

Senator Bob Bennett (R-Utah)

Address to high school students participating in the "We the People" constitutional competition at the Utah State Capitol, March 11, 1996

I'm delighted to be with you. I can't think of any single subject that is more important for our students growing up and preparing to exercise the rights of citizenship, voting and holding office, than the Constitution. It is near and dear to my heart and I'm delighted to be here to talk to you about it.

I assume that in preparation for this competition you have spent a lot of time studying the constitutional convention and the great compromise that occurred when we created the two houses of Congress, with states controlling the Senate and the populace controlling the House of Representatives and the difficulties they had in dealing with the various challenges. These were very practical politicians. Yet, we often think of them only as great political philosophers -- which they were. They understood political philosophy about as well as any group ever has and if this were a different setting I would spend the time discussing the basic political philosophy that undergirds the Constitution, but you've probably studied most of that in preparation for this opportunity.

You know about the ratification fight. If it were in today's world, the pundits would all be saying, "The Constitution will not be ratified. A poll taken overnight shows that 37 percent of the dental assistants in the major urban areas are opposed to this section, and 43 percent of the florists in this area are opposed to that section and the polls show that it can't possibly be ratified." And, nearly as we can tell, a majority of Americans were opposed to ratification of the Constitution. Alexander Hamilton got it through the state legislature of New York by a single vote. Going into that legislative session he was very, very shy of even that. I don't know how many votes he needed, but he proceeded to, in effect, "filibuster" the state legislature -- prevent it from voting on the Constitution -- until he had rounded up this vote and he had rounded up that vote and then he had rounded up another vote. He let the session drag on and finally when he had a one vote margin he quit talking, he quit arguing, and he voted. We still follow that same pattern today. Keep delaying it until you get the votes. Once you have the votes, you vote if you control the agenda.

Alexander Hamilton did that and got the Constitution ratified in New York, one of the two states where ratification was essential. Yes, it had to be ratified in all the states. But if Rhode Island had refused to ratify, if Delaware had refused to ratify, it frankly wouldn't have made much difference because the power of the rest of the states would have overcome that, but if New York or Virginia had refused to ratify you would have had no nation. So the fight focussed in those two huge states and Alexander Hamilton almost single-handedly lobbied the thing through the New York state legislature.

In Virginia the principle opponent to ratification was a man named Patrick Henry, the most popular politician in Virginia. He had a series of objections to the Constitution that he repeated over and over again but his main objection was that there was no list -- or in 17th century

language, "bill" -- of rights. He argued that we must have a list of individual rights. "No," he was told, "You don't need that. Those are all implied. Those are all suggested. You don't need to have a specific list of rights." And he said, "Oh, yes you do because government will forget if they're not written down." Finally the ratification vote in Virginia turned on this issue. James Madison, being the practical politician that he was, said, in effect, "OK, I'll make a deal. If you'll vote for ratification I will promise to go to the Congress as a member of the House of Representatives and propose a Bill of Rights in the first session." Madison overcame Henry and Virginia ratified. With New York ratifying and Virginia ratifying the other states came along and we had a country.

Madison, true to his word, went to the House of Representatives in the First Congress and proposed a Bill of Rights, 10 of which were adopted. He proposed 12, 10 were adopted. One of them, the eleventh, was just adopted, what, three years ago? It hung around for that long and finally got ratified by three fourths of the states and is now in the Constitution. Which brings me to the point that I want to make about the Constitution. And that is, no matter how important it is that you study the constitutional convention and the ratification process and the First Congress and the adoption of the Bill of Rights the process did not end in the 18th Century. The process of writing the Constitution is still going on. Stop and think about it for just a moment. In order to get the Constitution ratified the Congress had to agree, had to pledge in advance and then follow through on their promises to change it, to make it acceptable to the people's requirement that there be a Bill of Rights.

Now you look at the amendments to the Constitution and every single one of them, other than the mechanical ones -- some of the most recent amendments change the mechanics of how presidents are elected -- but aside from the mechanical amendments, every amendment adopted after the Constitution was first written has limited the power of the federal government. Every single amendment in the Bill of Rights limits the power of the federal government and moves power in the direction of the states and the people. The Tenth Amendment to the Constitution summarizes that absolutely, all power not given to the federal government nor denied to the states is implicitly given to the states and the people.

But there was one thing wrong with the Constitution. Is that heresy for me to say there was something wrong with the Constitution? There wasn't much the founding fathers could do about it because, again, they were practical politicians and when they were faced with an intractable situation they did what most practical politicians do when they are faced with that kind of a problem; they stitched around it and hoped in time that it could be taken care of. I'm talking about slavery. The Constitution embodied slavery in our basic law. And the notion of slavery is antithetical to the basic notion on which this country is founded. The founding fathers said, "We can't solve this problem. We can't get ratification if we don't do it this way. We hope this problem will go away. We'll just stitch around it in the Constitution and then hope that it gets taken care of." It didn't get taken care of. The nation ultimately fell apart. Split wide open. We went to war over the issue of slavery. I know there are a lot of political commentators who say there were a lot of other issues involved in the Civil War and there probably were, but Abraham Lincoln said the war was fought over slavery and I think he's a pretty good source. He was there. That's what he said caused the Civil War.

Interestingly, after the Civil War, every amendment to the Constitution has limited the power of states and individuals and increased the power of the central government. It was a pivot point in constitutional history that instead of going the one way we started going another. A manifestation, if you will, of the fact that we had become a single nation, we were an industrialized nation and we needed a degree of uniformity which as an agrarian nation we hadn't needed before. And so the Thirteenth Amendment would not allow states to maintain the institution of slavery. States lost that power. The Fourteenth Amendment said the states cannot deny citizenship to someone who has been a slave. Up until that time the states got to decide who was a citizen and who wasn't. The Fifteenth Amendment said the states could not deny the vote to someone who had once been a slave. Subsequent amendments to the Constitution have gone in that same direction saying to the states, "You cannot deny the vote to a woman." Some states had women's suffrage, some didn't and we needed a degree of uniformity in this great nation and the Constitution was amended to make that point. We said, "You cannot deny the vote to an 18 year old. You cannot use poll taxes as a way of denying the vote to the poor." States lost power which the founding fathers gave them after the Civil war as the federal government used the Constitution to assert its motion in the direction of a unified nation in an industrial society.

We're now undergoing a revolution as fundamental as the industrial revolution. We're going through the information revolution. And just as the industrial revolution changed everything the information revolution is changing everything. It is interesting that large organizations, whether they be General Motors or Dupont or IBM are all downsizing, that is they are getting smaller, and they're devolving power down to the lower levels. The hierarchy which was OK in an industrial society doesn't work anymore in an information society because with a PC at his workstation the lowest worker can have as much information at his fingertips as the boss does in the corner office. And the federal government hasn't caught up with that. The federal government is still organized in the huge hierarchical pattern from the 1940s and 1950s and the 1960s and as other institutions in America are downsizing and devolving the federal government is faced with the same challenge and finding it difficult.

It is interesting to me that one of the candidates for president in this circumstance as he looks out over the issue of the future of America has started to say at every campaign stop, "Let's pay attention to the Tenth Amendment to the Constitution that tries to move power back to the states." Now he doesn't want to repeal the Thirteenth Amendment or the Fourteenth or the Fifteenth Amendments or so on, he does not want to repeal that which was done -- properly in my view -- to move the country into the modern world of the industrial revolution but he recognizes that the founding fathers left within the Bill of Rights the answer to downsizing and devolution, to use the modern terms, of a giant organization moving power back to the lower levels. It is already there in the Constitution.

We don't need to amend the Constitution for the information age the way we found it necessary to amend it for the industrial age. We can simply reach out -- resuscitate if you will -- the Tenth Amendment. I've heard courts refer to it as a dead letter. Well it's not a dead letter. It is a gift from the founding fathers that says to us, "Yes, you do have the flexibility if you will simply recognize that the states have a role to play."

If we look at the modern problems of government, how do we care for our citizens who are in need, our citizens who have the greatest problems? We have discovered that making all the decisions about how we care for those citizens in Washington doesn't work. Maybe those decisions as to how we care for the poor and the needy and the disadvantaged in our society should be made in Salt Lake City or Carson City, Nevada or Sacramento, California rather than all of them being made in Washington.

We passed a bill that moves in that direction in the Senate. It passed 87 to 12. That's as strong a statement as I have seen in any piece of major legislation. If it's unanimous you know it's not controversial. The fact that we were able to get 87 votes for that concept of moving the responsibility back to the states, recognizing, if you will, the right of the states to do something different in each one according to the circumstances in each state is in the spirit of the Tenth Amendment. And in the spirit of the wisdom of the founding fathers in giving us a kind of government that no other country has. A government that says, "Yes, you will have a central government that can deal with the problems of national challenges such as defense and economy but the local problems really should be handled by the states." We need this balance between federal power and state power and maybe in the name of getting federal control we have gone too far and it is time to start moving back in the other direction because the states in the information age can have as much information as the federal government, probably more. The states in the information age can be trusted to do the right thing and in most cases probably more.

It is interesting to me as I serve in Congress in this time to realize that the Tenth Amendment to the Constitution is indeed being dusted off and looked at again. I'm told -- now, I'm not a lawyer, but I'm told -- that the courts are beginning to breathe life back into the Tenth Amendment. For the first time the Supreme Court actually struck down an action by the federal government on the grounds that under the Tenth Amendment that power was not given to the federal government and therefore belonged to the states.

So I congratulate you in the study that you are undertaking and I tell you that it is not a study of dusty old things 200 years ago. Constitutional issues are very much with us today. Constitutional issues are at the heart of what we do in government today. And the understanding of the Constitution and how it is structured and how it is put together and what it means through the 200 years of its existence is an understanding that all of you as citizens desperately need to have. Our nation will founder very quickly in a single generation if we do not have informed voters to make the decisions. So what you're doing is tremendously important and I salute you for it.