

INQUIRING MINDS- FEDERAL V STATES RIGHTS- December 3, 2021

Bob Barger, moderator

Understanding States' Rights and the 10th Amendment Questions

1. Where is the point at which the federal government intrudes on states' right? In what issues has this already happened. Is there a remedy?
2. How should the issue of marijuana regulation be addressed with federal law prohibiting distribution and state law allowing medical and/or recreational marijuana.
3. There are many differences between federal law and various state laws concerning abortion. What is the best way to resolve this contentious issue?
4. Should election law be dealt with at the federal or state level or both?

Amendment X -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 debate over states' rights started with the writing of the Constitution and Bill of Rights. During the Constitutional Convention, the Federalists, led by John Adams, argued for a powerful federal government, while the Anti-federalists, led by Patrick Henry, opposed the Constitution unless it contained a set of amendments specifically listing and ensuring certain rights of the people and the states. Fearing that the states would fail to ratify the Constitution without it, the Federalists agreed to include the Bill of Rights. In establishing American government's power-sharing system of federalism, the Bill of Rights' 10th Amendment holds that all rights and powers not specifically reserved to Congress by Article I, Section 8, of the Constitution or to be shared concurrently by the federal and state governments are reserved by either the states or by the people. In order to prevent the states from claiming too much power, the Constitution's Supremacy Clause (Article VI, Clause 2) holds that all laws enacted by the state governments must comply with the Constitution, and that whenever a law enacted by a state conflicts with a federal law, the federal law must be applied.

Civil Rights Movement- From the day in 1866, when the U.S. Congress passed America's first civil rights law, public and legal opinions have been divided on whether the federal government overrides states' rights in attempting to ban racial discrimination nationwide. Indeed, key provisions of the Fourteenth Amendment dealing with racial equality were largely ignored in the South until the 1950s. During the Civil Rights Movement of the 1950s and 1960s, southern politicians who supported the continuation of racial segregation and enforcement of state-level

“Jim Crow” laws denounced anti-discrimination laws like the Civil Rights Act of 1964 as federal interference with states’ rights. Even after passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965, several southern states passed “Interposition Resolutions” contending that the states retained the right to nullify the federal laws.

Current States Rights Issues.

Marijuana Legalization- While at least 10 states have enacted laws allowing their residents to possess, grow, and sell marijuana for recreational and medical use, the possession, production, and sale of marijuana continues to be a violation of federal drug laws. Despite previously rolling back an Obama-era hands-off approach to prosecuting violations of federal marijuana laws in pot-legal states, former Attorney General Jeff Sessions clarified on March 8, 2018 that federal law enforcement officers would go after dealers and drug gangs, rather than casual users.

Gun Control -Both the federal and state governments have been enacting gun control laws for over 180 years. Due to an increase in incidents of gun violence and mass shootings, state gun control laws are now often more restrictive than federal laws. In these cases, gun rights advocates often argue that the states have actually exceeded their rights by ignoring both the Second Amendment and the Supremacy Clause of the Constitution.

Other states’ rights issues include same-sex marriage, the death penalty, and assisted suicide.
By Robert Landley, July 3, 2019 _____

Preemption Doctrine- The preemption doctrine derives from the Supremacy Clause of the Constitution which states: "Constitution and the laws of the United States shall be the supreme law of the land [...] anything in the constitutions or laws of any state to the contrary notwithstanding." This means that any federal law can trump any conflicting state law. No state law may violate citizens' rights that are enshrined in the U.S. constitution. These cases of conflict are explained with examples below.

- **If a state law affords a person more rights than the federal law, the state law is legally presumed to prevail within that state.** For instance, if the federal law does not recognize same-sex marriage, but a specific state allows it, the state law prevails since it is giving its residents more civil rights.
- **If a state imposes more responsibility on its residents than the federal law, the state law prevails.** For instance, if the federal law does not require passengers in the back seat to wear seat belts, but a specific state requires residents to do so, the state law prevails and all citizens will be required to strap themselves in the rear passenger seat when they're in that particular state as residents or visitors.
- **If the state and federal laws are in explicit conflict, i.e. if a state law expressly permits something that the federal law expressly prohibits, the federal law**

prevails. For instance, if a particular state has legalized the possession of marijuana,

- but the federal law explicitly prohibits it, no state resident can possess marijuana despite it being legal in that state

Gay marriage conflict- Marriage has traditionally been a state issue. The minimum age requirement to get married varies by state. Marriage licenses are also issued by local governments. Gay marriage is legal in many states. Gay rights advocates and opponents of same-sex marriage advocate heavily at the state level — pushing for state laws that push their respective agenda. Some state laws are overturned by state courts. For example, in California. However, activists on both sides of the debate are also pushing for changes at the federal level because a federal law — or a U.S. Supreme Court ruling — would trump state law. Two cases heard by the U.S. Supreme Court in 2013 on gay rights bolstered same-sex marriage rights. In California, voters had enacted a law to ban gay marriage. This law was deemed unconstitutional by a federal court, and was overturned. The U.S. Supreme Court refused to decide this case when the federal court's decision was appealed. However, the Supreme Court also declined to make a ruling on whether individuals had a constitutional right to same-sex marriage.

1. In another case, the Supreme Court recognized the legitimacy of state law and ruled that married same-sex couples were entitled to federal benefits. i.e., if a gay couple is married in a state that recognizes same-sex marriage, they are to be treated as legally married in their dealings with the federal government. For example, they can file for taxes under the "Married filing jointly" status.

"Federal vs State Law." *Diffen.com*. Diffen LLC, n.d. Web. 9 Aug 2021. _____

The Supreme Court and Federalism Updated March 17, 2020 by Infoplease staff

The framers of the Constitution sought to balance the rights of the several states and the powers of the new federal government. Their solution was a federal system, which divides powers between the two levels of government. Although the Constitution is the "supreme law of the land," conflicts over states' rights versus national power have arisen throughout American history.

1997- In *Printz v. United States* the Court strikes down the provision of the federal Brady Act requiring states to check the background of handgun buyers.

2000- The Court's unanimous decision in *Reno v. Condon* approves a federal law preventing states from selling databases of personal information (the Driver's Privacy Protection Act) on the grounds that this is proper federal regulation of interstate commerce.

2000- In *United States v. Morrison*, the Court voted, in a 5-4 decision, that part of the 1994 Violence Against Women Act exceeded congressional power under the Constitution's Commerce Clause and, therefore, was unconstitutional

2003- In *Nevada v. Hibbs* the Court holds that a state worker can sue the state for money damages for its failure to obey the federal Family and Medical Leave Act of 1993. The decision is a break from the court's recent tendency to expand states' rights

2005- In *Gonzales v. Raich* the Court votes 6-3 that under the Constitution's Commerce Clause, Congress can criminalize the production of cannabis and its use even if states have approved its use for medical purposes.

2006- The Supreme Court rules in favor of upholding the 2003 Partial-Birth Abortion Ban Act in *Gonzales v. Carhart*. The case represents a move toward limiting abortion rights.

2014- The Court rules in *Town of Greece v. Galloway* that Christian prayers at the beginning of council meetings in an upstate New York town do not violate the constitutional prohibition against government establishment of religion.

2015 -States cannot keep same-sex couples from marrying and must recognize their unions, the Supreme Court says in a ruling. The decision was 5-4_____

Sens. Booker, Wyden, and Schumer introduce preliminary draft of bill to end cannabis prohibition- *Last update: July 14, 2021*

As currently drafted, the bill would make the following changes to federal cannabis policies:

- Deschedule cannabis by removing it from the Controlled Substances Act;
- Allow states to craft their own cannabis policies, just as states do with alcohol;
- Expunge federal records of arrests and convictions for non-violent cannabis offenses and allow for resentencing;
- Create a regulatory framework and federal tax structure for cannabis; and
- Establish a grants program to fund nonprofits to help those impacted by the war on cannabis, as well as programs to help equity applicants and states get access to funds for equity programs.

Abortion to supreme court in 2022 session *Washington — May, 2021* \ The Supreme Court on Monday agreed to take up a blockbuster dispute over a Mississippi ban on abortions after 15 weeks of pregnancy, setting up a high-stakes showdown over the future of *Roe v. Wade*. The battle will be the first test of limits on abortion access to go before the Supreme Court's expanded 6-3 conservative majority and could pave the way for more restrictions, as the dispute takes aim at the landmark 1973 ruling in *Roe*, which established a woman's right to an abortion. Arguments will likely be heard in the fall, during the high court's next term, with a decision expected by summer 2022. The justices will specifically weigh whether all pre-viability prohibitions on elective abortions are unconstitutional, according to an order issued Monday. The high court's abortion cases have established a woman has a right to an abortion before fetal viability, which generally occurs around 24 weeks into a pregnancy.