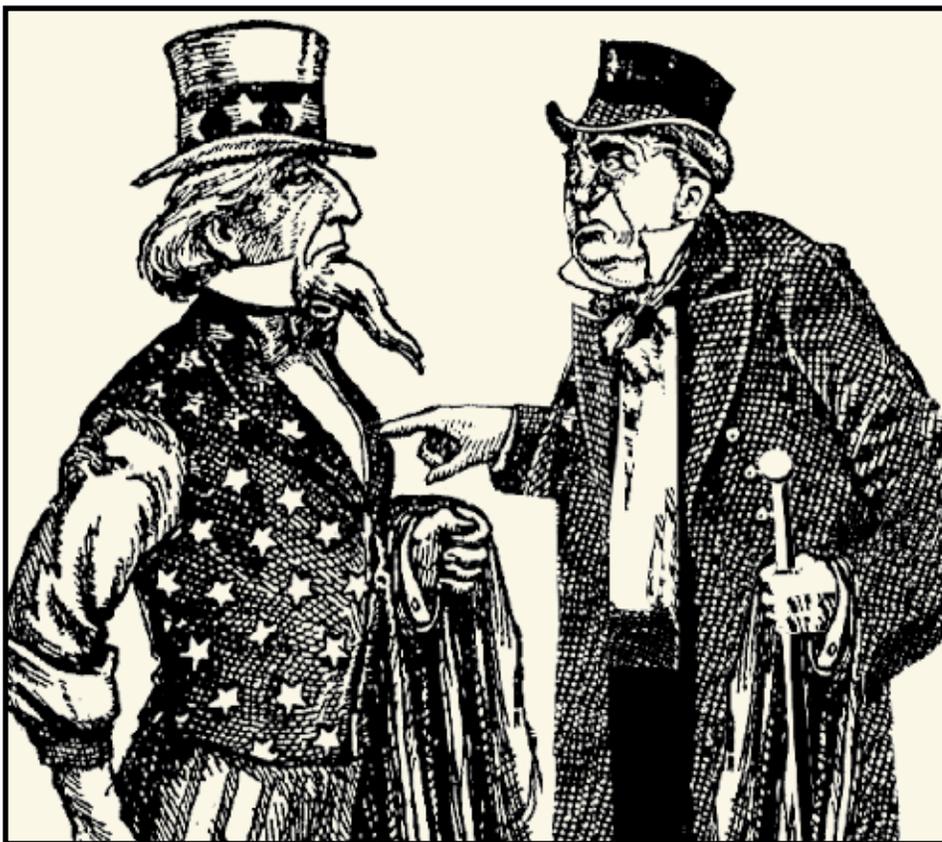


FACING OFF WITH THE FEDS

Sovereignty measures and other steps may indicate an upsurge in anti-federal sentiment in legislatures.



BY SUZANNE WEISS

Discontent over federal mandates in areas ranging from health care to gun control to national security is fueling a states' rights revival in legislatures across the country.

In 2009, formal protests against federal encroachment on states' authority and prerogatives under the 10th Amendment—in the form of sovereignty resolutions or memorials—were considered by legislators in 37 states. Although many of them never made it out of committee or failed on initial floor votes, roughly half were approved in at least one legislative chamber. And in seven states—Alaska, Idaho, Louisiana, North Dakota, Oklahoma, South Dakota and

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Tennessee—the measures passed in both the House and Senate.

State sovereignty resolutions are just one manifestation of an upsurge in anti-federal sentiment that began taking shape several years ago and has steadily gathered steam, says Gary Moncrief, a political science professor at Boise State University whose research focuses on state politics and government.

Some examples include:

◆ Since 2007, more than two dozen states have passed resolutions or laws denouncing and refusing to implement the federal REAL ID Act, which imposes rigorous security, authentication and issuance standards for driver's licenses and state ID cards.

◆ Fourteen states have asserted their right—through legislation or voter-approved initiatives—to permit and control the medicinal use of marijuana.

◆ Montana and Tennessee in 2009 enacted legislation declaring that firearms and ammunition manufactured, sold and used within their borders are not subject to federal regulations and taxes. Similar measures have been introduced in Florida, South Carolina, Texas and several other states over the past year.

◆ The Arizona Legislature recently voted to place a referendum on the fall 2010 ballot that would guarantee the state's residents the right to opt out of "any potential national health-care system."

In Moncrief's view, the growth of the state sovereignty movement over the past several years is attributable in large part to the Internet, which has facilitated efforts on the part of conservatives to force issues out of Washington and into states, where they might have a better chance of winning them.

"This is essentially a Republican initiative," he says. "It's a pretty easy way to stir things up and keep the base motivated."

Indeed, of the 16 states where sovereignty resolutions have passed in one or both legislative chambers, only two—Indiana and Ohio—are states where Barack Obama prevailed in 2008.

But while the sovereignty movement has a distinctively partisan tone, "it shouldn't be dismissed as some sort of right-wing cabal," Moncrief says. "Regardless of party or state, a lot of people are genuinely concerned about the continuing erosion of states' role, and they want to reclaim some power."

Some legislators who have sponsored sovereignty resolutions insist this isn't a red-state rebellion and that they are focused on taking a stand against federal encroachment on state authority that has been going on for decades.

Republican Representative Charles Key of Oklahoma made it clear the sovereignty resolution he introduced had nothing to do with the Obama administration. The measure was introduced in spring 2008, when George W. Bush was still in the White House. Well before that, in 1994, he sponsored a similar



REPRESENTATIVE
CHARLES KEY
OKLAHOMA

measure in the Oklahoma House.

This time around, Key decided to put forth a joint House-Senate resolution because he wanted to increase its exposure. “As people who believe in this constitutional form of government, we need to bring this issue to a national level and debate,” he says.

STATE-FEDERAL TENSION

The wording and tone of sovereignty resolutions vary, but typically they begin by asserting states’ authority and prerogatives under the 10th Amendment and go on to denounce and call for an end to the federal government’s usurpation of states’ constitutionally delegated powers.

Oklahoma’s resolution, for example, declares that “many federal laws are in direct violation of the 10th Amendment,” effectively “commandeering the legislative and regulatory processes of the states.” It demands prohibition or repeal of mandates that come without adequate federal funding and/or require states to comply under threat of penalties or sanctions.

In Tennessee, the sovereignty resolution approved by legislators, and subsequently signed by Governor Phil Bredesen, calls for creating a joint working group of states “to enumerate the abuses of authority by the federal government and to seek repeal of the assumption of powers and the imposed mandates.” New Hampshire’s resolution, which was voted down in March 2009, went so far as to lay out a variant of the 19th century “doctrine of nullification,” which holds that states have the right to declare null and void any federal laws they deem unconstitutional.

Oklahoma’s sovereignty initiative was strongly opposed by Governor Brad Henry, whose veto forced legislators to settle for a nonbinding concurrent resolution instead of one that would have had the force of law.

In his veto message, Henry, a Democrat, argued the resolution “alleges, without offering any evidence or explanation, that past and current U.S. leaders may have violated the

Constitution and committed crimes against the states and the country. It also implies that the state should reject federal tax dollars paid by Oklahoma citizens, and which are being used to address critical needs in transportation, education, health care, law enforcement, veterans programs and many other vital services beneficial to our state. In short, HJR 1003 could be detrimental to Oklahoma and does not serve the state or its citizens in any positive manner.”

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GARY MONCREIF, BOISE STATE UNIVERSITY

REAL ID THE SPARK

The progress of states’ efforts to push back against federal mandates is being tracked and supported by the Tenth Amendment Center, a Los Angeles-based advocacy organization founded by Michael Boldin, who describes himself as a “gun-toting, thirty-something, technology-inclined Libertarian.”

The center’s website offers a variety of resources for legislators, grassroots organizations and others interested in advancing anti-federal initiatives. Among them are model state sovereignty resolutions, suggested talking points and templates for pro-10th Amendment flyers, petitions and banners.

Like Moncrief and Key, Boldin sees the sovereignty movement as arising from stiff resistance on the part of states to the REAL ID Act, one of the Bush administration’s key national security initiatives. The storm of protest that followed the law’s passage in 2005 was a mix of concerns and fears about the cost and complexity of implementation, the potential threat to individuals’ privacy and the unforeseen consequences of creating a de facto national ID.

In 2007, Maine and Montana became the first of 25 states to pass resolutions or binding laws, respectively, denouncing the REAL ID Act and refusing to implement it. Although the federal law is still on the books, the dead-



REPRESENTATIVE
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IDAHO

line for state compliance has been extended twice. U.S. Homeland Security Secretary Janet Napolitano recently announced she would seek to repeal the law in favor of a new initiative, Pass ID, that would be cheaper, less rigorous and partly funded by federal grants.

“The bottom line is that, if there’s widespread support, people can resist the federal government at the state level,” Boldin said.

UNCERTAIN FUTURE

Whether the sovereignty movement will continue to grow is an open question.

Todd Donovan, a political science professor at Western Washington University, is among those who think the sovereignty movement has pretty much run its course.

“This 10th Amendment movement is tapping into a general angst about the size and power of the federal government, but it’s also very much outside the mainstream,” Donovan says.

The handful of states in which sovereignty resolutions have been approved represent “the low-hanging fruit, the states where the GOP rolled up victories in 2008 and the Democratic Party saw its vote share decline,” Donovan says. “That’s what you do with any 50-state strategy—you focus on the states where your initiatives have the best chance of passing. But once you’ve done that, you kind of hit a wall, and that’s what I think we’re going to see happen with the 10th Amendment movement.”

But Idaho Representative George Saylor, a Democrat, who voted against the sovereignty resolution that was passed in his state in 2009, says the movement is part of a long-standing tug-of-war between Washington and the states.

“Where power resides and who gets to do what—there’s been an ongoing interpretation of that through our history,” he says. “Sometimes the federal government asserts a stronger role, and it looks now like we might be getting into a period where the states push for more power.”