



Written by [Raven Clabough](#) on September 21, 2011

Does The American Jobs Act Destroy State Sovereignty?

The American Jobs Act has already faced a flurry of criticism for a variety of reasons, including the cost and the likelihood that it will do little to create jobs. The most recent cause for criticism, however, follows the revelation that the bill could potentially destroy state sovereignty.



Section 376 of the bill reads:

SEC. 376. FEDERAL AND STATE IMMUNITY.

1. Abrogation of State Immunity — A State shall not be immune under the 11th Amendment to the Constitution from a suit brought in a Federal court of competent jurisdiction for a violation of this Act.

In other words, under the authority of the jobs bill, states are not immune from federal prosecution if they are in violation of the act. *The Blaze* explains, “In the event this bill passes, it will override a state’s sovereign authority as defined and protected under the 11th Amendment.” It reads:

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

The bill also includes a provision that provides for the loss of state sovereignty:

(A) WAIVER- A State’s receipt or use of Federal financial assistance for any program or activity of a State *shall constitute a waiver of sovereign immunity*, under the 11th Amendment to the Constitution or otherwise, to a suit brought by an employee or applicant for employment of that program or activity under this Act for a remedy authorized under Section 375(c) of this Act. [Emphasis added.]

That portion of the bill virtually indicates that any state which receives federal assistance under the bill automatically loses its sovereign unity.

Meredith Jessup of *The Blaze* explains:

[If] a state is allocated a certain amount of funds for a road project, the initial funding for the project is a debt incurred by the state to be reimbursed by the federal government. This is so the feds can enforce guarantees of debt. It also prevents states from hiring contractors and then refusing to pay. Without the waiver of the 11th, the contractor would have no legal standing to sue the state for non-payment since the federal government is the ultimate source of funds (see the 14th Amendment).



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You can find similar language in other bills [such as] The Americans with Disabilities Act.

In general, this type of waiver serves to stop states from contracting workers and then refusing to pay them. However, the language is certainly in place for a state to surrender certain rights.

The bill continues:

(2) EFFECTIVE DATE — With respect to a particular program or activity, paragraph (1) applies to conduct occurring on or after the day, after the date of enactment of this Act, on which a State first receives or uses Federal financial assistance for that program or activity.

c) Remedies Against State Officials — An official of a State may be sued in the official capacity of the official by any employee or applicant for employment who has complied with the applicable procedures of this Act, for relief that is authorized under this Act.

(d) Remedies Against the United States and the States — Notwithstanding any other provision of this Act, in an action or administrative proceeding against the United States or a State for a violation of this Act, remedies (including remedies at law and in equity) are available for the violation to the same extent as such remedies would be available against a non-governmental entity.

The Blaze observes, “It would seem that The American Jobs Act was drafted in order to achieve statist goals rather create jobs. The authority of individual states is all but thrown to the side.”

Likewise, political analyst Dick Morris wrote of the bill:

It is soft tyranny that requires us to sit by passively while our ethic of cultural assimilation is replaced by a permanent enshrining of diversity. It bids we let our rights to our own property, that we have worked for and acquired, be sublimated to government power disguised as human rights. It asks that we elevate the demand for equality over that for economic initiative and the incentives which propel them.

Whether the bill will actually diminish the individuality of the states remains to be seen, but what is certain is that The American Jobs Act may continue to be scrutinized, particularly when analysts ponder the effectiveness of the bill.

Photos: U.S. Capitol (top) and California State Capitol (bottom)



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