



The Tenth Amendment & the Federal Government

Recommendation: Advocate for greater checks on the power and authority of the federal government by memorializing Congress to repeal the federal income tax and adopt a balanced budget amendment; evaluate the feasibility of calling for a constitutional convention and refusing to submit to certain federal environmental regulations.

Background

The Tenth Amendment to the United States Constitution was ratified in 1791 and holds 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 Tenth Amendment affirms the right of states to govern themselves in respect to all matters that are not explicitly delegated to the federal government in the Constitution. In the *Federalist No.45*, James Madison wrote that:

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. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.ⁱ

In the same letter Madison continued to argue that the Constitution provided limited power to the federal government, that the states *retained* their sovereignty over all other matters:

If the new Constitution be examined with accuracy and candor, it will be found that the change which it proposes consists much less in the addition of NEW POWERS to the Union, than in the invigoration of its ORIGINAL POWERS. The regulation of commerce, it is true, is a new power; but that seems to be an addition which few oppose, and from which no apprehensions are entertained. The powers relating to war and peace, armies and fleets, treaties and finance, with the other more considerable powers, are all vested in the existing Congress by the articles of Confederation.ⁱⁱ
[Emphasis in the original text]

Similarly, in *Federalist No. 84*, Alexander Hamilton argued that:

I go further, and affirm that bills of rights, in the sense and to the extent in which they are contended for, are not only unnecessary in the proposed Constitution, but would even be dangerous. They would contain various exceptions to powers not granted; and, on this very account, would afford a colorable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed? I will not contend that such a provision would confer a regulating power; but it is evident that it would furnish, to men disposed to usurp, a plausible pretense for claiming that power.ⁱⁱⁱ

Hamilton and Madison agree that the powers granted to the federal government in the Constitution are certainly limited to those specifically enumerated and that states retain authority over all other areas whether enumerated to the states in the constitution or omitted entirely. The adoption of the Tenth Amendment in 1791 affirmed this position. In 1833, Supreme Court Justice Joseph Story wrote that:

The Constitution was, from its very origin, contemplated to be the frame of a national government, of special and enumerated powers, and not of general and unlimited powers.^{iv}

Building on this interpretation in the Supreme Court's 1931 *United States v. Sprague* decision, Justice Owen Roberts argued that:

The Tenth Amendment was intended to confirm the understanding of the people at the time the Constitution was adopted, that powers not granted to the United States were reserved to the states or to the people. It added nothing to the instrument as originally ratified and has no limited and special operation, as is contended, upon the people's delegation by article 5 of certain functions to the Congress.^v

Erosion of the Tenth Amendment

Beginning in the 1930s, and accelerating over subsequent decades, the federal government has gained significant influence over matters that should be in the remit of the states; a trend that has had a severe and negative impact in a wide range of areas. Indeed, throughout most of 2009 and into 2010, Congress has taken significant steps toward enacting sweeping reforms of the American healthcare system (H.R. 3962, 111th Congress) and toward the introduction of a punitive "cap and trade" system of environmental regulation (H.R. 2454, 111th Congress). If enacted, both of those proposals would likely expand the federal government's role beyond what our nation's founders envisaged, beyond current federal law, and certainly beyond the limitations imposed by the Tenth Amendment.

In particular, the growth of federal programs such as Medicaid and the State Children's Health Insurance Program (S-CHIP) has placed the federal government at the center of every state's healthcare system. Through federal "matching" funds and states' "maintenance of effort" requirements, these two programs have placed a tremendous fiscal burden on states. In Texas, for example, the Medicaid program now costs \$40 billion per biennium and is the second largest item in the entire state budget. Estimates by the Texas

Health and Human Services Commission (HHSC) and the Heritage Foundation indicate that the Medicaid eligibility expansion being proposed as part of healthcare reform would cost Texas up to \$5 billion in new spending per biennium, and would increase Texas' Medicaid population by 77 percent.

In 2007, the Texas Legislature passed Senate Bill 10 (80R) into law. The legislation was intended to make the state's Medicaid program run more effectively and at a lower cost to taxpayers, yet it required a waiver from the federal government for some of its provisions to take effect. To date, no such waiver has been granted, and Texas has effectively been denied the flexibility to run its own Medicaid program. If the federal government were respectful of the U.S. Constitution, no such legislation would even be necessary.

A report by the Texas Comptroller of Public Accounts estimated that if the cap and trade legislation were to pass, Texas could lose 277,000 jobs in 2012, rising to a total of 677,000 by 2030 as a result of the legislation's punitive impact on industries that form the core of Texas' industrial base. Similarly, the Environmental Protection Agency's (EPA) December 7, 2009 carbon endangerment finding (that circumvents even Congress), is a prerequisite to regulatory action through which EPA can enforce restrictions on emissions from mobile sources such as vehicles, and stationary sources such as power plants, refineries and factories. Such action would threaten the livelihood and future of our state in the reckless pursuit of an agenda to eliminate businesses based on fossil fuels while also negating states' ability to pursue a rapid buildup of nuclear energy as an alternative, carbon-free power source.

Texas is capable of addressing healthcare reform and environmental protection at the state level (an assertion which is fully supported by legislation passed over the past decade), yet the federal government is poised to exert even more control over our state.

These are not the only areas of concern. The size and continued growth of the federal bureaucracy empowers the federal government and makes meaningful reform almost impossible: In February 5, 2010 it was reported that the federal government will add 600,000 more employees over the next four years.^{vi} The federal government has also trod on the Tenth Amendment in a number of areas, including public education, Second Amendment rights, protection for the unborn, and perhaps most egregiously, environmental regulation, where the threat of losing federal transportation funding is held over states to ensure that they comply with Environmental Protection Agency (EPA) regulation.

For example, the National Minimum Drinking Age Act of 1984 imposes a ten percent reduction in federal highway funding on any state that does not enact and enforce a law stating that individuals must be at least 21 years of age in order to purchase or possess alcohol.^{vii} Similarly (as discussed in detail below), Section 179 of the Clean Air Act permits the EPA to force the withholding of certain federal highway funds from a state in the event that the state fails to implement air quality regulations approved by EPA, fails to submit a required air quality improvement plan, or has an air quality improvement plan rejected by EPA.^{viii}

Federal education legislation such as The No Child Left Behind Act of 2001 and initiative such as "Race to the Top," have also had the effect of expanding federal power and influence over state policy decisions. No Child Left Behind (NCLB), for example, made certain federal education funding to states contingent on those

states developing and administering basic skills tests to students in certain grades. However, the legislation did not provide sufficient funding to mitigate the costs that would be incurred by states:

When Congress enacted NCLB, there was little attention devoted to what it would cost states to implement the requirements...As implementation proceeded, states began to examine how the costs of implementing balanced out against the additional resources provided by the law. Several studies suggested that NCLB would cost states considerably more than the funds appropriated by the federal government.^{ix}

As a result, state opposition to NCLB was almost unparalleled:

The extent of the opposition to NCLB legislation is unprecedented in its scope and depth...while many of the resolutions protesting NCLB were symbolic, the number of states passing or introducing them as well as the number of Republican states that opposed the legislation sent a powerful political message to Washington.^x

President Obama's "Race to the Top" initiative (RTTT) will likely have a similar impact on states. RTTT makes \$4 billion in federal grants available to states that enact education reforms specified by the U.S. Department of Education. These reforms include adoption of specified standards and assessments approved by the Department, that may differ significantly from standards that states have already developed.^{xi}

The federal government's use of "matching" funds (discussed below) and the recent "stimulus" legislation have also had a significant impact on states' budgets and are further examples of the erosion of the Tenth Amendment. For example the Unemployment Insurance payments that formed part of the stimulus legislation provided short-term financing to states, but would have required states like Texas to expand eligibility for its Unemployment Insurance program, thus raising costs in the long-term. According to the Office of the Governor:

The stimulus funding would merely reduce the amount the state must bond or borrow in the immediate-term, but the implications for employer tax rates and the long-term costs of the expansions mandated under the stimulus will ultimately exceed any short-term benefit.^{xii}

As a result of these numerous expansions and attempted expansions of federal power into policy areas that should be in the remit of the states, many states have begun passing resolutions asserting their constitutional rights enshrined in the Tenth Amendment.

Legislative Action

In the regular session of the 81st Legislature, the Texas House of Representatives passed House Concurrent Resolution 50, which affirmed Texas' Tenth Amendment rights and served notice to the federal government to cease and desist enforcing certain mandates that infringe upon those rights.

Legislators in 20 other states have introduced legislation preserving the right of individuals to pay directly for medical care, and the gun rights advocates in Montana has filed a lawsuit challenging federal authority to regulate firearms that are manufactured entirely inside Montana.

Moving forward, conservative legislators need to consider legislative options that will affirm the Texas' Tenth Amendment rights and limit the authority of the federal government in the manner intended by the founders.

Recommendation 1: Pass a resolution calling on Congress to consider adoption of a balanced budget amendment to the United States Constitution.

In 1977, the State of Texas formally petitioned the United States Congress to enact a federal requirement under which:

The total of all federal appropriations made by the Congress for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year.

Source: United States Senate Congressional Record, January 15, 1979; page 134

While the State of Texas operates within a spending limit contained in the Texas Constitution, the United States Constitution contains no such limitation. Although the founders could hardly have envisaged the growth of the federal government that has occurred in the last 75 years, it is the omission of a spending limit from the United States Constitution that has allowed the federal government to engage in the deficit spending that has resulted in the record levels of debt that the United States must now repay. As a result of this unprecedented and reckless federal spending, President Obama signed a temporary debt extension on December 28, 2009, increasing the ceiling on the debt from \$12.1 billion to \$12.4 billion. As of January 12, 2010, the United States national debt figure stands at \$12,291,168,534,194.

As noted above, in 1977 the Texas Legislature memorialized Congress to enact a balanced budget amendment to the U.S. Constitution. The introduced version of the resolution (H.C.R. 31, 65R) argued that:

The unbridled constitutional power of Congress to “borrow money on the credit of the United States” has resulted in almost perennial deficit spending and the steady growth of a national debt to a dangerous level...[B]ecause of the ability to spend now and pay much later, the federal government has been willing to fund programs of questionable benefit and need.^{xiii}

According to research compiled by the Friends of the Article V Convention, 39 states have already petitioned for a balanced budget amendment, the first being Oklahoma in 1955 and the most recent being Oregon in 2000.^{xiv} Article V of the U.S. Constitution governs the process by which it can be amended. Article V reads in part:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the

several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution.

Although the convention method has never been used to amend the Constitution, a large number of states petitioning for a convention has prompted Congress to act in the case of the Seventeenth Amendment (election of U.S. Senators), the Twenty-First (repeal of prohibition), Twenty-Second (Presidential term limits), and Twenty-Fifth (Presidential succession) Amendments.^{xv}

While Texas has already joined with 35 other states in petitioning for a balanced budget amendment, the petition should be reissued by the 82nd Legislature so that it calls for a constitutional convention on the narrow topic of a balanced budget amendment. This would help avoid the kind of uncertainty that surrounded states' previous attempts to have a balanced budget amendment adopted:

The second nearly-successful attempt to call a convention arose out of the state legislatures' desire for a balanced-budget amendment in the late 1970s and early 1980s. As was the case with the Seventeenth Amendment, pressure from applications requesting a convention led the Republican-controlled Senate to approve a balanced budget amendment in 1982 by a margin of 69 to 31. The amendment, however, did not have enough support to pass in the Democrat-controlled House of Representatives. The States were unable to provoke a response from Congress as they had been able to with the Seventeenth Amendment.

The first state application for a balanced budget amendment was made by North Dakota in 1975, and the thirty-second was made by Missouri in 1983. The drive to request a convention then lost momentum. Among the reasons for this slowdown were, once again, fears that a convention could not be limited to a single subject, a decrease in the number of Republicans (who tended to support the amendment more than Democrats) in state legislatures, and concern in the Northeast about the loss of federal grants if the budget were balanced.^{xvi}

Recommendation 2: Pass a resolution calling on Congress to consider repeal of the federal income tax.

The Sixteenth Amendment to the United States Constitution holds that:

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

The amendment was passed by Congress in 1909 and ratified by the State of Texas on August 16, 1910. By March 1913, the amendment had been ratified by 42 of the 48 states.^{xvii}

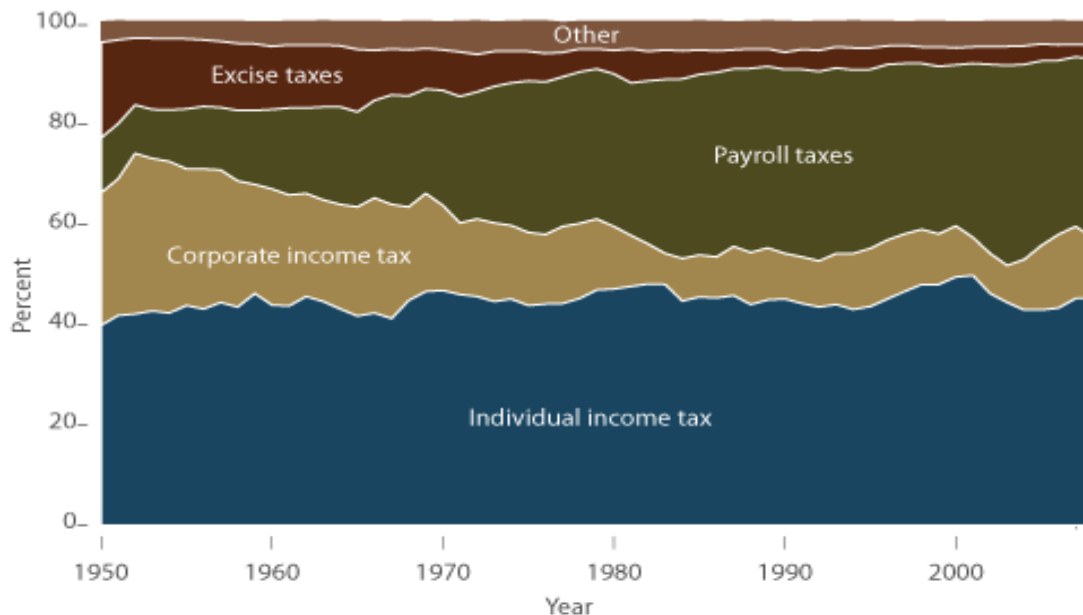
The amendment provides the legal basis for the federal income tax, which is particularly significant in a discussion of the authority of the federal government since the revenue generated from the federal income tax has become the principal source of federal power. Put simply:

The federal tax burden was meant to be the smallest of all, precisely because the Constitution made plain that Washington's powers would once again be limited to what the first nine amendments allowed. At present, the vision of the founders has been turned on its head. Rather than being able to choose the government of their liking on a state-by-state or city-by-city basis, Americans are captives of a federal government that has blatantly ignored the Constitution on the way to ascribing itself myriad powers and a taxing authority...

That there were no federal income taxes until early in the 20th century was a certain offshoot of the meaning of the 10th amendment. The Founders' knew well that governments only grow, so in explicitly limiting the role of the federal government in our lives, citizens could wisely choose the government regime (and the level of taxation) they would live under. If lots of services and powerful politicians floated their boats, they could live in New York, while if they wanted to live in a state that spent and taxed much less, they could, for instance, move to Texas.^{xviii}

These arguments are underscored by research carried out by the Tax Policy Center (TPC). According to TPC, "the individual income tax has been the largest single source of federal revenue since 1950, averaging just over 8 percent of GDP."^{xix} The following chart illustrates the significance of the federal income tax:

Sources of Federal Revenue, 1950 – 2008.



Source: 1950-2006: Budget of the United States Government, Fiscal Year 2008, HISTORICAL TABLES, Table 2.1 Receipts by Source: 1934-2012, available at <http://www.whitehouse.gov/omb/budget/fy2008/sheets/hist02z3.xls> 2007-2008: Congressional Budget Office, A Preliminary Analysis of the President's Budget and an Update of CBO's Budget and Economic Outlook, March 2009, Table F-3, available at <http://www.cbo.gov/ftpdocs/100xx/doc10014/HistoryMar09.pdf>

TPC also points out that “mandatory” federal spending on programs such as Medicaid, Medicare, and Social Security has more than doubled from one quarter of federal spending in 1962 to just over half of all federal spending in 2008.^{xx} This is especially significant in a discussion of the Sixteenth Amendment, since the continued growth of these mandatory programs will place an ever greater burden on the federal government’s principle source of revenue: the federal income tax.

Finally, TPC analyzed the break-down of revenue between federal, state, and local governments. According to their research, “federal, state, and local revenues totaled nearly \$4.7 trillion in 2006. Federal revenue made up just over half of that total, states collected about 30 percent, and local governments brought in 20 percent.” However, TPC goes on to note that “transfers from the federal government to state and local governments and from state governments to local governments shifted the balance of resources among the three groups.” The following table summarizes the initial collection and final distribution of federal, state, and local taxation:

FEDERAL, STATE, AND LOCAL GOVERNMENT REVENUES BEFORE AND AFTER INTERGOVERNMENTAL TRANSFERS^{xxi}

	Portion of Total Tax Collections	Revenue After Transfers
Federal Government	50 percent	42 percent
State Governments	30 percent	28 percent
Local Governments	20 percent	30 percent

Source: Tax Policy Center.

As the table shows, the federal government collects as much revenue as state and local government combined (the largest share coming from the federal income tax), while after transfers state and local governments claim 58 percent of all revenue, leaving the federal government with 42 percent. However, this is only half of the story. Much of the revenue that the federal government collects (primarily through the income tax) and distributes to states requires the states to submit to federal mandates in order to receive the funding. As the Cato Institute points out:

Medicaid is a jointly administered program between federal and state governments, meant to provide health care to low-income Americans. Unfortunately, the method for distributing federal funds to the states encourages unnecessary expansion of the Medicaid program, often to people who don’t need assistance...It seems to make no sense that taxpayers send money to Washington, only to have these funds sent back to their state capitals with strings attached.^{xxii}

It is evident from this analysis that the federal income tax, by providing the largest portion of federal revenue, provides the basis on which the federal government is able to wield power over the states that was

not envisaged by the Founders. Repealing the Sixteenth Amendment would limit the power of the federal government and return power to the states.

Recommendation 3: Refuse the portion of federal highway funding that requires the state to submit to certain federal environmental regulation.

Section 179 of the Clean Air Act permits the EPA to force the withholding of certain federal highway funds from a state in the event that the state fails to implement air quality regulations approved by EPA, fails to submit a required air quality improvement plan, or has an air quality improvement plan rejected by EPA.^{xxiii} Currently, according to the Federal Highway Administration, 18 political subdivisions in nine separate states are under threat of having a portion of their highway funding withdrawn because they have failed to meet those EPA requirements.^{xxiv}

The cap and trade legislation currently being considered in Congress (H.R. 2454) amends the Clean Air Act to require that coal-fired power plants permitted before January 2009 must reduce their carbon dioxide output by 50 percent by 2020. The EPA's endangerment finding described above also raises the specter of the agency implementing new air quality regulations by fiat, rather than legislative action. If Texas is serious about protecting itself from such punitive environmental regulation, the state must consider whether it is willing to forgo portions of its federal highway funding if it decides not to abide by certain EPA regulations. In 2008, according to the Legislative Budget Board, Texas received \$2.775 billion in federal transportation funding^{xxv}, though it is not clear that all of this funding would be jeopardized under the Federal Highway Administration's authority to withhold funding¹.

Texas could take such action in the knowledge that the state has a strong record of enacting legislation to improve the environment for all Texans. As a result of targets established by the Texas Legislature in 1999 and expanded in 2005, the state has more installed wind generation capacity than any other state in the nation and is internationally recognized as a leader in the development of this renewable resource. Texas is also a national leader in new energy technologies such as enhanced oil recovery, carbon capture and sequestration, and the development of a smart grid and advanced metering systems that reduce energy

¹ It is not possible to calculate the exact amount of funding that the Texas would have forgo in a given biennium since the Federal Highway Administration (FHA) is authorized only to withhold funding from local transportation projects. The FHA notes that "[w]hen highway fund sanctions are imposed, not all funding is affected. Projects are exempt from sanctions when the Department of Transportation determines that the principal purpose is an improvement in safety. In addition, despite sanctions, DOT may approve several types of projects geared toward improvement of air quality, including transit projects, HOV lanes, breakdown lanes, projects to improve traffic flow, and park-and-ride lots." For more information see James E. McCarthy "Clean Air Act Issues in the 107th Congress," Congressional Research Service, September 5, 2001.

inefficiency. Texas now ranks as one of the cleanest states in the nation for emissions of key pollutants by electric generators. The EPA's own figures show that Texas has the ninth cleanest nitrogen oxide emissions rate in the nation.^{xxvi} Similarly, when the volume of carbon dioxide emitted is adjusted for the amount of electricity generated, Texas has the fifteenth cleanest carbon dioxide emission rate in the country.^{xxvii} Texas must stand ready to defend these achievements by resisting the federal government's insatiable urge to enact ever more punitive environment regulation.

Recommendation 4: Pass a firearms bill in Texas that asserts that firearms manufactured and sold in Texas are not subject to federal regulation.

Plaintiffs in Montana have filed a lawsuit challenging federal authority to regulate firearms that are manufactured entirely inside Montana. The lawsuit stems from legislation enacted by the Montana Legislature in 2009 (the Montana Firearms Freedom Act or House Bill 246), which reads in part:

A personal firearm, a firearm accessory, or ammunition that is manufactured commercially or privately in Montana and that remains within the borders of Montana is not subject to federal law or federal regulation, including registration, under the authority of congress to regulate interstate commerce. It is declared by the legislature that those items have not traveled in interstate commerce. This section applies to a firearm, a firearm accessory, or ammunition that is manufactured in Montana from basic materials and that can be manufactured without the inclusion of any significant parts imported from another state. Generic and insignificant parts that have other manufacturing or consumer product applications are not firearms, firearms accessories, or ammunition, and their importation into Montana and incorporation into a firearm, a firearm accessory, or ammunition manufactured in Montana does not subject the firearm, firearm accessory, or ammunition to federal regulation.^{xxviii}

Several organizations, including the Montana Shooting Sports Association have filed suit as a result of a refusal by the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives (BATFE) to allow firearms manufacturers in Montana to proceed under the provisions of the Montana Firearms Freedom Act:

...to the extent the [Montana Firearms Freedom Act] conflicts with Federal firearms laws and regulations, Federal law supersedes the MFFA, and all provisions of the GCA and NFA, and their corresponding regulations, continue to apply.^{xxix}

The plaintiffs in the suit are requesting adjudication of:

...the questions of actual controversy between the parties as set forth above, that:

- (i) The United States Constitution confers no power on Congress to regulate the special rights and activities contemplated by the MFFA;

(ii) Under the 10th Amendment of the United States Constitution, all regulatory authority of all such activities within Montana's political borders is left in the sole discretion of Montana; and

(iii) Federal law does not preempt the MFFA and cannot be invoked to regulate or prosecute Montana citizens acting in compliance with the MFFA.^{xxx}

Enacting similar legislation in Texas would assert the limited nature of the federal government's authority, while upholding Texas' Tenth Amendment right to govern itself in respect of matters that are not explicitly delegated to the federal government in the Constitution.

ⁱ "The Alleged Danger From the Powers of the Union to the State Governments Considered," Federalist No. 45, James Madison, January 26, 1788.

ⁱⁱ *Ibid.*

ⁱⁱⁱ "Certain General and Miscellaneous Objections to the Constitution Considered and Answered," Federalist No. 84, Alexander Hamilton, May 28, 1788.

^{iv} Justice Joseph Story, "Commentaries on the Constitution of the United States: with a preliminary review of the constitutional history of the colonies and states before the adoption of the Constitution," 1833.

^v United States v. Sprague, 282 U.S. 716 (1931)

^{vi} "Great Paying Government Jobs," YahooFinance, February 5, 2010; http://finance.yahoo.com/career-work/article/108767/Great-paying-government-jobs.html?mod=career-salary_negotiation

^{vii} 23 U.S.C. §158.

^{viii} Federal Highway Administration, Highway Sanctions; <http://www.fhwa.dot.gov/environment/sanction.htm>

^{ix} Sunderman, Gail L.; James S. Kim, Gary Orfield (2005). "NCLB meets school realities: lessons from the field."

^x *Ibid.*

^{xi} U.S. Department of Education, "Race to the Top;" <http://www2.ed.gov/programs/racetothetop/index.html>

^{xii} Office of the Governor, Letter to House Republican Caucus, March 20, 2009.

^{xiii} Text of House Concurrent Resolution 31 (65R) as introduced.

^{xiv} It should be noted that the Friends of the Article V Convention is a group that believes that "We The People are being denied our constitutional right to an Article V Convention to propose amendments." However, their research concedes that three of the thirty-nine states that have petitioned for a balanced budget amendment have rescinded their petition, but notes that the 36 remaining petitions exceed the 34 that would constitute the requisite two-thirds of states.

^{xv} James Kenneth Rogers, The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process, Harvard Journal of Law and Public Policy, 1005, 1008 (2007).

^{xvi} *Ibid.*

^{xvii} Amendments to the Constitution of the United States, United States Government Printing Office; <http://www.gpoaccess.gov/constitution/html/conamt.html>

^{xviii} "Unconstitutional Spending," John Tamny, *Forbes Magazine*, November 30, 2009.

^{xix} "What Are the Federal Government's Sources of Revenue?" Tax Policy Center, April 22, 2009.

^{xx} "How Does the Federal Government Spend Its Money?, Tax Policy Center, April 22, 2009.

^{xxi} "What is the Breakdown of Revenue Among Federal, State, and Local Governments?" Tax Policy Center, September 23, 2008.

^{xxii} Cato on Health Care Reform: Medicare/Medicaid; <http://healthcare.cato.org/medicare-medicaid>

^{xxiii} Federal Highway Administration, Highway Sanctions; <http://www.fhwa.dot.gov/environment/sanction.htm>

^{xxiv} Federal Highway Administration, Status of Sanction Clocks Under the Clean Air Act, as of May 26, 2009; <http://www.fhwa.dot.gov/environment/sancclok.htm>

^{xxv} Highway Funding Primer, Legislative Budget Board, 2009;
http://www.lbb.state.tx.us/Other_Pubs/Highway_Funding_Primer_0209.pdf

^{xxvi} EPA Clean Air Markets Division, 2008 Acid Rain Program Data.

^{xxvii} Energy Information Administration, 2008 State Electricity Profiles.

^{xxviii} Texas of House Bill 246, 2009 Regular Session of the Montana Legislature;
<http://data.opi.mt.gov/bills/2009/billhtml/HB0246.htm#About>

^{xxix} BATFE letter to plaintiff Gary Marbut, dated September 29, 2009, as reproduced in plaintiff's filing with the United States District Court for the District of Montana, Montana Shooting Sports Association, Second Amendment Foundation, Gary Marbut v. Eric H. Holder Jr., Attorney General of the United States of America;
<http://www.marbut.com/Complaint%20-%20FINAL.pdf>

^{xxx} Plaintiff's filing with the United States District Court for the District of Montana, Montana Shooting Sports Association, Second Amendment Foundation, Gary Marbut v. Eric H. Holder Jr., Attorney General of the United States of America; <http://www.marbut.com/Complaint%20-%20FINAL.pdf>