



Center for Tenth Amendment Studies: Review of the 82nd Session of the Texas Legislature

By Mario Loyola, Director, Center for Tenth Amendment Studies

OVERVIEW

- ★ Significant progress was made during the 82nd Session of the Texas Legislature—and at the federal level—in furthering the *Agenda for State Action* developed in the fall of 2010: interstate compacts, constitutional amendments, and federal litigation to challenge the constitutionality of federal overreach.

INTERSTATE COMPACTS

- ★ Interstate compacts offer the only way for state governments to initiate changes in federal law. They offer a promising way for states to work together to redraw the proper boundary between state and federal authority.
- ★ The Center was very active in the interstate compacts area, focusing on health care and environmental regulation.
- ★ The main effort was in the Health Care Compact (HB 5) which will return health care funding to the states and give them the right to regulate whatever aspects of health care they might wish to regulate, suspending the operation of federal law correspondingly. The Health Care Compact passed as part of SB 7 in the special session at the end of June.
- ★ Substantially equivalent measures were filed in many other states, and ultimately were signed into law in Georgia and Oklahoma.
- ★ Several alternatives on health care were also developed, such a compact that would have returned just Medicaid funding to the states in the form of a block grant.
- ★ The Center also helped develop HB 2545, which would strip EPA of the authority to approve or disapprove State

Implementation Plans under the Clean Air Act. HB 2545 did not come to a vote on final passage, but continued to gain interest through the end of the session, and it will be a promising avenue in the next Legislature.

- ★ Much was accomplished in raising awareness in Texas and in state legislatures across the country of the potential of interstate compacts to address federalism issues and help erect a shield to protect the states' regulatory autonomy. The interstate compact proposals developed at the Foundation triggered a vital debate in many state legislatures as to why the federal government rather than the states should be regulating in areas such as health care, which are quintessentially matters of local concern. This was the greatest impact of our efforts.

BALANCED BUDGET AMENDMENT

- ★ One of the most effective and straightforward ways to limit the scope and power of the federal government, force a solution on entitlements, and restore our country's fiscal health and creditworthiness, would be to adopt a constitutional amendment requiring Congress to pass balanced budgets, subject to strict taxing and spending limitations.
- ★ The Center was active in support of resolutions in the 82nd session that would have presented an "Article V application" for Congress to convene a convention for the limited purpose of proposing a balanced budget amendment with spending limitations to the states for ratification. Examples included HCR 100 (Creighton) that would have called for a convention to propose a balanced budget amendment with spending limitations.
- ★ Significant opposition to the Article V route arose because of an unfounded concern that an Article V convention for the limited purpose of proposing amendments

for ratification by the states could become a plenary convention able to determine the ratification of its own proposals. This fanciful notion was effective in stopping HCR 100 and similar efforts.

- ★ HCR 18, which calls on Congress to propose an amendment to the Constitution, calling for balanced budget with spending limitations, did prevail.
- ★ In Congress, senators presented a superb balanced budget amendment proposal, S.J. Res. 10, which would balance the budget, cap spending at 18 percent of GDP, and require supermajorities for any tax or debt-ceiling increase.
- ★ The Center produced a comprehensive analysis of S.J. Res. 10 with an extensive history of federal spending to demonstrate the urgent need for such an amendment. This Policy Perspective, “A Constitutional Solution to Runaway Federal Spending,” was disseminated in Congress and in the Texas Legislature.

CHALLENGING FEDERAL OVERREACH IN THE COURTS

- ★ The Center filed the Foundation’s first-ever Amicus Brief in the 11th Circuit Court of Appeals, on behalf of the states in the 26-state challenge to the constitutionality of ObamaCare.
- ★ The Amicus Brief focused not on the individual mandate, which tests the power of the federal government in relation to individuals, but rather on the other substantive issue in the appeal, namely the Medicaid expansion provisions of ObamaCare, which test the power of the federal government in relation to the states.
- ★ The Amicus Brief was followed up with an op-ed in *The Wall Street Journal* by Mario Loyola and renowned constitutional scholar Richard Epstein (“ObamaCare’s Next Challenge,” June 7, 2011) summarizing the argument of the Foundation’s Amicus Brief.
- ★ Posts at *National Review* also highlighted the Amicus Brief and *The Wall Street Journal* op-ed.

