



Utah and the Tenth

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The trouble with the Ninth and Tenth Amendments to the Constitution — the last two items in the Bill of Rights — has not been lack of clarity. The Tenth, at least, is extremely clear: “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 problem has been one of enforcement. How do the States prevent the federal government from overreach? Especially when the federal government acts as if no objection to a federal law could be brooked? Especially when the Supreme Court is, ahem, wrong, or hasn’t yet been approached with a challenge.

Utah has rediscovered an old technique. And revived it. Governor Spencer Cox [signed into law](#) the “Utah Constitutional Sovereignty Act”: “The Legislature may, by concurrent resolution, prohibit a government officer from

enforcing or assisting in the enforcement of a federal directive within the state if the Legislature determines the federal directive violates the principles of state sovereignty.”

Ultra clear. And by old precedent — the non-enforcement of The Fugitive Slave Act by some northern states — it provides teeth to the Tenth. If the federal government were to enact (just stretch your mind a bit!) something obviously unconstitutional, like, say, a gun confiscation, the state legislature would simply vote to prohibit any state employee, or subsidiary of the state (county, municipality) from working with federal agents. Federal government agencies don’t have enough manpower to enforce all the rules. The feds rely on the states.

CNN [quotes](#) a Democrat representative running against Governor Cox suggesting that the use of this technique would be overruled by the Supreme Court using “the Supremacy Clause.”

No. The Supremacy Clause only applies to the federal government regarding *specified* (“enumerated”) powers.

Regarding matters not explicitly stated in the Constitution, it is the States that are supreme.

Or the People.

This is Common Sense. I’m Paul Jacob.