



Ohio Environmental Council

1207 Grandview Avenue, Suite 201  
Columbus, Ohio 43212

(614) 487-7506  
[www.theOEC.org](http://www.theOEC.org)

[ UNLEASHING THE POWER OF GREEN ]

## **Re: Ohio Senate Concurrent Resolution 13 – Tenth Amendment (As Introduced)**

### **Opponent Testimony of Jack Shaner, Deputy Director, Ohio Environmental Council**

#### **Before the Ohio Senate Committee on State and Local Government and Veterans Affairs**

**Honorable Jim Hughes, Chair; Honorable Jimmy Stewart, Vice-Chair; and Honorable Teresa Fedor, Ranking Minority Member**

**September 22, 2009 – Ohio Statehouse – Columbus, Ohio**

The OEC respectfully submits this Opponent Testimony on S.C.R. 13 (As Introduced) — the proposal to claim sovereignty over certain powers pursuant to the Tenth Amendment of the United States Constitution.

The Ohio Environmental Council opposes any legislative efforts that could undermine state or federal laws designed to protect human health and the environment. The arguments against the federal government’s inherent powers advanced by Ohio Senate Concurrent Resolution 13 (As Introduced), if followed to their logical conclusion, would prevent the federal government from enacting many laws designed to protect human health, environmental protection, or natural resource conservation.

#### **S.C.R. 13 Represents a Dangerous Interpretation of the United States Constitution**

This legislation represents a radical view of the United States Constitution which, if accepted, would nullify almost every action taken by the federal government to protect human health and the environment.

S.C.R. 13 begins by reaffirming the Tenth Amendment of the United States Constitution which reads, “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.” S.C.R. continues to state that, “A number of

proposals by previous administrations, some now pending proposals by the present administration, and some proposals by Congress, may further violate the Tenth Amendment scope of federal power.”

The clear implication of S.C.R. 13 is that the Tenth Amendment prevents the federal government from taking any action not expressly delegated to it in the text of the Constitution. This reading of the Constitution and the scope of federal power would effectively void countless federal laws which have had a positive effect on our society for generations.

### **S.C.R. 13 Would Upend Basic Federal Environmental Conservation Law**

It is a truism that our federal government is one of limited powers. However, the Tenth Amendment and its relation to the scope of the federal government’s power is a subject that has been taken up time and time again by the Supreme Court of the United States, the branch of our government with the authority to decide such questions.<sup>1</sup>

The Supreme Court has consistently held that the Tenth Amendment does not prohibit the federal government from exercising numerous powers not explicitly delegated to it by the Constitution, such as the power to enact child labor standards and minimum wage laws<sup>2</sup> or the power to take actions to remedy the past effects of racial discrimination.<sup>3</sup> The Court has also upheld the federal government’s power to take actions that will protect the natural environment, including the enactment of landmark laws such as the Clean Water Act.<sup>4</sup> Furthermore, Presidents of all political stripe, including Theodore Roosevelt, Dwight Eisenhower, Richard Nixon, and George W. Bush, have accepted this fundamental view of our system of government. Quite simply, many of the legislative accomplishments of each of these presidents would be abolished if views espoused by S.C.R. 13 were somehow the law of the land.

S.C.R. 13 is an non-binding resolution that breaks no new ground, that misapplies constitutional law, and that—if not already definitively dispensed with by the highest court in the land—would pose a clear and present danger to the most fundamental federal laws that protect the air we breathe, the water we drink, and the land upon which we live.

---

<sup>1</sup> *Marbury v. Madison*, 5 U.S. 137 (1803).

<sup>2</sup> *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985).

<sup>3</sup> *Heart of Atlanta Motel Inc. v. United States*, 379 U.S. 241 (1964).

<sup>4</sup> *SWANCC v. Army Corps of Engineers*, 531 U.S. 159 (2001).