

Testimony of Ed Mulholland
Government Oversight Committee, Ohio House of Representatives
Legislative Hearing on HJR3

Chairman Peterson, Vice Chair Thomas, Ranking Member Humphrey, and members of the committee, my name is Ed Mulholland and I am from Zanesville, Ohio, House District 97. I am a volunteer with Convention of States Action and we seek your support of House Joint Resolution 3. Its passage would move America one state closer to initiating an Article V convention for the purpose of proposing amendments to address the threatening overreach of the federal government.

The Declaration of Independence was an announcement to the world that the colonists would and could manage their own affairs. It was a statement establishing the right of individual liberty and local sovereignty. The Constitution followed, securing the liberty of the people, while granting the federal government only 27 enumerated powers.¹

Later, in the Bill of Rights, the tenth amendment stated 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.”* James Madison, an author of the Constitution and fourth president of the United States, said it this way: *“The powers delegated by the ... Constitution to the federal government are few and defined. Those ... [of] the State governments are numerous and indefinite.”*

By dividing power between the federal and state governments, the Framers built a safeguard into our political system to restrain federal overreach. This division of power is called federalism and, sadly, it has been dying a slow death for decades. The death of federalism is perilous for America because history has shown what happens when power becomes concentrated. As the power of the federal government expands, so expands the necessary regulation and control which steal the very liberties the government is supposed to protect. Power corrupts and absolute power corrupts absolutely! Just look at North Korea, Venezuela, and Cuba; concentrated power never ends well for the people.

Why is Federalism on its deathbed in America? How has this come about?

Prior to the New Deal era, local economic activities, such as labor, manufacturing, agriculture and mining were widely understood to be under the purview of state governments. They were not considered part of interstate commerce.²

¹https://www.law.cornell.edu/wex/enumerated_powers

²<https://hls.harvard.edu/today/the-move-away-from-federalism-and-separation-of-powers-has-had-lasting-impacts-on-american-democracy/>

Then, Supreme Court decisions, like upholding the National Labor Relations Act³ in 1937 and Wickard v. Filburn⁴ in 1942 dramatically changed the interpretation of the Constitution's Commerce Clause⁵, enlarging the federal government's lawmaking authority at the expense of State sovereignty.

With its new, expanded authority, the government grew so much that Congress was forced to defer a great deal of authority to newly created agencies. Today the number of statutes passed by our elected representatives in Congress is dwarfed by the number of regulations created by federal agencies staffed by unelected bureaucrats.⁶

The Supreme Court's arbitrary re-interpretation of the Commerce Clause can be corrected with an amendment to the Constitution through the passage of HJR3. Doing so will rightly shift power out of Washington DC and back to the states where it belongs and where our country's founders intended it to be. This will help to revive federalism and the balance of power between the federal and state governments.

Another contributor to the death of federalism was the United States v Butler decision in 1936 which re-interpreted the General Welfare Clause. Prior to this ruling the General Welfare Clause was interpreted to mean that Congress could only spend money in service of its 27 enumerated powers. It could not spend money for activities on which states could spend money. For example, states could spend money on education, welfare programs, medical programs, and retirement programs. Accordingly, Congress had no jurisdiction under the General Welfare Clause for those activities. However, after this Supreme Court ruling, the floodgates were opened, and Congress was permitted to spend money on essentially anything it wanted.⁷

This Supreme Court re-interpretation of the General Welfare Clause can also be corrected through an amendment to the Constitution that clarifies the Clause according to the Framers's intentions. Pandora's box of federal government expansion can, in fact, be closed through such an amendment.

Now some of you might be wondering what would happen to the federal programs American's have come to rely upon, such as Social Security?" Those programs would not have to end, but their administration could shift from the federal government to state governments.

³ <https://www.law.cornell.edu/supremecourt/text/301/1>

⁴ <https://www.law.cornell.edu/supremecourt/text/317/111>

⁵ <https://constitutioncenter.org/the-constitution/articles/article-i/clauses/752>

⁶ <https://youtu.be/p5-5a6Q54BM>

⁷ Michael Farris speaking at the 2023 Convention of States summit. Video: <https://www.youtube.com/watch?v=pIzo1vv1NtI>

The programs could be more closely tailored to the particular needs of each state. As our State elected officials, you would have control, and we all know that states tend to be more efficient with their resources and more responsive to their citizens' needs.

In summary: federalism is all but dead in our country due to an ever-expanding federal government that treats the states as federal agencies. This is dangerous because we are on a slippery slope toward the concentration of absolute power at the federal level. Concentrated power that inevitably leads to tyranny and loss of individual liberty.

This imbalance of power has come about in part from Supreme Court decisions that re-interpreted the Constitution, taking power from the states and giving it to the federal government. To preserve State sovereignty and the liberties of the people, we must restore federalism.

HJR-3 calls for a convention to give States the opportunity to at least discuss this important issue.

I urge you to support HJR-3 with your vote here in committee and when it goes before the full house. Thank you.