



NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

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United States House of Representatives
Washington, DC 20515

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North Carolina
President, NCSL*

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Dear Representative,

On behalf of the National Conference of State Legislatures (NCSL), the bi-partisan organization representing the legislatures of the nation's states, commonwealths, and territories, we urge strong opposition to the "No Regulation Without Representation Act of 2017," H. R. 2887, legislation that would result in an unprecedented preemption of state sovereignty.

If enacted, this constitutionally questionable legislation would codify a radical federal overreach that would undermine the longstanding constitutional right of states to protect the health, safety, and welfare of their citizens and local businesses, as well as preempt countless laws in all 50 states. In short, this legislation would strip states' ability to govern.

Since the beginning of the 20th century, federal legislation, primarily, but not exclusively, through the Commerce Clause, has increasingly eroded the regulatory power of states. The Framers of the Constitution would be alarmed, as they intended the role of the federal government to be limited, not a government that could regulate anything it wanted. The No Regulation Without Representation Act embodies the usurpation of state sovereignty and expansion of federal overreach the Framers feared. This legislation violates the Tenth Amendment's guarantee that the sovereign rights of states cannot be abridged by Congress and aims to eliminate states' powers within their borders, destroying the fundamental principles of federalism that have guided our nation since its founding.

The Tenth Amendment is the cornerstone of constitutional federalism as it reserves broad powers to the states and to the people. States have used this sovereignty to enact laws protecting the health, safety, and welfare of their citizens and local businesses, as they should, as their governments' are vested with that responsibility. And, while it is true that the Supreme Court has made clear that the Commerce Clause allows Congress to regulate interstate commerce, it has also noted that the Commerce Clause "does not elevate free trade above all other values." Therefore, states have the constitutional right to enact laws that are not only in the best interest of their citizens and businesses, but that reflect the popular approval of their citizenries, which is the underlying value of democracy and American Federalism.

State sovereignty, or states' rights, is not a doctrine of convenience. Rather, it's the idea that states, and their citizens, know best how to govern themselves. All too often, members of Congress will tout the importance of "states' rights" to justify a position on an issue, and then preempt states on other issues that don't suit their agendas. This ideological impurity is why the American people are frustrated. Therefore, it is the prerogative, no, it is the obligation of states to remind Congress that there are 50 stars on the American flag, not 535.

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Moreover, in regards to interstate sales tax collection, the No Regulation Without Representation Act unjustifiably pre-empts state authority as it goes beyond the physical presence standard established in the Supreme Court's *Quill* decision of 1992, a decision that Justice Kennedy has written was "questionable even when decided." Therefore, instead of addressing a growing problem, this legislation would exacerbate it. While NCSL is advocating for a federal solution on remote transaction tax fairness, we oppose this legislation because it not only preempts existing state laws, but it also fails to level the playing field for local retailers.

The No Regulation Without Representation Act is one of the most coercive, intrusive, and preemptive legislative measures ever introduced in Congress. If enacted, this law would prove congressional indifference for the role of states in American governance. Therefore, due to its egregious nature, NCSL adamantly opposes this legislation and will inform state legislative leaders of members of their Congressional delegations that sponsor or support it.

Sincerely,



Senator Dan Blue, North Carolina
NCSL President



Senator Deb Peters, South Dakota
NCSL President-elect