



## Sen. Roger Wicker Reintroduces Pro-Tenth Amendment Bill

As the federal government works tirelessly to reduce state governments to nothing more than administrative units of the central authority, there are a handful of lawmakers who understand the proper limited role of the federal government and are working to decentralize power and restore states to their proper preeminence.

Senator Roger Wicker (R-Miss.), shown, has introduced the “Restoring the 10th Amendment Act.” The bill, which Wicker has offered in every congressional session since 2010, would enable states to dispute federal regulations and executive orders.



“Small businesses, families, and individuals around the country are right to be frustrated with the growing size of their government,” [Wicker said](#). “My bill stresses the need for constitutional checks and balances on executive power and gives states and the American people a tool to challenge federal overreach.”

The [“Restoring the 10th Amendment Act,” S. 1632](#), makes any rule proposed by federal agencies or the president subject to constitutional challenge if state officials determine that it infringes on the 10th Amendment.

“I remain committed to limiting the size and scope of the federal government. Enacting this legislation would be a step toward greater accountability and limited federal power,” Wicker said.

Although the latest text of Wicker’s bill is not yet published, his office told *The New American* that it would be nearly identical to the version proposed in the last Congress. [That brief bill declared:](#)

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.

While Wicker’s efforts are to be praised and supported, the bill is redundant as a matter of constitutional law.

As the states have become servants, they may yet regain their proper role as masters. In this there is hope, in fact.

The states, through the exercise of the 10th Amendment and their residual sovereignty not expressly delegated to the federal government in the Constitution, may stop enforcement of every unconstitutional law and regulation at the state borders by enacting state statutes nullifying, for instance, the healthcare law and criminalizing state participation in administering or executing the unconstitutional provisions thereof.

Again, though Wicker’s bill is a step in the right direction, it is not the only method. In fact, although some have characterized his proposal as a nullification bill, it is not exactly so as under applicable provisions of S. 1632, states would be granted special standing to challenge onerous regulations and acts in federal court. There is another, more powerful weapon in the fight against federal encroachment on state prerogatives.

[Nullification is the “rightful remedy”](#) and is a much more constitutionally sound method of checking federal usurpation and is quicker and less complicated than an attempt to have a law repealed by Congress or overturned by a future federal bench more respectful of the Constitution. That said, there is no reason that concerned citizens should not use every weapon in the constitutional arsenal, including working to convince Congress to repeal any offensive act.

[The 10th Amendment](#) explicitly reserves powers to the states and the people (whether this means that some set of powers is retained by the people and were never ceded to the states is unclear and irrelevant to this analysis). The language of the 10th Amendment would be redundant were the states surrendering by way of ratification all their sovereign powers to the general government they created.

There would be nothing left to reserve if everything was given away in the first place. Furthermore, if the states are not the parties whose contract created the general government, does the 10th Amendment mean they are some sort of third-party beneficiary of the agreement? If this was the intent



Written by [Joe Wolverton, II, J.D.](#) on November 6, 2013

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of the Framers, why didn't they say so? Furthermore, if the states are the third-party beneficiaries of the constitutional contract, who are the promisor and the promisee? There is no answer because a question so asinine never occurred to the Framers.

To better understand this aspect of the relationship of state to federal government, the analogy of a homeowners' association is helpful.

Often, a number of homeowners in a neighborhood will come together to improve the security, safety, and prosperity of the neighborhood by forming a homeowners association (HOA). The neighbors will draw up a covenant and grant to the HOA certain enumerated powers. Typically, the HOA will be authorized to pass rules restricting the parking of cars on the street, the length of a lawn, the color a house in the group can be painted, and how tall a home can be built, for example. Let's assume that our imaginary HOA has a covenant granting oversight of just those few areas to an HOA council. Present and future homeowners are made aware of the covenant and they are bound to conform to its mandates.

Imagine if one day the HOA council passes a resolution mandating that every resident of the neighborhood purchase a Toyota — a green Toyota Camry, to be precise. Inspectors hired by the HOA council are sent out to watch every house, check every garage, and verify every vehicle registration to make sure the edict is obeyed.

Would the homeowners be required to heed this resolution? Additionally, who would have the right to decide if adoption of the car mandate was within the power of the HOA? The homeowners, of course!

Do you think the homeowners would recognize the right of the HOA council to decide the legitimacy of its car mandate? When property owners began complaining about the obvious overreach at the next general meeting of the HOA council, do you think they would be assuaged by the council's reassurance that the dictate was perfectly within its covenant authority?

What would happen if the council then insisted on the purchase and ratified its own ruling? Can you imagine a single homeowner who would accede to that sort of ordinance insanity?

Unless the states nullify each and every unconstitutional federal act, every time one is enacted, without exception and without apology, then they are no better than the homeowner in our analogy who goes out and buys a green Camry.

Until the time comes that state legislatures begin to understand and apply the powers they possess to check the federal onslaught, Wicker's bill serves an important role as a necessary half step toward the restoration of federalism.

As of press time, Senator Wicker's legislation has nine cosponsors: Senators Thad Cochran (R-Miss.), Chuck Grassley (R-Iowa), Johnny Isakson (R-Ga.), Jeff Sessions (R-Ala.), Pat Roberts (R-Kan.), John Thune (R-S.D.), Jim Inhofe (R-Okla.), James Risch (R-Idaho), and Mike Crapo (R-Idaho).

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