RESERVED POWERS

TENTH AMENDMENT

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.

RESERVED POWERS

Scope and Purpose

"The Tenth Amendment was intended to confirm the understanding of the people at the time the Constitution was adopted, that powers not granted to the United States were reserved to the States or to the people. It added nothing to the instrument as originally ratified." [1] "The amendment states but a truism that all is retained which has not been surrendered. There is nothing in the history of its adoption to suggest that it was more than declaratory of the relationship between the national and state governments as it had been established by the Constitution before the amendment or that its purpose was other than to allay fears that the new national government might seek to exercise powers not granted, and that the states might not be able to exercise fully their reserved powers." [2] That this provision was not conceived to be a yardstick for measuring the powers granted to the Federal Government or reserved to the states was firmly settled by the refusal of both Houses of Congress to insert the word "expressly" before the word "delegated," [3] and was confirmed by Madison's remarks in the course of the debate, which took place while the proposed amendment was pending, concerning Hamilton's plan to establish a national bank. "Interference with the power of the States was no constitutional criterion of the power of Congress. If the power was not given, Congress could

[1] United States v. Sprague, 282 U.S. 716, 733 (1931).

[2] United States v. Darby, 312 U.S. 100, 124 (1941). "While the Tenth Amendment has been characterized as a 'truism,' stating merely that 'all is retained which has not been surrendered,' [citing Darby], it is not without significance. The Amendment expressly declares the constitutional policy that Congress may not exercise power in a fashion that impairs the States' integrity or their ability to function effectively in a federal system." Fry v. United States, 421 U.S. 542, 547 n.7 (1975). This policy was effectuated, at least for a time, in National League of Cities v. Usery, 426 U.S. 833 (1976).

[3] Annals of Congress 767–68 (1789) (defeated in House 17 to 32); 2 B. Schwartz, The Bill of Rights: A Documentary History 1150–51 (1971) (defeated in Senate by unrecorded vote).