

### **Substitute for House Concurrent Resolution No. 11.**

A concurrent resolution to urge the United States Supreme Court to recognize its limited historic role in a federal system and to urge the states to become proactive in defending their sovereignty against federal overreach.

Whereas, The Founders of our republic established a federalist system, characterized by a clear division of powers defined by a written constitution, whereby the powers of the general government were clearly limited, and the existing, retained powers of the states clearly established; and

Whereas, The powers of the federal government were explained by James Madison in Federalist No. 45, to be "few and defined," and touching mainly on international issues of "war, peace, negotiation, and foreign commerce." In contrast the powers "which are to remain in the State governments are numerous and indefinite" and pertain to domestic affairs which "will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State"; and

Whereas, A majority of the states, in ratifying the U.S. Constitution from 1787 to 1790, demanded that the proposed constitution be amended to clearly define the existing, retained powers of the states. The new federal government responded by proposing to the states the Bill of Rights which recognized the existing, retained powers of the states and provided strict limitations on the powers of the new federal government; and

Whereas, The Tenth Amendment to the U.S. Constitution was adopted to ensure that the balance of power between the federal government and state governments remained in perpetuity; and

Whereas, This arrangement of federalism best meets the needs of the states which often vary in customs and values and which are in a position to best understand the needs and desires of their own citizens. Altering wrongs on the part of government is much more easily accomplished at the state level than at the federal level; and

Whereas, Nothing has changed in the U.S. Constitution since the adoption of the Bill of Rights which would alter that balance of power between the federal government and the states; and

Whereas, Generations after the Fourteenth Amendment was ratified, the United States Supreme Court began to embrace novel legal doctrines, most notably the Incorporation Doctrine which, contrary to prior court precedent, redefines the Fourteenth Amendment to be a constitutional watershed, one which makes every state and local law or custom subject to federal oversight, thereby proclaiming unto itself an authority never granted to it by the people. Beginning in the mid-1900s, the courts began to use the Fourteenth Amendment as a pretext for subsuming the long existing powers of the states, shaping society according to their own philosophies, and in the process, destroying federalism and rendering the Tenth Amendment all but meaningless; and

Whereas, A court which recognizes no proper boundary to its own power, particularly the boundaries established by the Tenth Amendment to the U.S. Constitution, has great potential for precipitating irreparable harm to the republic, as illustrated by the 1857 *Dred Scott v. Sandford* decision, and as stated by President Abraham Lincoln in his first inaugural address, referring to that infamous case, "...if the policy of the government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court the instant they are made...the people will have ceased to be their own rulers, having to that extent practically resigned their government into the hands of that eminent tribunal..."; and

Whereas, It is the responsibility of the states to defend the powers they retained under the U.S. Constitution. Chief Justice John Roberts wrote in *NFIB v. Sebelius*, "In the typical case we look to the States to defend their prerogatives by adopting 'the simple expedient of not yielding' to federal blandishments when they do not want to embrace the federal policies as their own. . . The States are separate and independent sovereigns. Sometimes they have to act like it."; and

Whereas, This resolution is part of our sworn duty to defend both the Michigan Constitution and the U.S. Constitution. Every state legislator from the state of Michigan swears an oath that he or she will support these constitutions; now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That we urge the United States Supreme Court to recognize its limited historic role in a federal system in which powers are separated among the branches of government and, most importantly, between the federal government and the state governments, and to recognize that it is the right of the individual states under the Tenth Amendment to determine certain domestic state issues; and be it further

Resolved, That we urge our fellow states to proactively defend their sovereignty from federal overreach; and be it further

Resolved, That copies of this resolution be transmitted to the Justices of the United States Supreme Court, the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, the members of the Michigan congressional delegation, and the legislatures of the other forty-nine states.