

Posted: 11/7/1994

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States to Washington: Cease and Desist!

Is America headed for a constitutional crisis? An anti-Washington populist uprising? A few years ago, asking these questions would have seemed absurd. Then came Colorado.

The Colorado state legislature has fired the first volley in what may become the most heated political battle of the '90s. By more than a three-to-one margin, it recently passed House Joint Resolution 1035, claiming sovereignty over the federal government. HJR 1035 is no less than a "Notice and Demand to the federal government, as our agent, to cease and desist, effective immediately, mandates that are beyond the scope of its constitutionally delegated powers."

Now the Michigan legislature is preparing to follow Colorado's lead. On September 20, House Concurrent Resolution 945 was adopted by the House and sent on to the Senate. Representative John Jamian (R-Bloomfield Hills), the House sponsor of the resolution, proudly proclaimed, "We're saying to Congress: Quit putting our money where your mouth is."

The prime object of the states' scorn is Washington's bad habit of foisting new programs and spending upon the states. Hundreds of these "unfunded mandates" are now on the books. If a state resists a mandate, Congress often threatens to cut off funds in other areas. For example, if states fail to meet federal standards in testing school bus drivers, they could lose federal highway grants.

What's happening is that states are re-asserting a right they have always had. Before the original colonies ratified the Constitution, they insisted that the Bill of Rights-the first ten Amendments-be added. The 10th Amendment clearly states: "The powers not delegated to the United States, nor prohibited to it by the states, are reserved to the states respectively, or to the people." Arguably, the Constitution does not grant the federal government the power to do a host of things it now performs or imposes upon the states.

The trouble with power is that whoever has it always wants more. Despite limits built into the Constitution, Washington has assumed ever more power over the past 200 years. In response, Michigan's HCR 945 declares "That the Michigan Legislature hereby asserts Michigan's sovereignty under the Tenth Amendment to the Constitution of the United States over all powers not otherwise enumerated and granted to the federal government by the United States Constitution."

Colorado and Michigan are not alone. Tenth Amendment resolutions have passed in six other states and are pending in many others. All across the country, state legislatures seem to be in the "I'm mad as hell and I'm not going to take it anymore" mood. As ammunition, they are citing a landmark United States Supreme Court decision, *New York v. United States* (112 S. Ct. 2408 (1992)), in which the Court held that Congress may not commandeer the legislative and regulatory processes of the states by making them accept nuclear waste.

Some interesting ways have been proposed to put teeth in the states' threat. One is for a state legislature to demand that its congressional delegation appear before them at an annual hearing, face-to-face and in front of cameras, to answer questions about why they voted so often to place financial and regulatory burdens on their own constituents. That

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1993 recommendation of the Midland-based Mackinac Center for Public Policy was approved without dissent by the Michigan legislature last year.

A more radical plan, suggested by Colorado state representative Charlie Duke, calls for Coloradoans not to send to Washington the taxes they would normally pay. Instead, the state's taxpayers would mail their federal taxes to a Colorado-administered escrow account. Then, if the Washington politicians have behaved themselves, the money would be forwarded to them. If not, the state would keep the money until they shape up.

This is strong medicine, but then federal mandates are a serious matter. They are bankrupting state and local governments and threatening to turn the states into mere servants of Washington. The Mackinac Center found that in 1993, for instance, the total cost to Michigan taxpayers of federal mandates in the Medicaid program alone was \$95.3 million. That amount was no less than one-third of the growth in state revenues for that year.

The move to assert state sovereignty promises to mushroom into a crisis for the federal government if it refuses to live and act within its constitutional boundaries. The states are not going to "take it" much longer.

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