

Congressman John Shadegg Testimony

*Subcommittee on Federal Financial Management, Government Information, and
International Security*

October 25, 2005

Thank you, Mr. Chairman, for allowing me to testify on the importance of the Tenth Amendment and a bill I introduced to protect it, the Enumerated Powers Act.

The Tenth Amendment to the United States Constitution reads as follows:

“The powers not delegated to the United States by Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people”

In other words, the national government cannot expand its legislative authority into areas reserved to the States or the people. As the final amendment in the Bill of Rights, the Tenth Amendment makes it clear that that the Constitution establishes a federal government of delegated, enumerated, and thus *limited* powers.

For that reason, every Congress since the 104th Congress I have introduced the Enumerated Powers Act. This legislation requires that all bills introduced in the U.S. Congress contain a statement setting forth the specific constitutional authority pursuant to which the law is being enacted. This measure will force a constant and ongoing reexamination of the role of the national government. The Enumerated Powers bill is a simple measure, but it is intended to require scrutiny that should fundamentally slow the ever-growing reach of the federal government. It will perform three important functions:

First, this legislation will encourage members of Congress to pause, reflect, and debate where a proposed piece of legislation fits within the Constitutional allocation of powers between the federal government, states, and the people.

The Supreme Court has confirmed the importance of the Tenth Amendment in decisions this decade. In the 1996 case, *United States v. Lopez*, the Supreme Court ruled Congress did not have the authority to require gun-free school zones. Apart from the question of whether such zones are a good idea, Congress simply lacks the power under the Constitution to mandate them. In this case, the Court determined that even the interstate commerce clause, used so often in the past as a blank check for federal action, did not apply because gun-free school zones had nothing to do with interstate commerce. Justice Kennedy concurred in the opinion:

It would be mistaken and mischievous for the political branches to forget that the sworn obligation to preserve and protect the Constitution in maintaining the federal balance is their own in the first and primary instance.

The second function of the Enumerated Powers Act would be to include a statement of the Constitutional authority pursuant to which Congress is acting, which will put Congress's view on record for the people to judge. The constitutional authority must be written in the bill itself.

Finally, such a statement will assist the courts in evaluating the constitutionality of the legislation enacted. Legislation that falls within our enumerated powers will more likely be

upheld if it contains an explicit explanation of its constitutional basis. And if the statement of Constitutional authority does not stand up to scrutiny, both the courts and the people will find it easier to hold Congress accountable.

Let me describe for you what “explicit explanation” means. On far too many occasions, committee reports come through Congress citing the General Welfare Clause, the necessary and proper clause, or, even more broadly Article I, Section 8 – the entire Powers of Congress section. House Rule XIII, Section 3(d) (1) requires that all committee reports contain “a statement citing the specific powers granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” The key word here is “specific,” yet too often, our committees fail to cite specific constitutional authority.

This House Rule was actually enacted at the beginning of the 105th Congress. That Congress incorporated the substantive requirement of my bill into House rules by requiring that report language must cite constitutional authority. However, the full effect of the Enumerated Powers Act will not be realized until it is incorporated into the bill itself and into actual law.

History of the Principle of Federalism

In 1787, when the Founding Fathers wrote our Constitution, they created a national government with far-reaching but limited powers. They believed that granting specific, rather than general, legislative powers to the national government would be one of the central mechanisms for protecting our freedoms while allowing us to achieve the objectives best

accomplished through a national government. As a result, the Constitution gives the federal government only eighteen specific enumerated powers.

Federalism invests two separate levels of government with jurisdiction over the same territory and the same citizens, as explained in Federalist Number 51. The Founders envisioned a form that would enable government to control the governed and also oblige the government to control itself. Federalism is intended as a constraint on government.

To our Founding Fathers, government presented a monopoly problem and the way to deal with it was to limit the central government's authority to a sphere of enumerated powers. In all those areas beyond Congress's purview, the Founder's sought to force the states to compete for their citizens' business, labor, and capital. The be-all and end-all of federalism is the doctrine of enumerated powers. Without that doctrine, Congress could pass any law at all. It could establish state uniform national rules on any subject and bypass the Founder's goal of state competition and experimentation.

For the longest part of our history, the first 150 years, from 1787 to 1937, the national government was a bulwark against excessive federal regulation. Unfortunately, the restraint demonstrated by the early Congresses was largely abandoned in the latter part of the twentieth century, and now in the twenty-first century. Beginning with the New Deal era, modern Congresses have displayed a willingness to pass any kind of law they want.

Virtually all of these laws, from labor and civil rights measures to environmental protection and crime control, are well-intentioned. But from a constitutional perspective, Congress does not possess the authority to enact many of them. The federal government has ignored the Constitution and expanded its authority into every aspect of human conduct. State governments and individual citizens have been denied their rightful – and lawful – role in our system of government.

The size and scope of the national government has exploded over the past seven decades, and many doubt the remaining vitality of this central feature of our Constitution. Yet the belief that the central government should have only limited powers remains alive in the hearts of Americans who believe that people, not government programs, hold the answers to our nation's problems.

Consider these bills: the UN Reform Act, the Water Resources Development Act, the Vocational and Technical Education for the Future Act, and even the Charles 'Pete' Conrad Astronomy Awards Act. These are just a few examples of the many bills passed by the House during the 109th Congress that do not cite specific constitutional authority in the committee report. Countless others have been introduced with the same problem. This is unacceptable.

For too long, the federal government has operated without constitutional restraint, blatantly ignoring the principles of federalism. In so doing, it has created ineffective and costly programs, massive deficits year after year, and a national debt totaling approximately \$8 trillion and rising. The Enumerated Powers Act will help slow the flood of unconstitutional legislation

while assisting Congress in its ongoing reexamination of the proper role of the federal government.

Right now, we have an opportunity to cut back on some of these ineffective programs and projects taken on by the federal government. In the wake of Hurricane Katrina, and at a time when federal spending has ballooned to an unsustainable level, two things need to be achieved: 1.) We need to cut back on some of the spending that occurs in Washington on projects wrongfully taken on by the federal government and 2.) We need to implement a system in which Congress reflects upon how proposed legislation fits into the federalist scheme.

Today, many Americans not only expect government to solve their problems, but believe that government has all-but-unlimited authority to do so. I became a member of Congress because I wanted to shrink the size and scope of the federal government and return power to the American people, as our forefathers envisioned. One of the most important things Congress can do is to honor and abide by the principles embodied in the Constitution – no more, no less. Respecting the Tenth Amendment is the first way to ensure that the genius of the Constitution and its division of power between the national government, the states, and the people continues to guide our nation.

As Barry Goldwater wrote in *The Conscience of a Conservative*:

“I have little interest in streamlining government or in making it more efficient, for I mean to reduce its size. I do not undertake to promote welfare, for I propose to extend freedom.

My aim is not to pass laws, but to repeal them. It is not to inaugurate new programs, but to cancel old ones that do violence to the Constitution, or that have failed in their purpose, or that impose on the people an unwarranted financial burden. I will not attempt to discover whether legislation is 'needed' before I have first determined whether it is constitutionally permissible. And if I should later be attacked for neglecting my constituents' interests, I shall reply that I was informed their main interest is liberty and that in that cause I am doing the very best I can.”

Again, thank you, Mr. Chairman, for allowing me to testify today.