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PROPOSED POLICY POSITION

URGING A COALITION OF REGIONAL AND NATIONAL ORGANIZATIONS TO ADDRESS THE SUPREME COURT RULING ON SOUTH CAROLINA V. BAKER

Background

During the first Federal Congress in 1789, our founding fathers incorporated a Bill of Rights into the Constitution of the United States of America in order to protect both the interests of the States and those of individual citizens. The Tenth Amendment of that venerable document states that 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 limits on Congress' authority to regulate State activities prescribed by the Tenth Amendment recently has been the subject of debate by the Supreme Court in the cases of Garcia v. San Antonio Metropolitan Transit Authority, 469 U.S. 528 (1985), and South Carolina v. Baker, 56 U.S.L.W. 4311 (U.S. April 20, 1988) (No. 94, Orig.). These cases hold that the limits of the Tenth Amendment are structural, and not substantive, leaving States to find protection from Congressional regulation through the national political process rather than through judicially defined areas of unregulated state activity.

The possibility that some extraordinary defect in the national political process might render Congressional regulation of State activities invalid under the Tenth Amendment was left open by the Garcia decision. The U.S. Supreme Court in neither Garcia nor Baker identified or defined the defects which might lead to the invalidation of a Congressional regulation, giving the States little hope for protection against Federal preemption of State authority.

When our nation was formed through the federal union between the American colonies, the diversity embodied in the individual States was preserved, and it was recognized that the people of the United States would act through a variety of governmental entities including strong State and local governments. The sovereignty of the States is important for the purpose of preserving the personal liberties of American citizens in that all power should reside in neither the State government nor the Federal government, but should be divided between them. The vitality of this system of government was reflected by the Tenth Amendment, which affirmed the doctrine that certain powers were reserved to the States.

We now face the continued erosion of those principles which are absolutely essential to the continued viability of our Federal system of government and the existence of sovereign States. These matters of States' authority are of equal importance to both State and local government, as local governments derive their authority from the States.

Without the protections afforded by the Tenth Amendment, the States are reduced to the level of a special interest group when they present arguments against preemption of State authority to the U.S. Congress. Actions must be taken immediately to restore some measure of constitutional protection to the States.

Recommendation

The Southern Legislative Conference urges state organizations to strive to reach a consensus on restating the fundamental principles of federalism by statutory, constitutional or judicial means, and urges the National Conference of State Legislatures and other State organizations to lobby Congress to build and maintain an effective role for the States in the federal system.

Adopted by the Southern Legislative Conference Executive Committee,
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(Sponsor: Senator Douglas Henry, Jr., Tennessee, SLC Chairman Elect,
and Chairman State/Federal Affairs Committee)

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