What Is the Re-Empowerment of the States Amendment?

The several States may repeal, in whole or in part, any Presidential Executive Order, rule, regulation, other regulatory action, or administrative ruling issued by a department, agency, or instrumentality of the United States. Such repeal shall take effect upon approval by the legislatures of two thirds of the several States of resolutions for this purpose that particularly describe the same whole or part of the Executive Order, rule, regulation, other regulatory action, or administrative ruling to be repealed.

Why Is This Amendment Necessary?

The Federal Government was created by 13 states joining together and ratifying the newly written Constitution. The framers of the Constitution were concerned that over time the Federal Government would usurp too much power over the states. For this reason, they included the 10th Amendment in the Bill of Rights, which reserves all powers for the states that are not delegated to the Federal Government. They also structured Congress so that the Senate was controlled by the states. This was accomplished by having two senators from each state elected by the Legislature of each state. In 1913, the 17th Amendment was ratified, which changed the election of senators from each State Legislature to the voters. During the past 105 years, the power and influence of the states have been greatly reduced.

In 1787, there were three distinct divisions of government: the legislative, the executive, and the judicial. During the past 231 years, Congress and the Supreme Court have allowed the Executive Branch to assume legislative and judicial powers in addition to its executive powers. These additional powers are used regularly by the Executive Branch. The President uses legislative power when an Executive Order is issued to address a national concern as an alternative to passing legislation in Congress. The Executive Branch also uses legislative power when its departments and agencies issue orders, regulations and letters of guidance. The Executive Branch uses judicial power when its departments and agencies issue administrative rulings that impose fines on those that have violated the regulations issued by the department or agency.

It can be reasonably argued that the world is more complex than it was in 1787. It can also be argued that the specialized knowledge required to write and enforce regulations on complex issues is best housed in a department or agency that is charged with that responsibility. For the most part, dedicated government employees have carried out these tasks responsibly. Unfortunately, there are occasions in which these unelected government employees have taken great liberties when crafting regulations and guidance.

It has become self-evident there should be a process in place that would put a check on the use of legislative and judicial power by the Executive Branch of the Federal Government.

Federalist Papers 51

James Madison wrote in Federalist Papers 51: “If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the
great difficulty lies in this: You must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.”

Most would agree that no president of the United States has ever been considered an angel.

It is for this reason that James Madison and the other founders created a system of checks and balances. These checks and balances were designed to avoid concentrating power in one body.

**Compound Republic of America**

In Federalist Papers 51, James Madison explains the benefits of the Compound Republic of America. He explains that the Federal Government will be a check on the State Governments and the State Governments will be a check on the Federal Government. “Hence a double security arises to the rights of the people. The different governments will control each other at the same time that each will be controlled by itself.”

Thomas Jefferson expressed a similar concern about concentrating power in one body. “What has destroyed liberty and the rights of man in every government which has ever existed under the sun? The generalizing and concentrating all cares and powers into one body.”

Congress and the Supreme Court have the power to restrict the use of legislative and judicial power by the Executive Branch of the Federal Government.

During the summer of 2018, the US Supreme Court ruled in the case of Lucia v. SEC, in a 7-2 decision, that administrative judges appointed by low-level staffers are unconstitutional. The Court found that because the judge was appointed as part of a routine administrative process run by mid-level staff, it is improper for the judge to hold the kind of authority generally granted to agency “officers” or officers of the court.

It is time for Congress to safeguard the legislative power it was granted by the US Constitution.

I am not suggesting the prohibition of Presidential Executive Orders.

I am not suggesting the elimination of regulators and regulations.

I am suggesting the adoption of the Re-Empowerment of the States Amendment. This Amendment would empower the states (collectively) to provide a check on the use of legislative and judicial power by the Executive Branch of the Federal Government.

Under James Madison’s concept of the Compound Republic of America, the 50 State Legislatures are the perfect entities to provide this necessary check.
The adoption of this Amendment will not reduce any power of Congress but will encourage the President to work with Congress to pass laws rather than issue Presidential Executive Orders and regulations.

This Amendment would give the states the power to act when they collectively believe the Executive Branch has violated their rights as defined by the 10th Amendment.

I am asking that Congress pass the Re-Empowerment of the States Amendment and send it to the states for ratification.

Thank you.

W. David Hemingway