

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE JOINT RESOLUTION 2026

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Sponsors: Representatives Holt; R. Hunter, Pope, and Bowman.

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Referred to: Rules.

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May 15, 1989

1 A JOINT RESOLUTION EXPRESSING THE OPINION OF THE GENERAL  
2 ASSEMBLY THAT THE TENTH AMENDMENT TO THE CONSTITUTION OF  
3 THE UNITED STATES IS OF OPERATIONAL FORCE GOVERNING AND  
4 BALANCING THE RESPECTIVE POWERS OF THE STATES AND THE  
5 FEDERAL GOVERNMENT AND URGING THE PRESIDENT AND CONGRESS  
6 TO CARRY OUT THEIR RESPONSIBILITIES TO PROTECT THE POSITION  
7 OF THE STATE IN THE FEDERAL UNION WITH REGARD TO THE TENTH  
8 AMENDMENT.

9       Whereas, the Tenth Amendment, part of the original Bill of Rights, reads as  
10 follows: "The powers not delegated to the United States by the Constitution, nor  
11 prohibited by it to the States, are reserved to the States respectively, or to the  
12 people;"and

13       Whereas, the limits on Congress' authority to regulate State activities  
14 prescribed by the Tenth Amendment have recently been the subject of debate by the  
15 Supreme Court in the cases of Garcia v. San Antonio Metropolitan Transit Authority,  
16 469 U.S. 528 (1965), and South Carolina v. Baker, 56 U.S.L.W. 4311 (U.S. April 20,  
17 1988) (No. 94, Original); and

18       Whereas, these cases hold that the limits of the Tenth Amendment are  
19 structural, and not substantive, leaving States to find protection from congressional  
20 regulation through the national political process, rather than through judicially defined  
21 spheres of residual State authority; and

22       Whereas, these United States Supreme Court decisions invite further federal  
23 preemption of State authority;

1 Now, therefore, be it resolved by the House of Representatives, the Senate concurring:

2           Section 1. It is the consensus of the General Assembly that the Tenth  
3 Amendment to the Constitution of the United States is and always has been of  
4 operational force governing and balancing the respective powers of the States and the  
5 federal government. It is the further sense of this body to affirm that the Tenth  
6 Amendment is a substantive limit on national power and should so be applied as a test  
7 by the Courts of the United States and of the several states in the cases coming before  
8 them where a question of the exercise of the federal authority is raised.

9           Sec. 2. The Secretary of State shall transmit a certified copy of this resolution  
10 to the President of the United States and to Congress urging them in the carrying out of  
11 their responsibilities to protect and strengthen the position of the States in the federal  
12 union, avoid intrusion upon State prerogatives, and afford protection to the proper  
13 governing authorities of the States.

14           Sec. 3. This resolution is effective upon ratification.