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Saving the Constitution from Bankruptcy

And eventually the general welfare, says U.S. Sen. Tom Coburn, warning that the federal government needs to be reigned in

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Oklahoma's Republican U.S. Sen. Tom Coburn doesn't have very high hopes for his Enumerated Powers Act to pass into law.

But, as he sees it, it's "the only way to get out of the impending financial disaster."

If it were to pass into law, the bill would essentially require lawmakers to justify each piece of proposed legislation by citing the specific source of authority in the Constitution for each provision of a bill.

Coburn said the bill highlights the importance of the Tenth Amendment, which states, "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."

Coburn, though, said the Tenth amendment is being disregarded by the federal government.

"Historic revisionists in both parties have misused the Constitution to justify a 'blank check' approach to spending and earmarking," he said.

As an example, he pointed to the existence of the federal Department of Education.

"You cannot find anywhere in the Constitution where there is a federal role for education. You can't find it. It's totally fabricated," said Coburn.

"How and where is education best accommodated? The closer it is to those that are involved in it," he added.

He pointed specifically to the federal No Child Left Behind Act of 2002, which mandates end-of-instruction tests, among other requirements of local school districts.

"You've got all these rules and all this stuff, and very little money. And there's no specific power enumerating the right of the federal government to interfere in state education. As a matter of fact, there are a couple of lawsuits going on about that right now. And the states are going to win. No question--they're going to win," said Coburn.

Other elected officials closer to home have pointed to the Real ID Act of 2006 as a violation of the Tenth Amendment, since it imposes federal standards for state-issued identification cards, while the Constitution does not specifically enumerate any authority for the federal government to do so (See "Patriotic or Paranoid?" in the June 26-July 2 issue of UTW, and "Be Scared, Be Very Scared" in the May 1-7 issue, which are both available at www.urbantulsa.com).

As Coburn explained, many of the aforementioned "historical revisionists" justify overreaching their authority by invoking the General Welfare Clause of the Constitution, which directs Congress to levy taxes to "provide for the common Defence and general Welfare of the United States."

But Coburn, in turn, invokes founding fathers James Madison and Thomas Jefferson.

He referenced a letter written by Madison in 1831 to James Robertson.

"With respect to the words 'general welfare,' I have always regarded them as qualified by the detail of (enumerated) powers connected with them. To take them in a literal and unlimited sense would be a metamorphosis of the Constitution into a character with there is a host of proofs was not contemplated by its creators," he wrote.

He also quoted Jefferson making the same point.

"Congress has not unlimited powers to provide for the general welfare, but only those specifically enumerated," said the founding father.

While Coburn only recently introduced his bill, the Enumerated Powers Act isn't new to Congress.

U.S. Rep. John Shadegg (R-AZ) has carried it every year for the 14 years he's been in office.

He told UTW that he filed it in response to the passage of the Brady Handgun Violence Prevention Act.

"Among the provisions of the Brady Bill, as it became known, was a requirement that 'local chief law enforcement officers' perform background checks on prospective handgun purchasers," said Shadegg.

"Ultimately, the Supreme Court ruled that Congress acted beyond its authority . . . It is not always the case, however, that laws passed by Congress which are not within the enumerated powers are challenged in the Supreme Court," he added.

Hence the Enumerated Powers Act.

Coburn was a co-sponsor when he served in the House, but he and Shadegg have so far failed to get it passed.

"There hasn't been vocal opposition," said Shadegg.

"After all, opposition to this bill is essentially opposition to the U.S. Constitution. That being said, there are not, nor have there ever been, Democrat co-sponsors of the bill," he added.

When asked why, after a decade and a half, the bill still hasn't passed, Coburn answered, "Because everybody likes government programs, whether it's in the constitutional realm or not."

"Most people don't want to do it because it means you have to go by the Constitution and you may not get to do everything you told everybody you would do," he added.

While Shadegg has carried the bill in the House every year for 14 years, Coburn filed the first Senate version of it just last month.

So, why file this now?

"Because the problems are so severe," Coburn answered.

"The real problem in the long run is that our debt's going up \$1 million a minute, \$1.4 billion a day," he explained.

"The deficit is going to wind up at about \$10 trillion at the end of this year, but we've got another \$85 trillion just on Medicare alone that we don't have the funding for, according to the last trustee's report. And then you've got about \$12 trillion on Medicaid, and about \$7 trillion on Social Security," Coburn continued.

He explained that, with the rising deficit, rising gas prices, continued growth in developing countries and the plummeting value of the U.S. dollar, the United States is heading toward an "economic calamity" on the order of the Great Depression, or worse.

"We're in the tank and there is no way out, unless we start making drastic, tough choices. And unfortunately, Republicans and Democrats alike don't want to make those tough choices. So, this is an attempt to start embarrassing them," said Coburn.

"I don't see any difference between the two parties on the issue of living within the bounds of what the Constitution says. They're both guilty," he added.

"The only way to get out of the impending financial disaster we have is to get the U.S. Congress to start living within the bounds of the Constitution and do what is necessary and also authorized. Not more, not less," he also said.

But, Coburn doesn't expect the Enumerated Powers Act to pass into law any time soon.

He said he has considerable support among fellow Republicans and "blue dog Democrats," but not enough to get a hearing for the bill or to get it passed.

"The difference will be made outside of Washington, not inside," Coburn said.

He said he hopes to inform the public about Congress' disregard of the constitutional limits on its authority in order to exert political pressure from outside of Washington, D.C., as he's done in his crusade against earmarks.

"Nothing new is fast. I've learned that in three and a half years in the Senate. We're just now getting close to where we're getting rid of earmarks, and I did the 'bridge to nowhere' the first year I was in the Senate. But prior to that, people didn't know about earmarks. But what we did is, we won the battle on earmarks outside of Washington, not inside," he said.

Coburn said he'd like to see states' rights and Tenth Amendment issues come up for discussion in the ongoing election season, but he's not holding his breath.

"Unless McCain picks it up, it'll get covered up until after the election. But this is not something we'll stop on. This is something we'll continue to do, continue to talk about, and we'll continue to raise," he said