

Thomas Jefferson called the Tenth Amendment the “foundation of the Constitution.”

Rule of Construction

Wilson’s courtyard speech, he distinguished between the delegation of powers in state governments and the new federal Constitution.

He said that in the case of state government “everything which is not reserved is given; but in the latter – the US Constitution “the reverse of the proposition prevails, and everything which is not given is reserved.”

Delegated Powers

“This specification of particulars [the 18 enumerated powers of Article I, Section 8] evidently excludes all pretension to a general legislative authority, because an affirmative grant of special powers would be absurd as well as useless if a general authority was intended.” Hamilton Federalist #83

What are the powers of the Federal Government?

Federalist #45 (Madison)

The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite

This doesn’t remotely resemble the system we have today.

The \$64,000 question

The states were intended to serve as a check on federal power.

“A consolidation of the States would subvert the new Constitution, and against which this article is our best security. Too much provision cannot be made against consolidation. The State Governments represent the wishes and feelings, and the local interests of the people. They are the safeguard and ornament of the Constitution; they will protect the period of our liberties; they will afford a shelter against the abuse of power, and will be the natural avengers of our violated rights.” - Fisher Aims, arguing for the inclusion of what would become the Tenth Amendment during the Mass. Ratifying Convention

KENTUCKY AND VIRGINIA RESOLUTIONS

Thomas Jefferson and James Madison authored documents first formally advancing the idea that states not only could, but should, intervene when the federal government oversteps its authority in response to the Alien and Sedition Acts passed by Congress in 1798. Jefferson penned resolutions for Kentucky and Madison drafted a similar piece of legislation for the

Commonwealth of Virginia. Taken together, the two resolutions lay out what we now call the Principles of '98.

Jefferson said nullification is the **rightful remedy**. James Madison said **“in case of a deliberate, palpable, and dangerous exercise of other powers, not granted by the said compact, the states who are parties thereto, have the right, and are in duty bound, to interpose for arresting the progress of the evil, and for maintaining within their respective limits, the authorities, rights and liberties appertaining to them.”**

These resolutions didn't actually nullify anything. They merely established the constitutional foundation for the principles. In a letter he sent with a copy of his draft of the Kentucky Resolutions, Jefferson told Madison **“I think we should distinctly affirm all the important principles they contain, so as to hold to that ground in the future, and leave the matter in such a train as that we may not be committed absolutely to push the matter to extremities, & yet may be free to push as far as events will render prudent.”**

Nullification 2 definitions

1. Legal
2. Common

Federalist #46 (Madison's Blueprint)

Should an unwarrantable measure of the federal government be unpopular in particular States, which would seldom fail to be the case, or even a warrantable measure be so, which may sometimes be the case, the means of opposition to it are powerful and at hand. The disquietude of the people; their repugnance and, perhaps refusal to cooperate with officers of the Union, the frowns of the executive magistracy of the State; the embarrassment created by legislative devices, which would often be added on such occasions, would oppose, in any State, very serious impediments; and were the sentiments of several adjoining States happen to be in Union, would present obstructions which the federal government would hardly be willing to encounter.

Marijuana

Hemp

ANTI-COMMANDEERING

Simply put, the federal government cannot force states to help implement or enforce any federal act or program. The anti-commandeering doctrine is based primarily on five Supreme Court cases dating back to 1842. *Printz v. U.S.* serves as the cornerstone.

Justice Joseph Story held that the federal government could not force states to implement or carry out the Fugitive Slave Act of 1793. He said that it was a federal law, and the federal government ultimately had to enforce it:

The [fugitive slave clause] is found in the national Constitution, and not in that of any state. It does not point out any state functionaries, or any state action to carry its provisions into effect. The states cannot, therefore, be compelled to enforce them; and it might well be deemed an unconstitutional exercise of the power of interpretation, to insist that the states are bound to provide means to carry into effect the duties of the national government, nowhere delegated or intrusted to them by the Constitution.

Printz

We held in *New York* that Congress cannot compel the States to enact or enforce a federal regulatory program.

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