



Wicker Bill Introduced to Reaffirm 10th Amendment

The short [bill](#) asserts:

(1) The 10th article of amendment to the Constitution of the United States (hereinafter in this section referred to as the "10th Amendment"), ratified on December 15, 1791, 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."

(2) The 10th Amendment expressly limits the powers of the Federal Government to those delegated by the Constitution and reaffirms and protects the freedom of the States to exercise those that are not.

(3) The 10th Amendment reflects the opposition of the Founding Fathers to a Federal Government with expansive powers; their intention for the powers of the States to act as a check on those of the Federal Government; and their concern that the Federal Government would attempt to usurp powers intended to remain with the States.

(4) James Madison, in *The Federalist* No. 45, wrote, "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."

(5) The Supreme Court, in *United States v. Sprague*, 282 U.S. 716 (1931), noted, "The Tenth Amendment was intended to confirm the understanding of the people at the time the Constitution was adopted, that powers not granted to the United States were reserved to the States or to the people."

(6) The Supreme Court, in *Fry v. United States*, 421 U.S. 542 (1975), also noted, "The Amendment expressly declares the constitutional policy that Congress may not exercise power in a fashion that impairs the States' integrity or their ability to function effectively in a federal system."

(7) The Executive Departments and Agencies of the Federal Government often promulgate regulations contrary to the spirit and letter of the 10th Amendment.

(8) The 10th Amendment assures that the people of the United States of America and each sovereign State in the Union of States, now have, and have always had, rights the Federal Government may not usurp.

(9) It is the responsibility of Congress to safeguard the 10th Amendment and to recognize that it is as vital and valuable today as on the date of its ratification.



The 10th Amendment Regulatory Reform Act allows designated state officials to file a legal brief



Written by [Raven Clabough](#) on January 6, 2011

challenging the constitutionality of proposed regulations.

If passed, the bill would permit state officials to challenge federal regulations. The [Clarion Ledger](#) explains, “Wicker said he introduced the legislation to curb the growing lists of federal rules and regulations, lists of administrative rules that total 163,333 pages, up 22,000 pages since the start of the decade.”

Wicker indicates, “Under the legislation, any rule proposed by a federal agency would be subject to constitutional challenges if state officials determine the rule infringes upon powers reserved to the states under the 10th Amendment.”

Agencies are permitted 15 days to respond to constitutional challenges, and are required to post and notify states of any challenges filed.

The bill would be yet another tool for state officials to use in their challenge against Obama’s healthcare law. According to [The Hill](#), the Wicker bill mirrors a similar piece of legislation introduced by Republican Representative Tom Cole of Oklahoma on March 25, 2010, two days after President Obama signed his signature healthcare law.

While Wicker is in favor of a full repeal of the healthcare law and plans to vote in favor of repeal on January 12, he sees the legislation as yet another way to challenge the law.

Like Cole, Wicker seeks to specifically target the individual mandate of the healthcare law through his legislation.

However, Wicker contends that the bill could be used to challenge virtually any regulations, including those posed by the Environmental Protection Agency.

Marty Wiseman, executive director of Mississippi State University’s John C. Stennis Institute of Government, asserts that the legislation is virtually a nullification law, which ultimately permits states to ignore or reject laws that are considered unconstitutional.

Wiseman states, “There are interesting points in history where these nullification laws have been tried.”

According to Larry Greenley of The John Birch Society, however, the law is in fact different from nullification in that (1) it pertains to federal regulations, not laws, and (2) it simply empowers designated state officials to commence legal action in a federal district court if a federal agency refuses to drop a regulation that is considered unconstitutional.

The Wicker bill currently has the full support of Mississippi Governor Haley Barbour. It also has 30 Senate co-sponsors — an impressive figure given that it was introduced during the lame-duck session — including John McCain, Lindsey Graham, Scott Brown, and Jim DeMint.

Photo: Sen. Roger Wicker



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