

WRITTEN QUESTIONS FOR RUTH BADER GINSBURG
FROM SENATOR STROM THURMOND

I want to ask you a few questions about the 10th Amendment to the United States Constitution.

As we all know, and as discussed here, the Constitution was submitted to the states by resolution of the Constitutional Convention on September 17, 1787. South Carolina was the eighth state to ratify on May 23, 1788.

The Bill of Rights, the first ten amendments to the Constitution, was proposed by Congress on September 25, 1789, and declared ratified on December 15, 1791.

After the Constitution was submitted and before it was ratified, assurances were made to Legislatures of the several states that the 10th Amendment as part of the Bill of Rights would become a part of the United States Constitution. These assurances assured the ratification of the Constitution.

What is your view of two levels of sovereignty guaranteed by the Constitution--State sovereignty and federal sovereignty?

What is your view of the separation of powers doctrine as enunciated by the founding fathers and guaranteed by the 10th Amendment?

What weight will you give to the 10th Amendment when considering laws enacted by Congress that pre-empt state authority and sovereignty?

In your judgment, does the 10th Amendment have meaning and worth today and in the future?

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT
WASHINGTON, DC 20001

RUTH BADER GINSBURG
UNITED STATES CIRCUIT JUDGE

July 27, 1993

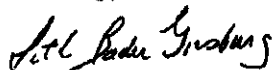
The Honorable Strom Thurmond
Senate Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Senator Thurmond:

Your questions about the Tenth Amendment were forwarded to me yesterday. I enclose a response, which I hope you will find satisfactory.

With appreciation for your interest.

Sincerely,



Ruth Bader Ginsburg

Enclosure

Response by Ruth Bader Ginsburg to Written Questions
of Senator Strom Thurmond, received July 26, 1993

In response to the four questions you asked about the Tenth Amendment, I have several overlapping thoughts and therefore hope you will find this composite answer satisfactory. The plan for dual sovereignty, confirmed in, and reinforced by the Tenth Amendment, is a core part of our Nation's history and an important reason for our Nation's success. Justice Black, in *Younger v. Harris*, 401 U.S. 37 (1971), spoke eloquently on this subject when he referred to the essential character of "Our Federalism." Many other Justices have expressed similar views over the years. "Our Federalism" has inspired foreign systems, notably, the European Economic Community members, and the motivating spirit of the Tenth Amendment should continue to contribute to the greatness of the United States.

As you note, the Tenth Amendment is vital to the Constitution's separation of powers scheme. The separation for which the Founders provided is indicated both by the tripartite structure established in the first three Articles of the Constitution, and by the Tenth Amendment. Further recognition of the sovereignty of the states is contained in the Guarantee Clause of Article IV, section 4.

Today, as in earlier years, the Tenth Amendment serves as a basic reminder -- first to Congress and then to the courts in interpreting congressional actions -- that the national government is one of limited powers and that the sovereignty of the states is a cornerstone in our constitutional structure. In specific application, the Amendment requires Congress to be clear and careful when it considers displacement of state authority with federal programs; and it requires the courts to insist on such clarity in cases involving claims that Congress has pre-empted state legislative, regulatory, or judicial authority.