations and executive orders that have usurped the sovereignty of the states and of the people.

And there are encouraging indications that federal initiatives will begin to devolve power to the states. But it would be overly optimistic to rely upon the federal government to willingly devolve all of the powers that it has wrested from the states. Restoration of the sovereignty of the states and the people will primarily depend upon their resolve.

The people, through the states, retain the right to reclaim their sovereignty through Constitutional amendments. The amendment process is, however, difficult and cumbersome. The people need more expeditious mechanisms for rendering Constitutional decisions. Various proposals have been made, the most promising of which include:

The *Government of the People Amendment*, where ratification by two-thirds of the states would nullify sections of federal law or regulation which have violated the sovereignty of the states; and

The *States Initiative Amendment*, which would allow three-fourths of the states to propose and ratify an amendment which would become of the Constitution unless Congress voted to disapprove amendment by a two-thirds vote within two years.

CHAPTER 7

THE ALEC SOVEREIGNTY OF THE PEOPLE AND DEVOLUTION AGENDA

The American Legislative Exchange Council (ALEC) has adopted a "Sovereignty of the People and Devolution Agenda" comprised of model resolutions, model proposals for Constitutional amendments, and model legislation.

The cornerstone of the agenda is the "Declaration of Sovereignty." It is hoped that this document will represent a valuable resource to the public and public officials as this pivotal debate proceeds.[39]

The ALEC "Sovereignty of the People and Devolution Agenda" includes the following elements:

1. ***ALEC Declaration of Sovereignty*****:** This resolution reiterates the role of the federal government under the Constitution, outlines the extent to which the federal government has illegitimately assumed sovereignty, affirms the importance of fundamental law, proposes principles by which popular sovereignty should be restored, and outlines strategies by which such restoration might occur.

2. Model Resolution: ***Declaration of Sovereignty:*** The *Declaration of Sovereignty* (above) in resolution form.

3. Model Resolution: ***Government of the People Amendment:*** This resolution petitions the U.S. Congress to propose the *Government of the People Constitutional Amendment,* for submittal to the states for ratification. The amendment allows the states to nullify federal laws and regulations, by a two-thirds vote, when the states deem that the federal government has exceeded its Constitutional authority.

4. Model Resolution: ***States Initiative Amendment*****:** This resolution petitions the U.S. Congress to propose the

States Initiative Constitutional Amendment to the Constitution, for submittal to the states for ratification, providing that three-quarters of the states may propose amendments to the Constitution, which are ratified if Congress, within two years of such proposal, fails to disapprove them by a two-thirds vote.

5. Model Resolution: ***Restatement of State Sovereignty:*** This resolution claims sovereignty under the Tenth Amendment over all powers not delegated to the federal government by the Constitution.

6. Model Legislation: ***Joint Legislative Committee on Federal Mandates Act:*** This model legislation establishes a joint legislative committee on federal mandates to annually review the activities of Congress and the federal government, including court rulings, with regard to any laws, regulations or other actions that may require state compliance with a federal mandate.

7. Model Legislation: ***Constitutional Defense Council Act:*** This model legislation establishes a Constitutional Defense Council to examine and challenge by legal action, legislation or any other legal means: federal Mandates; court rulings; The authority granted to, or assumed by, the federal government; laws, regulations and practices of the federal government; any other activity that is deemed appropriate by the Council.

8. ***Model Legislation: Federal Mandate & Encroachment on State Sovereignty Act:*** This legislation creates a "Federal Mandate & Federal Encroachment on State Sovereignty Auditor" to inventory all federal mandates, calculate the cost of mandates to the different levels of government; and maintain a voting record of the congressional delegation.

** It is expected that principles such as those outlined in ALEC's *Declaration of Sovereignty* will be considered at the "Conference of the States," which was, at publication, in the planning stages. ALEC has endorsed the "Conference of the States" in the belief that a comprehensive national debate is required on the sovereignty of the people and devolution.

DECLARATION OF SOVEREIGNTY
(Annotated)

I. We, the American Legislative Exchange Council, state legislators representing the states and the people hereby reaffirm the sovereignty of the states and of the people.

More than two centuries ago, the sovereign states, representing the sovereign people did, of their own volition, ratify the Constitution of the United States. In so doing, the states, in concerted action, established the federal government to perform certain limited and enumerated functions. Under the Tenth Amendment of the Constitution of the United States, the powers not delegated to the federal government were "reserved to the states respectively, or to the people."

II. Throughout the history of the United States, and especially in recent decades, the federal government has, without right, blatantly disregarded state sovereignty by arrogating unto itself powers that were to have been reserved to the states and to the people.

A. It has conscripted states and their subordinate levels of government to implement its programs through federal mandates, funded and unfunded;

NOTE: *Federal authority over the states is largely limited to forbidding or limiting state action with respect to individual Constitutional rights or powers delegated to the federal government under the Constitution. Congress has virtually no constitutional authority to enact mandates on the States, much less their subordinate levels of government. To a large degree, federal mandates have arisen as the federal government has intruded into powers that were to have been reserved to the states.*

Federal mandates pervade federal programs that involve state and local governments. These range from *mandates costing billions of dollars to bureaucratic rules that may be described as nuisances, but which significantly add to state and local government administrative burdens and costs.*

B. It has requisitioned officers of states and their subordinate levels of government to perform duties on its behalf, bypassing state constitutional and legislative processes;

NOTE: *Some federal laws require the states, governors, and other state or local public officials to administer federal programs. States are not administrative divisions of the federal government. State and local government officials are not employees of the federal government. It is inappropriate for the federal government to conscript states, their political subdivisions, state government officials, or local government officials to perform federal duties.*

Examples include regional planning mandates that require certain gubernatorial actions and the Ozone Transport Commission, which was established by Congress to deal with air quality issues in the Northeast. The Commission consists of governors, but excludes the state legislatures. It is inappropriate to delegate powers to state officials or agencies outside of mechanisms established under state constitutions.

C. It has, as a result of expanding power, imprudently increased spending, increased taxation, and increased regulation, which have, in consequence, reduced economic growth by unnecessarily discouraging investment and job creation;

NOTE: *Throughout history the nation has engaged in deficit spending, primarily in times of war. In recent decades, however, the federal government has routinely run deficits, and the national debt is now approaching $5 trillion (almost $50,000 per household).*

The federal deficit has risen largely due to insufficiently controlled federal domestic spending. Per-capita, inflation adjusted federal revenues have doubled since 1960, while federal spending has escalated at a 30 percent greater rate than revenues.

D. It has, through deficit spending and other actions, created massive federal obligations that threaten the living standards of the people, the solvency of the states, and the future of generations yet unborn;

NOTE: *Excessive federal spending threatens the economic future of the nation.*

Recent evidence of this is provided by the Congressional Bi-Partisan Commission on Entitlement and Tax Reform. By 2012, at present rates of growth, virtually all federal revenues will be required to fund entitlements and interest on the national debt. Maintaining the present level of federal programs would require federal tax revenue increases of 75 percent over the next 40 years.

E. It has, by centralizing power in Washington, D.C., created a "democratic deficit," a condition under which the federal government has assumed control over functions of government that should have been reserved to state and local governments, making effective control of government more difficult for the people;

NOTE: *A fundamental principle of American government is that the people are sovereign (popular sovereignty).*

The people, however, have less control over a remote government than they have over government that is more proximate. Moreover, the people are able to make electoral changes more readily where government is *closer to the people. As a result, more proximate government is more responsive to the people; it is more reflective of democratic ideals.*

F. It has, through unwarranted judicial intervention, interposed itself between the states and the people on matters not of federal jurisdiction;

G. It has, through imprudent judicial review, systematically expanded the power of Congress and the Executive by usurping powers that were not intended under the Constitution of the United States;

***NOTE:** The federal court system, and especially the Supreme Court, has allowed expansion of federal power by unreasonably permissive interpretations of the Constitution. For example:*

The "commerce" clause of the Constitution has been interpreted so broadly that the authority of states within their own borders has been seriously compromised by federal intrusion.

Federal courts have imposed unreasonable requirements on the states with respect to prison operations.

H. It has evaded the restraints of the nation's fundamental law, the Constitution of the United States, and has in so doing engaged in the imposition of arbitrary laws, administrative actions, and judicial decisions.

Through these actions, the federal government has usurped the sovereignty of the states. And, through these actions, the federal government has usurped the sovereignty of the people.

III. We declare that the federal government cannot, on its own, legitimately diminish the sovereignty of the states and of the people as intended under the Constitution of the United States.

The fundamental law of the nation may only be altered in the manners prescribed by that fundamental law. We are convinced that the policy failures that have accompanied expanded central authority provide, in themselves, powerful testimony to the importance of limiting the federal government to those powers enumerated in the Constitution of the United States. To correct these failures and to secure a more favorable future for the nation, it is necessary that the powers expropriated by the federal government be returned to the states and to the people.

IV. We therefore declare the following principles as necessary to the restoration of the sovereignty of the states and of the people, as required under the Tenth Amendment of the Constitution of the United States:

A. *The federal government should be restored to the role assigned to it under the Constitution of the United States.* The powers usurped from the states and from the people by the federal government should be returned in an expeditious and orderly manner. Mechanisms exist for interstate cooperation where necessary, such as interstate compacts, voluntary uniform standards, and amendments to the Constitution of the United States.

B. *Constitutional clauses that have been the source of illegitimate federal expansion should be restored to their original meaning.* Federal expansion has often been based upon unreasonably permissive interpretations of enumerated powers under the Constitution of the United States, especially the "commerce" clause.

See II-G

C. *The federal government should not impose mandates, unfunded or funded, on the states or on their subordinate gov-*

ernments. The Constitution of the United States delineates federal responsibilities, and reserves all other responsibilities to the states or to the people. Federal mandates on state or local governments are unnecessary and inappropriate.

See II-A

D. *The federal government should be the exclusive financier of its programs.* By partially funding federal programs, such as through matching grants, the federal government distorts the priorities of state and local governments, and establishes a democratic deficit that virtually disenfranchises state and local voters. The federal government has a legal obligation to fully fund its programs, and should neither require nor entice state or local governments to participate in the funding of federal programs.

NOTE: *Much of America's crisis in governance has occurred because the lines of governmental authority have become blurred. Overlapping federal and state powers have led to massive duplication, waste and even abuse. Moreover, where authorities overlap unnecessarily, it is more difficult for people to assign blame for the failures of government, which encourages expansion of such duplicative and wasteful practices.*

If federal involvement in a government function is appropriate under the Constitution, then it is the responsibility of the federal government to administer and fully fund its programs relating to that function. In a democracy, the will of the people -- popular sovereignty -- is more effectively served where the funding and administration of a government program is the responsibility of a single level of government.

E. *All federal government relationships with local governments should be through the states.* All governments in the

United States are the creation of the states, which are the creation of the people. One government, the federal government, was created in concert by the states. All other governments are the creation of, and subordinate to the states respectively. Direct federal government-local government relationships are inappropriate, except to the extent specifically authorized by the constitution or laws of a particular state.

NOTE: *Local governments are creations and political subdivisions of the sovereign states. Where the federal government bypasses state governments to establish programs with local governments, the federal government violates the sovereignty of the people as delegated through the states. The Constitution provides no authority to the federal government to establish relationships with political subdivisions of the states (local governments).*

Moreover, the interests of state government and local government interests can be at odds at the federal level. Differences between governments within a state should be resolved within the state. Direct federal government relationships with local governments compromise the sovereignty of the states, because they interfere with the ability of the states to manage their own responsibilities. Moreover tax revenues are wasted by duplicative and competing lobbying efforts at the federal level.

F. *The federal government should not assign federal responsibilities to officers of state or local governments.* Various federal laws designate state or local government officers to perform federal functions. The federal government should enlist state officers or departments to assist it in the performance of its duties only when specifically authorized by the constitution or laws of a particular state.

See II-B

G. *The federal government's treaty-making power should be limited to powers that are clearly within the federal scope of responsibility.* The states have delegated treaty making powers only with respect to those areas of authority that have been delegated to the federal government.

NOTE: *In at least one federal state, the central government has used international treaty obligations, into which it had entered, as justification for pre-emption of state authority. This is inappropriate and should not be allowed to happen in the United States.*

H. *Congress should not act to displace state and local police power -- and the courts should not permit such displacement -- except where the Constitution authorizes.* Congress has preempted entire areas of regulation that have traditionally been matters of state and local police power. In addition, the federal courts have improperly condoned these congressional assaults on local governance, under the doctrine of implied preemption, the so-called "dormant" commerce clause, and other constitutional provisions.

See II-G

I. *A Constitutional mechanism should be established that would give the States a direct and dispositive role in protecting their sovereign powers against unwarranted encroachments pursuant to federal statues and regulations.* The Supreme Court of the United States, itself an organ of the federal government, has forsaken the constitutional principles of limited federal power and state sovereignty. Therefore, a constitutional amendment should be proposed by Congress and ratified by the States whereby a provision of federal law may be repealed upon the adoption by two-thirds of the states during any five year period of a "Resolution of Disapproval."

***NOTE:** The proposed Constitutional amendment, the "Government of the People" amendment, would offer the states a mechanism to render Constitutional decisions (A "Resolution of Disapproval" enacted by 2/3 of the states.) "Resolutions of Disapproval" would not be subject to judicial review.*

V. In support of these principles, we commit ourselves to the pursuit of such remedies as may be necessary to restore the sovereignty of the states and of the people, by:

A. Legal actions to challenge the illegitimate exercise of federal power;

B. Repeals of laws by which federal power has been illegitimately expanded;

C. Constitutional Amendments to curtail unwarranted federal power; and

D. Such other actions as may be appropriate.

SOVEREIGNTY OF THE PEOPLE AND DEVOLUTION AGENDA

DECLARATION OF SOVEREIGNTY

I. We, the American Legislative Exchange Council, state legislators representing the states and the people hereby re-affirm the sovereignty of the states and of the people.

More than two centuries ago, the sovereign states, representing the sovereign people did, of their own volition, ratify the Constitution of the United States. In so doing, the states, in concerted action, established the federal government to perform certain limited and enumerated functions. Under the Tenth Amendment of the Constitution of the United States, the powers not delegated to the federal government were "reserved to the states respectively, or to the people."

II. Throughout the history of the United States, and especially in recent decades, the federal government has, without right, blatantly disregarded state sovereignty by arrogating unto itself powers that were to have been reserved to the states and to the people.

A. It has conscripted states and their subordinate levels of government to implement its programs through federal mandates, funded and unfunded;

B. It has requisitioned officers of states and their subordinate levels of government to perform duties on its behalf, bypassing state constitutional and legislative processes;

C. It has, as a result of expanding power, imprudently increased spending, increased taxation, and increased regulation, which have, in consequence, reduced economic growth by unnecessarily discouraging investment and job creation;

D. It has, through deficit spending and other actions, created massive federal obligations that threaten the living standards of the people, the solvency of the states, and the future of generations yet unborn;

E. It has, by centralizing power in Washington, D.C., created a "democratic deficit," a condition under which the federal government has assumed control over functions of government that should have been reserved to state and local governments, making effective control of government more difficult for the people;

F. It has, through unwarranted judicial intervention, interposed itself between the states and the people on matters not of federal jurisdiction;

G. It has, through imprudent judicial review, systematically expanded the power of Congress and the Executive by usurping powers that were not intended under the Constitution of the United States;

H. It has evaded the restraints of the nation's fundamental law, the Constitution of the United States, and has in so doing engaged in the imposition of arbitrary laws, administrative actions, and judicial decisions.

Through these actions, the federal government has usurped the sovereignty of the states. And, through these actions, the federal government has usurped the sovereignty of the people.

III. We declare that the federal government cannot, on its own, legitimately diminish the sovereignty of the states and of the people as intended under the Constitution of the United States.

The fundamental law of the nation may only be altered in the manners prescribed by that fundamental law. We are convinced that the policy failures that have accompanied expanded central authority provide, in themselves, powerful testimony to the importance of limiting the federal government to those powers enumerated in the Constitution of the United States. To correct these failures and to secure a more favorable future for the nation, it is necessary that the powers expropriated by the federal government be returned to the states and to the people.

IV. We therefore declare the following principles as necessary to the restoration of the sovereignty of the states and of the people, as required under the Tenth Amendment of the Constitution of the United States:

A. *The federal government should be restored to the role assigned to it under the Constitution of the United States.* The powers usurped from the states and from the people by the federal government should be returned in an expeditious and orderly manner. Mechanisms exist for interstate cooperation where necessary, such as interstate compacts, voluntary uniform standards, and amendments to the Constitution of the United States.

B. *Constitutional clauses that have been the source of illegitimate federal expansion should be restored to their original meaning.* Federal expansion has often been based upon unreasonably permissive interpretations of enumerated powers under the Constitution of the United States, especially the "commerce" clause.

C. *The federal government should not impose mandates, unfunded or funded, on the states or on their subordinate governments.* The Constitution of the United States delineates federal responsibilities, and reserves all other responsibilities to the states or to the people. Federal mandates on state or local governments are unnecessary and inappropriate.

D. *The federal government should be the exclusive financier of its programs.* By partially funding federal programs, such as through matching grants, the federal government distorts the priorities of state and local governments, and establishes a democratic deficit that virtually disenfranchises state and local voters. The federal government has a legal obligation to fully fund its programs, and should neither require nor entice state or local governments to participate in the funding of federal programs.

E. *All federal government relationships with local governments should be through the states.* All governments in the United States are the creation of the states, which are the creation of the people. One government, the federal government, was created in concert by the states. All other governments are the creation of, and subordinate to the states respectively. Direct federal government-local government relationships are inappropriate, except to the extent specifically authorized by the constitution or laws of a particular state.

F. *The federal government should not assign federal responsibilities to officers of state or local governments.* Various federal laws designate state or local government officers to perform federal functions. The federal government should enlist state officers or departments to assist it in the performance of its duties only when specifically authorized by the constitution or laws of a particular state.

G. *The federal government's treaty making power should be limited to powers that are clearly within the federal scope of responsibility.* The states have delegated treaty making powers only with respect to those areas of authority that have been delegated to the federal government.

H. *Congress should not act to displace state and local police power -- and the courts should not permit such displacement -- except where the Constitution authorizes.*

Congress has preempted entire areas of regulation that have traditionally been matters of state and local police power. In addition, the federal courts have improperly condoned these congressional assaults on local governance, under the doctrine of implied preemption, the so-called "dormant" commerce clause, and other constitutional provisions.

I. *A Constitutional mechanism should be established that would give the States a direct and dispositive role in protecting their sovereign powers against unwarranted encroachments pursuant to federal statues and regulations.* The Supreme Court of the United States, itself an organ of the federal government, has forsaken the constitutional principles of limited federal power and state sovereignty. Therefore, a constitutional amendment should be proposed by Congress and ratified by the States whereby a provision of federal law may be repealed upon the adoption by two-thirds of the States during any five year period of a "Resolution of Disapproval."

V. In support of these principles, we commit ourselves to the pursuit of such remedies as may be necessary to restore the sovereignty of the states and of the people, by:

A. Legal actions to challenge the illegitimate exercise of federal power;

B. Repeals of laws by which federal power has been illegitimately expanded;

C. Constitutional Amendments to curtail unwarranted federal power; and

D. Such other actions as may be appropriate.

MODEL RESOLUTION

DECLARATION OF SOVEREIGNTY

A resolution for the purpose of declaring the sovereignty of the States and of the people, and proposing principles by which the sovereignty of the States and of the people the may be restored to their intention under the Constitution of the United States.

Be it resolved that the legislature of the State of _________, the Senate and the House of Representatives (or House of Delegates or Assembly) jointly concurring hereby adopts the following declaration of sovereignty.

Section I.

We, the legislature of the State of _______ hereby re-affirm the sovereignty of the states and of the people.

More than two centuries ago, the sovereign states, representing the sovereign people did, of their own volition, ratify the Constitution of the United States. In so doing, the states, in concerted action, established the federal government to perform certain limited and enumerated functions. Under the Tenth Amendment of the Constitution of the United States, the powers not delegated to the federal government were "reserved to the states respectively, or to the people."

Section II.

Throughout the history of the United States, and especially in recent decades, the federal government has, without right, blatantly disregarded state sovereignty by arrogating unto itself powers that were to have been reserved to the states and to the people.

A. It has conscripted states and their subordinate levels of government to implement its programs through federal mandates, funded and unfunded;

B. It has requisitioned officers of states and their subordinate levels of government to perform duties on its behalf, bypassing state constitutional and legislative processes;

C. It has, as a result of expanding power, imprudently increased spending, increased taxation, and increased regulation, which have, in consequence, reduced economic growth by unnecessarily discouraging investment and job creation;

D. It has, through deficit spending and other actions, created massive federal obligations that threaten the living standards of the people, the solvency of the states, and the future of generations yet unborn;

E. It has, by centralizing power in Washington, D.C., created a "democratic deficit," a condition under which the federal government has assumed control over functions of government that should have been reserved to state and local governments, making effective control of government more difficult for the people;

F. It has, through unwarranted judicial intervention, interposed itself between the states and the people on matters not of federal jurisdiction;

G. It has, through imprudent judicial review, systematically expanded the power of Congress and the Executive by usurping powers that were not intended under the Constitution of the United States;

H. It has evaded the restraints of the nation's fundamental law, the Constitution of the United States, and has in so doing engaged in the imposition of arbitrary laws, administrative actions, and judicial decisions.

Through these actions, the federal government has usurped the sovereignty of the states. And, through these actions, the federal government has usurped the sovereignty of the people.

Section III.

We declare that the federal government cannot, on its own, legitimately diminish the sovereignty of the states and of the people as intended under the Constitution of the United States. The fundamental law of the nation may only be altered in the manners prescribed by that fundamental law. We are convinced that the policy failures that have accompanied expanded central authority provide, in themselves, powerful testimony to the importance of limiting the federal government to those powers enumerated in the Constitution of the United States. To correct these failures and to secure a more favorable future for the nation, it is necessary that the powers expropriated by the federal government be returned to the states and to the people.

Section IV.

We therefore declare the following principles as necessary to the restoration of the sovereignty of the states and of the people, as required under the Tenth Amendment of the Constitution of the United States:

A. *The federal government should be restored to the role assigned to it under the Constitution of the United States.* The powers usurped from the states and from the people by the federal government should be returned in an expeditious and orderly manner. Mechanisms exist for interstate cooperation where necessary, such as interstate compacts, voluntary uniform standards, and amendments to the Constitution of the United States.

B. *Constitutional clauses that have been the source of illegitimate federal expansion should be restored to their original meaning.* Federal expansion has often been based upon unreasonably permissive interpretations of enumerated powers under the Constitution of the United States, especially the "commerce" clause.

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