

state-federal relations that the governors adopted at our 1996 winter meeting. That policy calls upon Congress to "limit the scope of its legislative activity to those areas that are enumerated and delegated to the federal government by the constitution." The Tenth Amendment Enforcement Act of 1996 will help reinvigorate this fundamental constitutional principle and for that reason enjoys my full support.

Sincerely,

JOHN ENGLER,
Governor.

OFFICE OF THE GOVERNOR,
STATE OF MONTANA,
Helena, MT, March 6, 1996.

Hon. TED STEVENS,
Chairman, U.S. Senate Committee on Governmental Affairs, Washington, DC.

DEAR CHAIRMAN STEVENS: I am writing in support of your proposed legislation entitled the Tenth Amendment Enforcement Act of 1996. I applaud your efforts to protect states from federal legislation that, while perhaps unintentionally, has had a strangling effect on the states' ability to act effectively on behalf of their citizens.

The failure to respect states' rights takes a variety of forms, from unfunded mandates to complex requirements that prohibit states from adopting innovative programs to solve problems that may be unique to the state or region. I am sure it is difficult to determine which functions the federal government should properly manage and which should be left to state or local governments. I think most would agree, however, with the intent of the Tenth Amendment—that a better balance must be struck between the federal government and each of the states.

The revitalization of government is essential in these times of declining trust and diminishing respect of its cities. The Tenth Amendment Enforcement Act of 1996 would make government more responsive to our citizens and help restore the public's faith in the policy process.

I hope your proposal is received well in Congress. I know it would be received well in the states.

Sincerely,

MARC RACICOT,
Governor.

STATE OF WISCONSIN,
OFFICE OF FEDERAL/STATE RELATIONS,
Washington, DC, March 5, 1996.

Hon. TED STEVENS,
Chairman, Rules & Administration Committee,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN STEVENS: I am writing you in support of legislation that you intend to introduce in your committee regarding the Tenth Amendment. Your vision in regard to this delegation of powers should be commended. Our founding fathers would applaud your courageous efforts.

As you know, the Tenth Amendment restricts the federal government's legislative and regulatory activities to those powers delegated to the federal government under the U.S. Constitution.

Since I have held elective office I have always been a staunch supporter of States Rights' and a firm believer that decisions are best made at the local level. Your bill identifies the problems associated with the lack of enforcement of the Tenth Amendment at present and aims to amend some of these inconsistencies.

Under the Tenth Amendment, federal laws may not interfere with state or local powers unless Congress declares its intent to do so, and Congress cites its specific constitutional authority. Allowing Members of Congress to challenge future legislation that attempts to supersede the Tenth Amendment in my opinion would be beneficial.

As Governor of the State of Wisconsin, I have always been a firm believer that legislation is a far better course of action than litigation. Your bill would do away with needless regulation, infringement of states' abilities to provide quality services to its residents', and encourage local decision making opportunities.

The Tenth Amendment Enforcement Act of 1996 would prevent confusion between the three branches of government and would keep the pressure on Washington to address the concerns Governors have been advocating for years; the need to return power to the states and to the people.

Again, I would like to take this opportunity to thank you for your support on this important legislative matter. Please do not hesitate to contact me in the future.

Sincerely,

TOMMY G. THOMPSON,
Governor.

STATE OF NEW HAMPSHIRE,
OFFICE OF THE GOVERNOR,
Concord, NH, February 26, 1996.

Hon. TED STEVENS,
U.S. Senate, Chairman, Committee on Governmental Affairs, Washington, DC.

DEAR SENATOR STEVENS: Thank you for your letter outlining your introduction of the Tenth Amendment Enforcement Act of 1996. I am pleased to offer my strong endorsement of this piece of legislation.

The individual states have seen a continual degradation of their power and sovereignty during the past 60 years. Beginning with the creation of the welfare state through President Roosevelt's New Deal in the 1930's, the federal government has inappropriately usurped power traditionally left to the states. Issues such as education, crime, commerce and the environment have been co-opted at the federal level. The result is an erosion of local control and the creation of a system of twisted rules and regulations. This overregulation has stifled State initiatives and innovations. The time has come to say enough is enough.

In the State of New Hampshire, many examples exist of federal overreaching. The most telling of these is our continuing attempts at reforming welfare. Our ambitious program would end welfare as we know it, putting people into the workforce. It is based upon the simple notion that those who are able to work for a living should do so. Instead of collecting a welfare check, individuals would receive unemployment benefits and job training. The result would be a motivated workforce, properly trained and prepared to sustain themselves instead of accepting government largesse. Unfortunately, the federal government has gone out of its way to hinder our efforts. New Hampshire is not alone in this fight. Each state has a similar story to tell.

Liberty is defined by American Heritage as the "condition of being free of restriction or control." It is clear that this definition does not relate to our current set of circumstances. The individual states are the engines of democracy, pushing new and exciting concepts which enrich the country as a whole. The states have been thwarted in their efforts to accomplish this. The time has come to reassert the authority of the Tenth Amendment and to return power back to the states and to the individual where it belongs. I believe that the Tenth Amendment Enforcement Act of 1996 will do this and strongly support its passage.

Very truly yours,

STEPHEN MERRILL,
Governor.

STATE OF TEXAS,
OFFICE OF THE GOVERNOR,
February 27, 1996.

Hon. TED STEVENS,
U.S. Senate Committee on Governmental Affairs,
Washington, DC.

DEAR SENATOR STEVENS: I strongly support your legislation, the Tenth Amendment Enforcement Act of 1996.

I applaud your efforts and hope to see this bill's passage this year.

Sincerely,

GEORGE W. BUSH.

STATE OF SOUTH CAROLINA,
OFFICE OF THE ATTORNEY GENERAL,
Columbia, SC, March 14, 1996.

Hon. TED STEVENS,
U.S. Senate,
Washington, DC.

DEAR SENATOR STEVENS: Please accept this letter as a pledge of support for the Tenth Amendment Enforcement Act of 1996, which you are introducing in the Senate. This is clearly one of the most important pieces of legislation to come before Congress this year.

As attorney general of South Carolina, I see first-hand the trouble that arises every time the federal government oversteps its boundaries and intrudes on states' rights. In fact, South Carolina can claim one of the most egregious examples of the federal government meddling in states' affairs with disastrous results.

Several years ago, when I was a solicitor in Charleston, S.C., a local hospital approached me with a plea: Help us do something about crack babies. In increasing numbers, pregnant women were abusing crack cocaine and giving birth to addicted newborns, who cry and shake uncontrollably, refuse to take food and, too often, ultimately die in intensive care.

Working with the hospital, I developed a program to aggressively confront pregnant women with the consequences of their drug use. Over five years, we presented all pregnant women who tested positive for cocaine with a choice: seek drug treatment or face arrest and jail time.

The program was undeniably successful—until the federal government intervened. Without offering any reasonable alternative solutions for saving these crack babies, federal officials came to Charleston and yowled about discrimination and privacy rights. When we refused to back down, they resorted to blackmail. They continued with the program.

So, now, once again, these crack babies cry unconsolably in Charleston—thanks to the federal government's intrusion where it has no business.

There are myriad other examples of ways the federal government ignores the 10th amendment—with effects that would be laughable if they didn't do so much harm. A sampling:

The Hunley. The federal government claims it owns the H.L. Hunley because it won the Civil War. However, the first submarine to sink another vessel lies on soil that belonged to the state of South Carolina even before the United States came into existence. Although common and maritime law, as well as state and federal statutes, point to South Carolina's ownership of the sunken submarine, the federal government's insistence on interfering in South Carolina affairs will cost all of the nation's taxpayers. Worse, its meddling in this matter has caused this war treasure to sit at the bottom of the Atlantic Ocean, rusting away, until the issue can be resolved with the federal government.

The Citadel. Traditionally, education has been a province of the states. And polls show

that the majority of South Carolinians—both male and female—want the option of single-gender education offered by The Citadel. But the federal government thinks it knows what's best for South Carolinians and is trying to destroy an outstanding educational environment that South Carolinians overwhelmingly support.

Tobacco regulation. The Food and Drug Administration is trampling on states' turf with its new proposals for regulating cigarettes and chewing tobacco. Perhaps its silliest demand is that all advertising label cigarettes as "a nicotine-delivery device." The fact is, Congress has not given the FDA power to regulate tobacco except in limited instances. Everything else is up to the states—at least, it's supposed to be. We know the laws in South Carolina, and we can enforce them without Washington's "help."

Garnishment of wages. The federal government is threatening to sue South Carolina for not complying with a federal law that authorizes the garnishment of wages of people who get behind on student loans. The problem is, the law contains no express provision applying its terms to state government. In fact, its language attempts to override state laws altogether. It provides no clear direction to state governments, but now we're faced with the possibility of defending South Carolina in a suit.

Motor Voter. South Carolina is one of seven states to challenge the "Motor Voter" law that allows people to register to vote when they obtain a driver's license. The issue is not easy and accessible registration; we already have that in place. The issues are the rights of sovereign states and unfunded federal mandates. The federal government demanded that South Carolina spend a million dollars to expand its voter registration program—without giving the state a dime. Then, when we began to implement the program, the Justice Department demanded that the state contact all the people who theoretically could have registered while we were in litigation. And it ordered a monthly report on our progress. This micro-management of state business by the federal government should be an outrage to all U.S. citizens.

In closing, the legislation you are proposing promises a meaningful solution to the federal government's continued disregard of the 10th Amendment. Count me in as an enthusiastic supporter of the bill, and let me know of anything I can do to promote its passage.

With kindest personal regards,
CHARLES MOLONY CONDON,
Attorney General.

STATE OF HAWAII,
DEPARTMENT OF THE ATTORNEY
GENERAL,
Honolulu, HI, March 4, 1996.

HON. TED STEVENS,
U.S. Senator, Chairman, Committee on Governmental Affairs, Washington, DC.

DEAR SENATOR STEVENS: As the Attorney General for the State of Hawaii, I am writing to express my strong support for the Tenth Amendment Enforcement Act of 1996 ("TAEA").

There have been far too many instances in which federal laws impede, interfere with, or nullify state legislative or administrative actions to the detriment of the interests of the people of Hawaii. This has occurred in large part because the federal courts have given much congressional legislation very broad preemptive scope, in many cases far beyond what it appears Congress itself intended. These preemption rulings have prevented the states from enforcing and implementing needed state policies in areas of traditional state concern, while at the same

time failing to serve any significant federal interests.

In my fourteen month tenure as Attorney General of Hawaii, examples of important state policies which were frustrated by preemption rulings made by the federal courts include the striking down of Hawaii's employment disability discrimination laws as applied to airline pilots, see *Aloha Islandair v. Tseu*, Civ. No. 94-00937 (D. Haw. 1995), appeal filed, C.A. No. 95-16656 (9th Cir.), the overturning of state labor department discretion to bar preexisting condition limitations in state-wide employee health care plans, *Foodland Super Market v. Hamada*, Civ. No. 95-00537 (D. Haw. 1996), appeal filed (9th Cir.), and the nullification of a state law merely asking the State's two major newspapers, granted the privilege of doing business under a joint operating agreement with antitrust immunity, to turn over their tax returns to the state Attorney General, for subsequent disclosure to the United States Justice Department, in order to assess the economic consequences of, and the newspapers' continued need for, the antitrust immunity, see *Hawaii Newspaper Agency v. Bronster*, Civ. No. 95-00635 (D. Haw. 1996), appeal filed, C.A. No. 96-15142 (9th Cir.).

Enactment of the TAEA would be a significant step in reversing this disturbing trend, and would help restore state direction over areas of predominant, if not exclusive, state concern. Under the TAEA (Section 6), preemption would only occur when Congress has explicitly stated that a given area is preempted. This would curtail the potentially unlimited sweep of the "implied preemption" doctrine, and ideally result in a more narrowly construed "express preemption."

Although certain provisions of the TAEA may pose procedural difficulties, or raise some questions of interpretation, I support the overall effect of, and goals behind, the TAEA, and specifically endorse Section 6, which would do much to minimize unwarranted preemption of state actions. I would, however, broaden the language of Section 6(a) to clarify that federal law shall not preempt "State or local government law, ordinance, regulation, or action," unless the statute explicitly declares an intent to preempt. This should ensure that all types of state action, including, for example, state discretionary administrative actions not commanded by any rule or statute, are not preempted without express congressional statement of intent to do so.

Thank you for your support of these critical state interests.

Very truly yours,

MARGERY S. BRONSTER,
Attorney General.

STATE OF COLORADO, DEPARTMENT
OF LAW, OFFICE OF THE ATTORNEY
GENERAL,
Denver, CO, March 15, 1996.

Re Tenth Amendment Enforcement Act

HON. TED STEVENS,
*U.S. Senate, Hart Senate Office Building,
Washington, DC.*

DEAR SENATOR STEVENS: I am writing to express my strong support for the proposed Tenth Amendment Enforcement Act of 1996. The proposal is an important part of the continuing effort to return to the States matters which properly belong within their control.

Every state has a vast number of examples of federal laws and regulatory actions which have interfered with state powers and objectives. I will mention just a few examples from Colorado.

The federal government has been especially intrusive into state affairs in the area of the environment. The country faces many

environmental problems, from our quality problems to hazardous waste cleanups. The states are diligently working to solve these problems, while taking into account local needs and concerns. Federal interference with state efforts often results in less protection to the environment and less experimentation by the states.

For example, in 1994, Colorado passed legislation which was intended to encourage businesses to perform voluntary audits of their environmental compliance and to promptly correct any violations found. In exchange for these voluntary efforts, state regulators will not impose penalties for the violations. This program, which will be of great benefit to the environment, is severely hampered by the federal Environmental Protection Agency's refusal to give the same assurances, that is, to refrain from prosecuting companies that voluntarily report and correct violations.

Another example of EPA hindering state efforts at experimentation concerns Colorado's attempts to put in place a unique water quality testing program. Colorado was one of the first states to attempt to employ a different biomonitoring test. Rather than encouraging these efforts, EPA continuously rejected Colorado's regulation implementing the program until the state rule was drafted to be word-for-word like a comparable federal regulation.

Another example in the area of the environment concerns air quality. Our state has been developing strategies to deal with air quality issues for years. But our problems and solutions are unique since Colorado is a high elevation state. A federal "one size fits all" approach does not work here. The Environmental Protection Agency's answer—a centralized emissions testing program—has created large implementation costs and reduced state flexibility in addressing pollution problems. Even though Colorado drivers will expend hundreds of millions of dollars in testing costs over the next few years, State officials have no practical alternatives if the program does not work or if better solutions are discovered.

Another example of federal intrusion into matters of state concern arose recently in Colorado with regard to the Medicaid program. As you know, Congress' 1993 change to the Hyde Amendment made federal funds available for abortions terminating pregnancies resulting from rape and incest, but did not require that States pay for any abortions. However, an official at the federal Health Care Financing Administration wrote a letter concluding that states must pay for the disputed abortions. Based solely upon this letter, and without any change in federal statutes or regulations, several federal appellate courts have required States to pay for these procedures, notwithstanding state laws to the contrary.

Colorado state officials are in an impossible dilemma because our state constitution forbids the use of public funds to pay for these procedures. To avoid violating the state constitution but still be consistent with federal mandates, state officials must either (1) withdraw from the Medicaid program and forfeit hundreds of millions of dollars in federal funds, thereby denying thousands of low income Colorado residents access to needed medical care or (2) face contempt citations from federal judges. This problem could have been avoided if federal officials clearly understood their own responsibility to protect state prerogatives.

The federal "motor voter" law presents a different type of intrusion. This law doesn't treat States just like the private sector, it actually imposes special burdens simply because they are States. As the Supreme Court recognized in *Oregon v. Mitchell*, 400 U.S. 112