

10th Amendment: Federal money tied to power

By: Tim Botos – June 2, 2013

Pity poor James Madison.

He didn't even want the 10th Amendment included in the Bill of Rights. He believed it was redundant overkill. But to please his colleagues, who were still reeling from British oppression, it was included. And it goes like this:

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.

Now, 222 years after its ratification, even the legal experts can't agree on what the founding fathers meant by that.

Depending on how you read it, there are two basic schools of thought:

1. The states' rights view, which is that federal government should provide only the most basic services, which the states can't handle on their own.
2. The view that the amendment simply reiterates an intention of undeclared shared powers.

Chris Edwards, director of tax-policy studies at the Cato Institute, a Washington, D.C., think tank, said the 10th Amendment has been twisted, torn, stomped upon and shredded in the last century.

"We now have a federal empire," he said.

He has written and spoken extensively on the growth of federal government. Edwards said Congress and U.S. Supreme Court justices have steadily increased federal powers, ignoring the 10th amendment in the process.

"It is completely upside down," he said, explaining that 70 percent of all government spending is done at the federal level and 30 percent locally. "The vision of the founders was the opposite ... and they knew that state and local governments were supposed to be the ones closer to the people."

By controlling the money, Edwards said, federal government controls policy. "The states have essentially been bought off," he said.

Backed by Supreme Court decisions, Congress has passed laws that pressure states to adhere to such things as minimum drinking ages, for example, or face reductions in federal funds for road work in the state.

AID TO THE STATES

Edwards has noted that federal financial aid to the states will amount to \$561 billion this year. That's the largest chunk of the national spending budget, aside from Social Security and national defense.

"There are more than 1,100 of these aid programs out there," he said.

They are programs that typically send money to the states, which then divide it among locals. The government's own Catalog of Federal Domestic Assistance provides an A-to-Y (no programs begin with the letter 'Z') index of all of them.

Some have similar goals and even similar names. For example, nine programs begin with the word 'Food': Food Aid Nutrition Enhancement Program, Food and Agricultural Sciences National Needs Graduate Fellowship Grants, Food and Drug Administration Research, Food Assistance and Nutrition Research Programs, Food Distribution Program on Indian Reservations, Food for Education, Food for Progress, Food Safety and Security Monitoring Project, and Food Safety Cooperative Agreements.

A review of several federal databases reveals that tens of millions of dollars in such aid have made it back to Stark County in recent years to pay for everything from bulletproof vests for police officers and new sidewalks near school buildings, to major road and bridge improvement or replacement projects.

"The federal government wasn't supposed to be involved in K-12 education, either," Edwards said. "But there it is."

Race to the Top, Safe Schools and Citizenship Education and Innovation and Improvement are just some of the programs for which many Stark County school districts have received money in recent years.

THE PEOPLE

The weight of the 10th Amendment is not a Republican vs. Democrat or Liberal vs. Conservative issue, said Scott Landreth, Ohio Coordinator for the Tenth Amendment Center, founded in 2007.

"It's all about adherence to the Constitution," said Landreth, who lives near Cincinnati. "We've looked to the various ratifying conventions held at the time. We believe it was to reiterate the limited powers of the federal government."

It's not that simple, though, say some law experts.

"There's no doubt federal government has grown," said Mark R. Killenbeck, a law professor at the University of Arkansas School of Law. "Even (Alexander) Hamilton couldn't have contemplated a federal government of this scope."

Killenbeck has authored many articles and papers on federalism and American Constitutional history. He also wrote a book about the McCulloch v. Maryland U.S. Supreme Court decision from 1819.

He points to a Supreme Court ruling in U.S. v. Sprague (1931), when justices weighed in with this on the 10th: “The amendment states but a truism that all is retained which has not been surrendered. There is nothing in the history of its adoption to suggest that it was more than declaratory of the relationship between the national and state governments as it had been established by the Constitution before the amendment or that its purpose was other than to allay fears that the new national government might seek to exercise powers not granted, and that the states might not be able to exercise fully their reserved powers.”

Killenbeck said most state rights advocates gloss over the phrase “or to the people,” the last clause in the 10th Amendment.

“The people speak through Congress ... they are part of this dynamic,” he said. “Why do these programs exist? Because the people told Congress it was important to have all these programs ... even all the (controversy) over earmarks. All these earmarks were created because the people wanted them.”

And if the people don't like it, he said, every two years they can vote for a new congressman and replace one-third of the Senate.