

ISSUE BRIEF

“Information to Action”

Topic: Tenth Amendment

Title: *WHY DO WE HAVE A 10TH AMENDMENT?* by Joshua Charles

The US Constitution has an extremely unique feature: an explicit declaration that the federal government only possesses the powers delegated to it. It reads as follows:

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.*

The ninth amendment further reinforces this point:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others *retained by the people.*

But the Constitution didn't have the tenth amendment when it was first ratified. The tenth amendment didn't come until a few years later, with the ratification of the Bill of Rights in 1791.

So why was it added?

As James Madison declared in *Federalist No. 45*—prior to the adoption of the tenth amendment— “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.” For those who argued in favor of the Constitution, this was already clear: the federal government only possessed what the Constitution granted to it. It did not possess a general “police power,” or general authority to legislate for the health, safety, and morals of the people. Those general police powers remained with the states, per their own constitutions.

So, the tenth amendment was added quite simply out of an abundance of caution. It stated explicitly what was already implicit in the Constitution itself. In that sense, it is an amendment which gives a sense of the “philosophy” undergirding the Constitution.

As Justice Joseph Story observed in the 1830's in his classic *Commentaries on the Constitution*, “Its sole design [the tenth amendment] is to exclude any interpretation [of the Constitution], by which other powers should be assumed beyond those, which are granted.”

Why was such a thing required? “Let us never forget,” says the Justice in the same section on the tenth amendment, “that our constitutions of government are solemn instruments, addressed to the common sense of the people and designed to fix, and perpetuate their rights and their liberties. They are not to be frittered away to please the demagogues of the day.”

In short, that is why we have a tenth amendment: to remind all governors that the rights retained by the people cannot be “frittered” away unless they themselves delegate it by a solemn act of amendment to the Constitution. Such an act requires the entire people, as outlined in Article V. It cannot be rightly done by any President, Congress, Supreme Court, or bureaucratic agency.