

TESTIMONY OF ED MULHOLLAND
GENERAL GOVERNMENT COMMITTEE
OHIO SENATE
COLUMBUS, OHIO

LEGISLATIVE HEARING ON SJR-3

Chair Roegner, Vice Chair Gavarone, Ranking Member Blackshear, members of the committee.
my name is Ed Mulholland, I'm from Zanesville, Ohio, Senate District 31.

The Declaration of Independence was an announcement to the world that the colonists could and would 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 by granting the federal government only 27 enumerated powers. James Madison, an author of the Constitution and fourth president of the United States, said it this way, Quote:

“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 division of power is called federalism, and it is critically important! As the power of the federal government expands, so expands the necessary regulation and control which steals the very liberties the government is supposed to protect

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. Then, several Supreme Court decisions, re-interpreted the Commerce Clause, enlarging the federal government's lawmaking authority at the expense of State sovereignty.¹

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

This re-interpretation of the Commerce Clause can be addressed with an amendment to the Constitution.² Doing so will keep power in the states where it belongs and where our country's founders intended it to be. Re-interpretation of the General Welfare clause has also contributed to the death of federalism. Originally 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, the States have the authority to spend money on education, welfare, medical, and retirement programs. Accordingly, Congress could not spend money on those activities.

Then thanks to the United States v Butler decision in 1936, the floodgates were opened, and Congress was permitted to spend money on essentially anything it wanted.³ This re-interpretation of the General Welfare clause can also be addressed with an amendment to the Constitution.

Without action by the States to constrain federal overreach 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. To preserve State sovereignty and the liberties of the people, we must restore federalism. SJR-3 calls for a convention to give States the opportunity to at least discuss this important issue.

I urge you to support SJR-3.

1. NLRB v. Jones & Laughlin Steel Corp. (1937)

(Shifted focus from direct interstate movement to "substantial effects" on commerce.)

Wickard v. Filburn (1942)

(Introduced the "aggregation principle": trivial local acts could be regulated if their cumulative effect touched interstate commerce. States lost nearly all say over local economic activity; Congress could micromanage farming, manufacturing, anything with a market ripple.)

2. Sample of possible Amendment to strengthen the Commerce clause (excerpted source: Official Proposals of the Article V Simulated Convention 2023, Adopted August 4, 2023 in Williamsburg, VA)

Section 1. Commerce among the states shall mean buying, selling, or transportation of commercial goods and services across state lines.

Section 2. Congress shall not delegate any rule making function related to commerce among the states to any executive official or agency.

Section 3. Any federal law or regulation existing at the time of ratification of this amendment in conflict with this amendment shall become null and void two years after the date of ratification of this amendment.

Section 4. For purposes of this Constitution, Navigable Waters shall be limited to surface waters actively used for transport of goods in commerce among the states

3. The *United States v. Butler* decision, handed down by the U.S. Supreme Court on January 6, 1936, was a landmark case that addressed the scope of Congress's taxing and spending powers under the General Welfare Clause (Article I, Section 8, Clause 1) of the Constitution. While it struck down a key New Deal program, it paradoxically laid groundwork for expanding federal authority in later years by affirming Congress's broad authority to tax and spend for the "general welfare."